



New South Wales

Superannuation Legislation Amendment Act 2010 No 60

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New South Wales

Superannuation Legislation Amendment Act 2010 No 60

Act No 60, 2010

An Act to amend various superannuation Acts with respect to death and disability benefits for ambulance officers, deferred superannuation benefits and reductions and increases in benefits for tax purposes; and for other purposes. [Assented to 28 June 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Superannuation Legislation Amendment Act 2010*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Police Regulation (Superannuation) Act 1906 No 28

[1] Section 14AAA Restoration of death benefit previously reduced to offset contribution tax liabilities

Omit “section 279D of the *Income Tax Assessment Act 1936*” from section 14AAA (1).

Insert instead “section 295-485 of the *Income Tax Assessment Act 1997*”.

[2] Section 14AAA (2)

Omit section 14AAA (2) and (3). Insert instead:

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

[3] Section 14AB Power of STC to adjust benefits to comply with certain standards relating to superannuation

Insert “or 14AD” after “section 14AA” in section 14AB (10) (a).

[4] Section 14AC Commutation of pensions for adjustment of benefits

Omit “determination reducing a benefit that may be taken in the form of a pension is made under section 14AA” from section 14AC (1).

Insert instead “benefit that may be taken in the form of a pension is reduced under section 14AA or 14AD”.

[5] Section 14AD

Insert after section 14AC:

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

- (1) This section applies to a benefit if:
 - (a) a right to the benefit accrues under this Act to or in respect of a contributor or former contributor, and
 - (b) STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and
 - (c) a portion of that tax is referable to the employer-financed portion of that benefit, and
 - (d) the benefit is of a kind prescribed by the regulations for the purposes of this section.

- (2) The amount of the benefit is reduced by the amount necessary to offset STC's liability to pay no-TFN tax so far as it is referable to the employer-financed portion of that benefit.
- (3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.
- (4) A contributor or former contributor may elect to have his or her SANCS benefit reduced instead of the benefit to which this section applies if the SANCS benefit is payable to the contributor or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset.
- (5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.
- (6) In this section:
 - employer contribution** includes a salary sacrifice contribution.
 - employer-financed portion** of a benefit includes any part of the benefit financed by a salary sacrifice contribution.
 - no-TFN tax** means an amount equal to the difference between the amount of:
 - (a) income tax payable by STC under the *Income Tax Assessment Act 1997* of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and
 - (b) income tax that would be so payable if the information about the tax file number was provided.

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

[6] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

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

[1] Section 26AA Restoration of death benefit previously reduced to offset contribution tax liabilities

Omit “section 279D of the *Income Tax Assessment Act 1936*” from section 26AA (1).

Insert instead “section 295-485 of the *Income Tax Assessment Act 1997*”.

[2] Section 26AA (2)

Omit section 26AA (2) and (3). Insert instead:

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

[3] Section 26AB

Insert after section 26AA:

26AB Power of STC to reduce benefits for no-TFN tax

- (1) This section applies to a benefit if:
 - (a) a right to the benefit accrues under this Act to or in respect of an employee or former employee, and
 - (b) STC has paid or is liable to pay no-TFN tax in respect of employer contributions to the Fund, and
 - (c) a portion of that tax is referable to that benefit, and
 - (d) the benefit is of a kind prescribed by the regulations for the purposes of this section.
- (2) The amount of the benefit is reduced by the amount necessary to offset STC’s liability to pay no-TFN tax so far as it is referable to that benefit.
- (3) The amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.
- (4) The regulations may provide for the establishment of debt accounts in respect of employees or former employees for the purposes of this section.

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

(5) In this section:

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

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

Note. An employee or former employee may also elect to have a benefit under this Act reduced, instead of having a benefit in the Police Superannuation Scheme, the State Authorities Superannuation Scheme or the State Superannuation Scheme reduced.

[4] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Schedule 3 Amendment of State Authorities Superannuation Act 1987 No 211

[1] Section 45AA Restoration of death benefit previously reduced to offset contribution tax liabilities

Omit “section 279D of the *Income Tax Assessment Act 1936*” from section 45AA (1).

Insert instead “section 295-485 of the *Income Tax Assessment Act 1997*”.

[2] Section 45AA (2)

Omit section 45AA (2) and (3). Insert instead:

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

[3] Section 45B

Insert after section 45AA:

45B Power of STC to reduce benefits for no-TFN tax

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

- (5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.
- (6) In this section:
employer contribution includes a salary sacrifice contribution.
employer-financed portion of a benefit includes any part of the benefit financed by a salary sacrifice contribution.
no-TFN tax means an amount equal to the difference between the amount of:
- (a) income tax payable by STC under the *Income Tax Assessment Act 1997* of the Commonwealth on employer contributions to the Fund for a contributor if there is a failure by the contributor to provide information about his or her tax file number to STC, and
 - (b) income tax that would be so payable if the information about the tax file number was provided.
- SANCS benefit* means a benefit that accrues to or in respect of a contributor or former contributor who is an employee or former employee under the *State Authorities Non-contributory Superannuation Act 1987*.

[4] Part 5B, heading

Omit “**Transfer**”. Insert instead “**Retention or payment**”.

[5] Section 46AE Retention or payment of eligible deferred benefits

Omit section 46AE (2). Insert instead:

- (2) An eligible person who reaches the retirement age may:
- (a) elect to retain the eligible deferred benefit in the Fund, or
 - (b) elect to have the eligible deferred benefit paid or transferred to the First State Superannuation Fund or another complying superannuation fund, complying approved deposit fund or retirement savings account (the *nominated fund or account*).

[6] Section 46AE (3)

Insert “to transfer an eligible deferred benefit” after “eligible person” where firstly occurring.

[7] Section 46AE (4)

Omit the subsection.

[8] **Part 5E**

Insert after Part 5D:

Part 5E Death or incapacity benefits for ambulance officers

46AL Definitions

In this Part:

ambulance officer means a member of the NSW Health Service who is an officer within the meaning of the ambulance officers award.

ambulance officers award means a State industrial instrument prescribed by the regulations for the purposes of this definition.

amending Act means the *Superannuation Legislation Amendment Act 2010*.

death or incapacity benefit means a benefit payable to or in respect of an ambulance officer under an ambulance officers award (whether provided for in that award or by or under any Act, law or instrument) if:

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

46AM Application of Part

This Part has effect despite any other provision of this Act or the regulations.

46AN Provision to be made with respect to death or incapacity benefits for ambulance officers

- (1) The regulations may make provision for or with respect to the following:
 - (a) the effect on coverage under this Act for an additional benefit, and liability to pay the additional benefit levy, of a contributor or former contributor who is or was an ambulance officer and who is covered for a death or incapacity benefit,
 - (b) preventing the repayment of any additional benefit levy paid by a contributor or former contributor who is or was an ambulance officer,

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- (c) any other matter that is necessary or convenient for the purposes of complying with or giving effect to an ambulance officers award or this Part.
- (2) Any such regulations may take effect from the date of commencement of this Part, as inserted by the amending Act, or the date on which an ambulance officers award first applies to an ambulance officer (whichever is earlier).
- (3) Without limiting section 46AM, regulations may be made under this Part that are inconsistent with Part 3, 4, 5 or 6 of this Act, or any regulations made under those Parts, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to an ambulance officers award.

[9] Schedule 6 Savings and transitional provisions

Insert at the end of clause 1 (1):

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Schedule 4 Amendment of Superannuation Act 1916 No 28

[1] Section 61RAA Restoration of death benefit previously reduced to offset contribution tax liabilities

Omit “section 279D of the *Income Tax Assessment Act 1936*” from section 61RAA (1).

Insert instead “section 295-485 of the *Income Tax Assessment Act 1997*”.

[2] Section 61RAA (2)

Omit section 61RAA (2) and (3). Insert instead:

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

[3] Section 61RB Power of STC to adjust benefits to comply with certain Commonwealth standards relating to superannuation

Insert “or 61RC” after “section 61RA” in section 61RB (10) (a).

[4] Section 61RC

Insert after section 61RB:

61RC Power of STC to reduce benefits for no-TFN tax

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

or former contributor. On an election being made, the SANCS benefit is reduced accordingly and the benefit to which this section applies is reduced only if it is necessary to do so to meet any shortfall in the amount of offset.

(5) The regulations may provide for the establishment of debt accounts in respect of contributors or former contributors for the purposes of this section.

(6) In this section:

employer contribution includes a salary sacrifice contribution.

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

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

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

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

[5] Section 61RE Commutation of pensions for adjustment of benefits

Omit “determination reducing a benefit that may be taken in the form of a pension is made under section 61RA” from section 61RE (1).

Insert instead “benefit that may be taken in the form of a pension is reduced under section 61RA or 61RC”.

[6] Schedule 25 Savings and transitional provisions

Insert at the end of clause 1 (1):

Superannuation Legislation Amendment Act 2010

[Agreement in principle speech made in Legislative Assembly on 11 June 2010
Second reading speech made in Legislative Council on 24 June 2010]

BY AUTHORITY