



New South Wales

# Superannuation Legislation Amendment Bill 2007

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Superannuation Act 1916* which establishes the State Superannuation Scheme, to permit members of that scheme to have compulsory employee contributions paid by employers on a salary sacrifice basis,
- (b) to amend the *Superannuation Administration Act 1996* to require Ministerial approval for the indemnification of certain officers,
- (c) to make other minor and consequential amendments to those Acts and the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *State Authorities Non-contributory Superannuation Act 1987* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *State Authorities Superannuation Act 1987* set out in Schedule 2.

**Clause 5** is a formal provision that gives effect to the amendments to the *Superannuation Act 1916* set out in Schedule 3.

**Clause 6** is a formal provision that gives effect to the amendments to the *Superannuation Administration Act 1996* set out in Schedule 4.

**Clause 7** provides for the repeal of the proposed Act after the proposed Act commences. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of State Authorities Non-contributory Superannuation Act 1987**

**Schedule 1 [1] and [2]** amend sections 4 and 4A of the *State Authorities Non-contributory Superannuation Act 1987* (the *SANCS Act*) to make it clear that, in calculating the superable salary of an employee, the cost of any salary sacrifice contributions under relevant State public sector superannuation schemes is to be included. **Schedule 1 [3]** makes a consequential amendment.

**Schedule 1 [4]** amends Schedule 5 to the *SANCS Act* to enable regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

## **Schedule 2      Amendment of State Authorities Superannuation Act 1987**

### **Salary sacrifice contributions**

**Schedule 2 [2] and [3]** amend sections 4 and 4A of the *State Authorities Superannuation Act 1987* (the *SASS Act*) to make it clear that, in calculating the superable salary of a contributor to the State Authorities Superannuation Scheme, the cost of any salary sacrifice contributions is to be included. **Schedule 2 [4]** makes a consequential amendment.

**Schedule 2 [5]** amends sections 12 and 19B of the *SASS Act* to make those provisions consistent with proposed amendments to be made to other Acts by the proposed Act.

**Schedule 2 [6]** substitutes section 19A of the *SASS Act* to make the section consistent with proposed amendments to be made to other Acts and to make it clear that salary sacrifice contributions paid by employers for the purposes of contributors' contributions to superannuation under that Act are to be treated in the same way as

employee contributions for the purposes of that Act and that benefits financed by such contributions are to be treated as contributor-financed benefits. **Schedule 2 [1]** makes a consequential amendment.

#### **Other amendments**

**Schedule 2 [7] and [8]** amend section 30A of the SASS Act to make it clear that the deferred benefit of a contributor who is an executive officer, and who elects not to continue to contribute to the State Authorities Superannuation Scheme and to have his or her deferred benefit paid to the First State Superannuation Fund, another complying superannuation fund, a complying approved deposit fund or a retirement savings account, is to be paid as soon as practicable after the election is made.

**Schedule 2 [9]** amends Schedule 6 to the SASS Act to enable regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

### **Schedule 3      Amendment of Superannuation Act 1916**

#### **Salary sacrifice contributions**

**Schedule 3 [4]** inserts proposed section 10U into the *Superannuation Act 1916* (the *SSS Act*). The proposed section enables a contributor to the State Superannuation Scheme to enter into an agreement with the contributor's employer to sacrifice remuneration to pay all or part of the compulsory employee contributions to that scheme. The remuneration is foregone and the contributions are paid by the employer to the Scheme instead of being paid by the employee from his or her salary after payment of tax. The contributor is also required to pay an amount to meet the cost of any tax payable in respect of a salary sacrifice contribution. The proposed section also makes it clear that such salary sacrifice contributions are to be treated in the same way as employee contributions for the purposes of the SSS Act. **Schedule 3 [1]** makes a consequential amendment.

**Schedule 3 [2] and [3]** amend sections 3AA and 3A of the SSS Act to make it clear that, in calculating the superable salary of a contributor, the cost of any salary sacrifice contributions is to be included.

#### **Other amendments**

**Schedule 3 [5] and [6]** amend section 20AB of the SSS Act to make it clear that the deferred benefit of a contributor who is an executive officer, and who elects not to continue to contribute to the State Superannuation Scheme and to have his or her deferred benefit paid to the First State Superannuation Fund, another complying superannuation fund, a complying approved deposit fund or a retirement savings account, is to be paid as soon as practicable after the election is made. **Schedule 3 [7]** makes a consequential amendment.

**Schedule 3 [8]** amends Schedule 25 to the SSS Act to enable regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.

## **Schedule 4      Amendment of Superannuation Administration Act 1996**

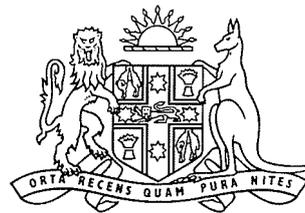
### **Indemnification of members of STC Board and chief executive officer**

**Schedule 4 [1]** inserts proposed section 80A into the *Superannuation Administration Act 1996* (the *SAA Act*). The proposed section requires SAS Trustee Corporation (*STC*), the trustee for certain State public sector superannuation schemes, to obtain Ministerial approval before indemnifying a former or current member of the STC Board or the chief executive officer of STC, or entering into an indemnity agreement.

### **Other amendments**

**Schedule 4 [3]** inserts a savings provision in Schedule 3 to the SAA Act so that the insertion of proposed section 80A does not prevent STC from providing indemnities without the approval of the Minister if the indemnity is provided pursuant to a deed or other written agreement entered into by STC before the commencement of the amendment.

**Schedule 4 [2]** amends Schedule 3 to the SAA Act to enable regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act.



New South Wales

# Superannuation Legislation Amendment Bill 2007

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of State Authorities Non-contributory Superannuation Act 1987 No 212	2
4 Amendment of State Authorities Superannuation Act 1987 No 211	2
5 Amendment of Superannuation Act 1916 No 28	2
6 Amendment of Superannuation Administration Act 1996 No 39	2
7 Repeal of Act	2
Schedule 1 Amendment of State Authorities Non-contributory Superannuation Act 1987	3
Schedule 2 Amendment of State Authorities Superannuation Act 1987	4
Schedule 3 Amendment of Superannuation Act 1916	6
Schedule 4 Amendment of Superannuation Administration Act 1996	9





New South Wales

# Superannuation Legislation Amendment Bill 2007

No. , 2007

---

## **A Bill for**

An Act to amend the *Superannuation Act 1916*, the *State Authorities Superannuation Act 1987* and the *State Authorities Non-contributory Superannuation Act 1987* with respect to the payment of compulsory employee superannuation contributions by way of salary sacrifice arrangements and the transfer of benefits to other superannuation schemes; to amend the *Superannuation Administration Act 1996* with respect to the provision of indemnities by the SAS Trustee Corporation; and for other purposes.

---

---

<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Superannuation Legislation Amendment Act 2007</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5
<b>3 Amendment of State Authorities Non-contributory Superannuation Act 1987 No 212</b>	6
The <i>State Authorities Non-contributory Superannuation Act 1987</i> is amended as set out in Schedule 1.	7
<b>4 Amendment of State Authorities Superannuation Act 1987 No 211</b>	10
The <i>State Authorities Superannuation Act 1987</i> is amended as set out in Schedule 2.	11
<b>5 Amendment of Superannuation Act 1916 No 28</b>	13
The <i>Superannuation Act 1916</i> is amended as set out in Schedule 3.	14
<b>6 Amendment of Superannuation Administration Act 1996 No 39</b>	15
The <i>Superannuation Administration Act 1996</i> is amended as set out in Schedule 4.	16
<b>7 Repeal of Act</b>	18
This Act is repealed on the day following the day on which this Act commences.	19
	20

---

<b>Schedule 1</b>	<b>Amendment of State Authorities</b>	1
	<b>Non-contributory Superannuation Act</b>	2
	<b>1987</b>	3
	(Section 3)	4
<b>[1] Section 4 Salary</b>		5
	Insert after section 4 (1) (a):	6
	(a1) if salary sacrifice contributions under an STC Act are	7
	made in respect of the employee, the cost of the	8
	contributions, and	9
<b>[2] Section 4A Salary of executive officers</b>		10
	Insert “, other than salary sacrifice contributions,” after “superannuation” in	11
	section 4A (3).	12
<b>[3] Section 4B Salary not to be affected by salary sacrifice</b>		13
	Omit the section.	14
<b>[4] Schedule 5 Savings and transitional provisions</b>		15
	Insert at the end of clause 1 (1):	16
	<i>Superannuation Legislation Amendment Act 2007</i>	17

---

<b>Schedule 2</b>	<b>Amendment of State Authorities Superannuation Act 1987</b>	1
		2
	(Section 4)	3
<b>[1] Section 3 Definitions</b>		4
	Omit “section 19A (b)” from the definition of <i>salary sacrifice contribution</i> in section 3 (1).	5
	Insert instead “section 19A (1) (b)”.	6
<b>[2] Section 4 Salary</b>		7
	Insert after section 4 (1) (a):	8
	(a1) if salary sacrifice contributions are made in respect of the contributor, the amounts payable for those contributions under section 19B, and	9
<b>[3] Section 4A Salary of executive officers</b>		10
	Insert “, other than salary sacrifice contributions,” after “superannuation” in section 4A (3).	11
<b>[4] Section 4B Salary not to be affected by salary sacrifice</b>		12
	Omit the section.	13
<b>[5] Sections 12 (3) (a1) and 19B</b>		14
	Omit “income” wherever occurring.	15
<b>[6] Section 19A</b>		16
	Omit the section. Insert instead:	17
<b>19A Contributions by or on behalf of employees</b>		18
	(1) Contributions may be made to the Fund for crediting to a contributor’s account:	19
	(a) by the contributor ( <i>employee contributions</i> ), and	20
	(b) by the contributor’s employer in accordance with an agreement between the contributor and the employer under which the contributor is to forgo remuneration yet to be earned and the remuneration foregone is to be applied by the employer to contributions on behalf of the contributor ( <i>salary sacrifice contributions</i> ).	21
		22
		23
		24
		25
		26
		27
		28
		29
		30
		31

---

(2)	In this Act and the regulations, a reference (however expressed) to a contribution by an employee or a contributor or a contributor-financed portion of a benefit is taken to include a reference to a salary sacrifice contribution or any part of a benefit financed by a salary sacrifice contribution.	1 2 3 4 5
(3)	In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed portion 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.	6 7 8 9 10
<b>[7]</b>	<b>Section 30A Contributor who is executive officer</b>	11
	Omit section 30A (5) (d). Insert instead:	12
	(d) except as provided by subsection (6), is not entitled to be paid the benefit provided by section 43 (6) until on or after first ceasing to be an employee after making the election and unless there exist the circumstances set out in section 43 (3), and	13 14 15 16 17
<b>[8]</b>	<b>Section 30A (6)</b>	18
	Omit the subsection. Insert instead:	19
	(6) If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by section 43 (6) to which the contributor is entitled having regard to this section.	20 21 22 23 24
<b>[9]</b>	<b>Schedule 6 Savings and transitional provisions</b>	25
	Insert at the end of clause 1 (1):	26
	<i>Superannuation Legislation Amendment Act 2007</i>	27

---

<b>Schedule 3</b>	<b>Amendment of Superannuation Act 1916</b>	1
	(Section 5)	2
<b>[1] Section 3 Definitions</b>		3
Insert in alphabetical order in section 3 (1):		4
	<i>Salary sacrifice contribution</i> —see section 10U (2).	5
<b>[2] Section 3AA Salary of executive officers</b>		6
Insert “, other than salary sacrifice contributions,” after “superannuation”		7
wherever occurring in section 3AA (3) and (6B).		8
<b>[3] Section 3A Salary</b>		9
Insert after section 3A (1) (a):		10
	(a1) if salary sacrifice contributions are made in respect of the	11
	contributor, the amounts payable for those contributions	12
	under section 10U (3) (a) and (b), and	13
<b>[4] Section 10U</b>		14
Insert after section 10T:		15
<b>10U Salary sacrifice contributions</b>		16
(1)	The whole or part of an amount that is required to be contributed	17
	to the Fund by an employee under this Act may be paid by salary	18
	sacrifice contributions.	19
(2)	A <i>salary sacrifice contribution</i> is a contribution paid in	20
	accordance with an agreement between an employee and the	21
	employee’s employer under which the employee is to forgo	22
	remuneration yet to be earned and the remuneration foregone is	23
	to be applied by the employer to the amount payable for the	24
	employee contributions under this Act.	25
(3)	The amount payable to the Fund for a salary sacrifice	26
	contribution to meet the requirement for an employee	27
	contribution under this Act is to comprise the following:	28
	(a) the amount necessary (taking into account any	29
	contributions not made on a salary sacrifice basis) to meet	30
	the required employee contribution under this Act (the	31
	<i>contribution element</i> ),	32
	(b) the amount necessary to meet any tax payable under	33
	Commonwealth taxation law in respect of the amount paid	34
	under paragraph (a).	35

---

(4)	A salary sacrifice contribution is to be paid within the same period as a contribution made by deduction from the salary or wage of a contributor under section 20.	1 2 3
(5)	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 agreement under this section:	4 5 6 7
(a)	a contribution by an employee or a contributor,	8
(b)	the cost to an employee or a contributor of a unit of pension,	9 10
(c)	an instalment for a unit of pension paid by an employee or a contributor.	11 12
(6)	In this Act and the regulations, a reference (however expressed) to an employer contribution or an employer-financed portion 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.	13 14 15 16 17
(7)	This section has effect despite any other provision of this Act.	18
<b>[5]</b>	<b>Section 20AB Contributor who is executive officer</b>	19
	Omit section 20AB (5) (d). Insert instead:	20
(d)	except as provided by subsection (6), is not entitled to be paid the benefit provided by Division 3A of Part 4 until on or after first ceasing to be an employee after making the election and unless there exist the circumstances in which a person referred to in section 52A (1) is entitled to be paid a benefit under that Division, and	21 22 23 24 25 26
<b>[6]</b>	<b>Section 20AB (6)</b>	27
	Omit the subsection. Insert instead:	28
(6)	If a contributor makes an election under subsection (5) (e), STC must, as soon as practicable after the election is made, pay to the trustee or provider of the nominated fund or account the amount of the benefit provided by Division 3A of Part 4 to which the contributor is entitled under subsections (7) and (8).	29 30 31 32 33
<b>[7]</b>	<b>Section 20AB (7)</b>	34
	Omit “subsection (6) (a)”. Insert instead “subsection (6)”.	35

Superannuation Legislation Amendment Bill 2007

Schedule 3      Amendment of Superannuation Act 1916

---

<b>[8]    Schedule 25 Savings and transitional provisions</b>	1
Insert at the end of clause 1 (1):	2
<i>Superannuation Legislation Amendment Act 2007</i>	3

---

## Schedule 4      Amendment of Superannuation Administration Act 1996

1  
2

(Section 6)

3

### [1] Section 80A

4

Insert after section 80:

5

#### **80A    STC not to indemnify officers without Ministerial approval**

6

- (1) STC may indemnify a person who is or has been an officer of STC against a liability incurred as an officer of STC, or enter into an indemnity agreement, only with the written approval of the Minister.

7  
8  
9  
10
- (2) For the purposes of this section, an *indemnity agreement* means an agreement or arrangement (whether made by deed or otherwise), between STC and a person who is or has been an officer of STC, that contains any one or more of the following provisions:

11  
12  
13  
14  
15

  - (a) a provision that requires STC to indemnify the person against any liability incurred as an officer of STC,

16  
17
  - (b) a provision that requires STC to maintain an insurance policy in respect of any liability incurred by the person as an officer of STC,

18  
19  
20
  - (c) a provision that requires STC to pay money to or on behalf of the person to assist in defending or responding to any claim, investigation or other proceedings relating to the person's term of office as an officer of STC (including a provision that requires payment in advance of any liability being incurred by the person),

21  
22  
23  
24  
25  
26
  - (d) a provision that confers on the person a right of access to documents held by STC, in any specified circumstances, in connection with any claim, investigation or other proceedings relating to the person's term of office as an officer of STC.

27  
28  
29  
30  
31
- (3) If an indemnity agreement is entered into by STC in accordance with the approval of the Minister under this section, STC may indemnify a person, as required by that agreement, without obtaining a further approval from the Minister.

32  
33  
34  
35
- (4) The approval of the Minister under this section:

36

  - (a) may be given generally or may be limited to a particular case or class of cases, and

37  
38

(b)	is subject to such conditions (if any) as are specified in the approval.	1 2
(5)	In this section: <i>officer of STC</i> means the following:	3 4
(a)	a member of the STC Board,	5
(b)	the chief executive officer of STC.	6
[2]	<b>Schedule 3 Savings and transitional provisions</b>	7
	Insert at the end of clause 1 (1):	8
	<i>Superannuation Legislation Amendment Act 2007</i>	9
[3]	<b>Schedule 3, Part 5</b>	10
	Insert after Part 4:	11
	<b>Part 5 Provisions consequent on the enactment of the Superannuation Legislation Amendment Act 2007</b>	12 13 14
30	<b>Indemnification agreements entered into before commencement</b>	15
(1)	Section 80A, as inserted by the <i>Superannuation Legislation Amendment Act 2007</i> , does not prevent STC from indemnifying a person who is or has been an officer of STC against a liability incurred as an officer of STC, without the approval of the Minister, if the indemnity is provided pursuant to a deed or other written agreement entered into by STC before the commencement of section 80A.	16 17 18 19 20 21 22
(2)	In this clause: <i>officer of STC</i> means the following:	23 24
(a)	a member of the STC Board,	25
(b)	the chief executive officer of STC.	26