



New South Wales

Parliamentary Remuneration Amendment (Salary Packaging) Act 2009 No 62

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Parliamentary Remuneration Amendment (Salary Packaging) Act 2009 No 62

Act No 62, 2009

An Act to amend the *Parliamentary Remuneration Act 1989*, the *Parliamentary Contributory Superannuation Act 1971* and the *Constitution Act 1902* with respect to the provision of employment benefits and the making of superannuation contributions for members of Parliament by way of salary sacrifice. [Assented to 16 September 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Parliamentary Remuneration Amendment (Salary Packaging) Act 2009*.

2 Commencement

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

Schedule 1 Amendment of Parliamentary Remuneration Act 1989 No 160

[1] Section 2A Purpose of Act

Insert “or received as employment benefits” after “income” in section 2A (1) (a).

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

designated employer—see section 6A.

employment benefit—see section 6A.

salary sacrifice contribution means a superannuation contribution made for a member by way of salary sacrifice.

[3] Part 2A

Insert after Part 2:

Part 2A Employment benefits

6A Employment benefits

- (1) A member (including a recognised office holder) is entitled to be provided with employment benefits if the member elects by notice in writing to the designated employer to be provided with those benefits and if the designated employer approves of that election.
- (2) For the purposes of this section, an *employment benefit* is a benefit (other than a salary sacrifice contribution) that:
 - (a) is or is to be provided to a member at the cost of the State, and
 - (b) is of a private nature, and
 - (c) is of a kind approved as an employment benefit by a determination of the Tribunal, either generally or in relation to any member or class of members.
- (3) The cost of providing an employment benefit (including any applicable tax or administrative costs) is to be as determined from time to time by the designated employer and the remuneration otherwise payable to the member is reduced by the cost of providing the benefit.

- (4) The designated employer may from time to time determine the terms and conditions on which, including the manner in which, employment benefits are to be provided.
- (5) Any determination by the designated employer under this section as to the costing or terms and conditions of, or any other matter relating to, the provision of employment benefits is to be consistent with any determination of the Tribunal relating to those matters.
- (6) The provision of an employment benefit to a member may be terminated at any time by the member by notice in writing to the designated employer.
- (7) For the purposes of this section, the *designated employer* is the person holding the position of Executive Manager, Parliamentary Services in the Parliament's Department of Parliamentary Services or the holder of a position of the following kind that is prescribed by the regulations for the purposes of this section:
 - (a) a position of an officer of either House of Parliament,
 - (b) any position under the separate control of the President or Speaker, or under their joint control.
- (8) This section has effect despite anything to the contrary in this Act, the *Constitution Act 1902* or any other Act.

6B Functions of Tribunal relating to employment benefits

- (1) The Tribunal may, from time to time, make determinations with regard to employment benefits.
- (2) The Tribunal may, by a determination:
 - (a) fix the type of benefits that may be provided as employment benefits, and
 - (b) fix conditions on which employment benefits are to be provided, and
 - (c) make provision for the costing of employment benefits.
- (3) A determination may amend or revoke a determination that has already been made.
- (4) A determination or a provision of a determination may relate to all or any members or to any class of members.

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- (5) In fixing the type of benefits that may be provided as employment benefits, the Tribunal may only approve a benefit of a kind that is available to a member of the Government Service (other than a benefit that is only available to executive officers within the meaning of Part 3.1 of the *Public Sector Employment and Management Act 2002*).

6C Special determinations as to employment benefits

- (1) The Minister may direct that a special determination be made by the Tribunal as regards employment benefits.
- (2) Any such direction:
- (a) may relate to all or any employment benefits or any class of them, and
 - (b) may relate to all or any individual members and recognised office holders or to any class of them.
- (3) A special determination is to be made by such time as the Minister directs and is to take effect from such time as the Tribunal specifies in the determination.

[4] Section 8 The Tribunal

Insert after section 8 (2):

- (3) The Tribunal has such powers, authorities, duties or functions as are conferred or imposed on it by or under this or any other Act.

[5] Section 9

Omit the section. Insert instead:

9 Tribunal may make determinations as to additional entitlements

The Tribunal may make determinations of additional entitlements that are to be available to a member or recognised office holder.

[6] Section 10 General provisions as to determinations of additional entitlements

Insert “under this Part” after “determinations” in section 10 (1).

[7] Section 12A Financial implications of determinations

Omit “this Act” from section 12A (1). Insert instead “this Part”.

[8] Section 14A Superannuation approvals

Omit “14” wherever occurring in section 14A (5) and (6). Insert instead “14I”.

[9] Section 14C Definitions

Insert “and Division 3” after “Division”.

[10] Section 14C, definition of “salary”

Omit paragraph (b) of the definition. Insert instead:

- (b) the total of the following amounts:
 - (i) the remuneration payable to the member by way of basic salary and additional salary (if any),
 - (ii) the cost of any employment benefits provided to the person (as determined by the designated employer),
 - (iii) the amount of any additional superannuation contributions made by way of salary sacrifice under section 14F, or

[11] Part 3A, Division 3, heading

Insert after section 14E:

**Division 3 Salary sacrifice for additional
superannuation contributions**

[12] Section 14EA

Insert before section 14F:

14EA Application of Division

This Division applies to all members, including continuing members under the *Parliamentary Contributory Superannuation Act 1971* referred to in section 14B (*contributors to the PCSS*).

[13] Section 14F Salary sacrifice arrangements

Omit section 14F (1) and (2). Insert instead:

- (1) A member may elect, by notice in writing to the designated employer, to make additional superannuation contributions by way of salary sacrifice contributions.
- (2) A *salary sacrifice contribution* is a contribution paid in accordance with an approval by the designated employer under which the member elects to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the designated employer as a superannuation contribution to a superannuation fund, approved deposit fund or retirement account.

[14] Section 14F (4)

Omit “The percentage or amount so specified is not to exceed 50%, or a greater percentage prescribed by the regulations, of the total basic salary and any additional salary of the member.”.

[15] Section 14F (4A)

Insert after section 14F (4):

- (4A) If an election is made by a contributor to the PCSS, the election is to specify that the additional superannuation contributions are to be paid to one of the following:
- (a) the First State Superannuation Fund,
 - (b) a complying superannuation fund,
 - (c) a complying approved deposit fund,
 - (d) a retirement savings account.

[16] Section 14F (5)–(7)

Omit “Treasurer” wherever occurring. Insert instead “designated employer”.

[17] Section 14F (8) (b)

Insert “under section 14E or this section” after “purpose”.

[18] Part 3B, heading

Insert after section 14F:

Part 3B The Tribunal

[19] Sections 8 (as amended by item [4]), 13 and 14

Renumber the sections as sections 14G, 14H and 14I, respectively, and transfer them to new Part 3B (as inserted by item [18]).

[20] Section 15 Payment of Parliamentary remuneration, allowances and employment benefits

Insert after section 15 (4):

- (4A) Employment benefits are subject to such provisions as may be specified in a determination that is in force.

[21] Section 15 (6)

Insert “(including the cost of providing employment benefits and salary sacrifice contributions)” after “this Act”.

[22] Schedule 2 Parliamentary Remuneration Tribunal

Omit “(Section 8)”. Insert instead “(Section 14G)”.

[23] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1:

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Act 2009*

[24] Schedule 3, clause 4

Insert after clause 3:

4 Existing elections for superannuation contributions

- (1) An existing contributions election continues in force as if it had been made under this Act as amended by the *Parliamentary Remuneration Amendment (Salary Packaging) Act 2009*.
- (2) In this clause:
existing contributions election means an election by a member that was in force under section 14F immediately before the amendment of that section by the *Parliamentary Remuneration Amendment (Salary Packaging) Act 2009*.

Schedule 2 Amendment of other Acts

2.1 Constitution Act 1902 No 32

Section 13 Disqualifications

Insert after section 13 (4B):

- (4C) Nothing in:
- (a) subsection (1) applies so as to prevent a person from being elected or from sitting or voting as a Member of either House of Parliament, or
 - (b) subsection (2) requires or permits the seat of a Member of either House of Parliament to be declared to be, or to become or be, vacant,

on the ground that he or she elects or agrees to be provided with, or receives, employment benefits (including salary sacrifice contributions for superannuation) under the *Parliamentary Remuneration Act 1989* or any other Act.

2.2 Parliamentary Contributory Superannuation Act 1971 No 53

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

designated employer has the same meaning as in the *Parliamentary Remuneration Act 1989*.

salary sacrifice contribution—see section 18AA.

[2] Section 3 (1), definition of “salary”

Insert at the end of paragraph (c) of the definition:

and

- (d) the cost of any employment benefits (within the meaning of the *Parliamentary Remuneration Act 1989*) provided to the member or former member (as determined by the designated employer), and
- (e) if salary sacrifice contributions are made in respect of the member or former member under this Act, the amounts payable for those contributions under section 18AA, and
- (f) if salary sacrifice contributions are made in respect of the member or former member under section 14F of the *Parliamentary Remuneration Act 1989*, the amounts of those contributions,

[3] Section 6 Payments into and out of Fund

Insert “and salary sacrifice contributions” after “members” where firstly occurring in section 6 (1) (b).

[4] Section 18AA

Insert after section 18:

18AA Salary sacrifice contributions

- (1) The whole or part of the amount required to be deducted from the salary of a member under this Act may be paid by salary sacrifice contributions, if the member elects to make salary sacrifice contributions and the designated employer and the trustees approve of the election.
- (2) A *salary sacrifice contribution* is a contribution paid in accordance with an approval by the designated employer under which the member elects to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the designated employer to the amount required to be deducted from the salary of a member under this Act.
- (3) The amount payable for a salary sacrifice contribution to meet the requirement for a salary deduction under this Act is to comprise the following:
 - (a) the amount necessary (taking into account any deductions not made on a salary sacrifice basis) to meet the required deductions under this Act (the *contribution element*),
 - (b) the amount necessary to meet any tax payable under Commonwealth taxation law in respect of the amount paid under paragraph (a).
- (4) A salary sacrifice contribution is to be paid within the same period as a deduction from salary under section 18.
- (5) An election under this section:
 - (a) may be made only in respect of future salary instalments, and
 - (b) is to be in writing to the designated employer, and
 - (c) is to be accompanied by any information required by the trustees and the designated employer, and
 - (d) takes effect when it is approved by the designated employer and the trustees, and
 - (e) may be varied or revoked by notice in writing to the designated employer and the trustees.

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- (6) In this Act and the regulations, a reference (however expressed) to any of the following is taken to include a reference to the contribution element of a salary sacrifice contribution in accordance with an election under this section:
- (a) a deduction from salary,
 - (b) a contribution by or in respect of a member.
- (7) In this Act and the regulations, a reference (however expressed) to:
- (a) an employer-financed component of a benefit does not include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution, and
 - (b) an employee-financed component of a benefit includes a reference to a contribution element of a salary sacrifice contribution and any part of a benefit financed by the contribution element of a salary sacrifice contribution.
- (8) This section has effect despite any other provision of this Act.

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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Act 2009*

[Agreement in principle speech made in Legislative Assembly on 26 June 2009
Second reading speech made in Legislative Council on 10 September 2009]

BY AUTHORITY