

Increase for a Hurt On Duty Pension (s.10(1a))

General information about the benefits

Entitlement to a Police Superannuation Scheme (PSS) hurt on duty (HOD) pension is set out in:

PSS Fact Sheet 11: *Medical Discharge Benefit for Members of the Police Force (s8/s10B(1))*, and

PSS Fact Sheet 12: *Medical Discharge Benefit for a Former Member of the Police Force (s10B(2))*.

The minimum rate for an HOD pension is 72.75% of your attributed salary of office at the time you left the Police Force.

If you are receiving an HOD pension, you may be entitled to an increase to your pension if you satisfy certain conditions.

Who can apply?

You can apply for an increase in the rate of your HOD pension if:

1. you are currently receiving an HOD pension, and
2. you have not commuted the whole of any PSS pension to a lump sum.

Note: If you did not become entitled to an HOD pension before 30 June 2006, you will need to either be under age 60 or have left the Police Force within the past five years. STC may accept a late application outside these time limits only if it is satisfied that in all the circumstances of the case it is desirable to do so. Accordingly, if you do not apply within the specified time, your application is likely to be refused unless you are able to convince STC that there are sound reasons for the delay and persuade the decision-maker to accept your application.

How is your entitlement determined?

To be eligible for an increase in the rate of your HOD pension to within the range of 72.75% to 85% of your attributed salary of office on your last day of service (attributed salary), you must be able to show that:

1. you are currently receiving an HOD pension,
2. you are currently incapacitated for work outside the Police Force to some degree, and
3. your incapacity for work outside the Police Force must be due to the specified medical condition that:

the Police Advisory Superannuation Committee (PSAC) certified caused you to be incapable of personally exercising the functions of a police officer (or, if you left the Police Force prior to 30 June 2006, of discharging the duties of your office) **and**

was determined by the Commissioner of Police to have been caused by a HOD injury.

Any increase to your HOD pension to within the range from 72.75% up to a maximum of 85% of your attributed salary of office will be determined by PSAC commensurate with its opinion of your incapacity, due to an HOD medical condition to undertake work outside the NSW Police Force.

Please note that the test for determining eligibility for an increase in the rate of an HOD pension to within the range from 72.75% up to a maximum of 85% of attributed salary of office was confirmed to be as set out above on 14 November 2018 when the High Court of Australia handed down its decision (by unanimous majority) in the case of *SAS Trustee Corporation v Miles* [2018] HCA 55. A 2017 decision by the NSW Court of Appeal had temporarily changed the test for eligibility but the High Court's decision has confirmed the test to be what STC had applied for many years.

The Police Superannuation Scheme (PSS) is administered by Mercer Administration Services (Australia) Pty Ltd (Mercer) on behalf of the trustee, SAS Trustee Corporation (STC). PSS is governed by the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987* and the *Superannuation Administration Act 1996*. The scheme is also subject to Commonwealth superannuation and tax legislation.

STC has published this fact sheet. STC is not licensed to provide financial product advice in relation to PSS.

Reasonable care has been taken in producing the information in this fact sheet and nothing in it is intended to be or should be regarded as personal advice. If there is any inconsistency between the information in this fact sheet and the relevant scheme legislation, the scheme legislation will prevail. In preparing this fact sheet, STC has not taken into account your objectives, financial situation or needs. You should consider your personal circumstances and possibly seek professional advice, before making any decision that affects your future.

To the extent permitted by law, STC, its directors and employees do not warrant the accuracy, reliability or completeness of the information contained in or omitted from this fact sheet.

If you have previously applied for an increase to your HOD pension (whether or not an increase was granted), any further application for an increase up to 85% of your attributed salary can be made if:

1. your appeal rights have been exhausted since your last application for an HOD pension was determined, and
2. your incapacity for work outside the Police Force due to your HOD medical condition has increased since your most recent application was determined.

If PSAC decides that you are totally incapacitated for work outside the Police Force, with the incapacity due to a specified medical condition determined to have been caused by a HOD injury, you will be entitled to an HOD pension of 85% of your attributed salary. A further increase above 85% may be payable if your HOD injury occurred because while in the Police Force you were required to be exposed to risks of physical or psychological injury to which members of the general workforce are not normally required to be exposed.

Only one application for a pension increase above 85% would normally be considered and determined by PSAC. The only exception to this may be where the Commissioner of Police makes a material change to your HOD certificate after PSAC determines your application and provided you have not in the interim appealed to the District Court against the PSAC determination. The reason for this proviso is that such an appeal to the District Court would be finalised on the basis of the amended HOD certificate, and you could not then ask PSAC to make another decision in the light of that amended certificate.

You cannot get any increase in an HOD pension if the only HOD injury that caused or contributed to the medical condition that caused your incapacity occurred before 21 November 1979. If this is your situation, you should refer to PSS Fact Sheet 15: *Pre 21 November 1979 Benefits Arising From Work-related Injuries*.

What increase to my HOD pension can be paid?

The HOD pension can be increased within the range of 72.75% and 85% of your attributed salary depending on the extent to which you are incapacitated for work outside the Police Force due to an HOD medical condition. This is determined by considering:

1. what a person without your HOD medical condition, but with your skills, education, experience, qualifications, age and any non-HOD medical conditions, could earn in a labour market that is reasonably open to you, and

2. what you are actually earning or could be earning in a labour market reasonably open to you, with your HOD medical condition.

The difference between what such a person could earn (without your HOD medical condition) and what you could earn (with your HOD medical condition) will represent your **degree of incapacity** for work outside the Police Force due to your HOD medical condition. For instance, a person with your skills, education, experience, qualifications, age and any non-HOD medical conditions, may be able to earn \$1,200 per week. In comparison, if your earning capacity is determined as only \$800 because of your HOD medical condition, your degree of incapacity would be \$400 per week or 33%.

If this example were you, the 33% incapacity to work outside the Police Force due to your HOD medical condition would translate to an increase of your pension from 72.75% of your attributed salary (minimum amount) to 76.75% of your attributed salary (i.e. $33\% \times 12.25 + 72.75$).

If you are totally (or 100%) incapacitated for work outside the Police Force due to your HOD medical condition your pension can be increased to a rate of 85%.

If PSAC decides that you are totally incapacitated for work outside the Police Force, with the incapacity due to a specified medical condition determined to have been caused by a HOD injury and that the HOD injury occurred because while in the Police Force you were required to be exposed to risks of physical or psychological injury to which members of the general workforce are not normally required to be exposed, you will be entitled to an increase above 85% of your attributed salary commensurate with the risks to which you were required to be exposed. A rate of up to 100% of your attributed salary may be payable, but only in a most extreme case.

How do I demonstrate my incapacity for work outside the Police Force?

A medical report paid for by STC will address questions relevant to your application for an increase in an HOD pension. A functional and/or vocational assessment may also be required. A copy of the general questions that medical specialists and vocational assessors are generally asked to address is available from the State Super website.

You may have the opportunity to see the medical report or vocational assessment report obtained by STC if the conclusions in these reports do not support your application.

If you provide a medical report or a vocational report at your own expense, the PSAC in assessing your application would prefer that report to:

1. be provided by a medical practitioner specialising in the area relevant to your HOD medical condition or by a suitably qualified vocational assessor,
2. be based on an examination or assessment of you,
3. address the questions that have been determined are relevant to an entitlement for an increase to an HOD pension (available on the State Super website), and
4. have been prepared, preferably, within the 12 months prior to the application being made.

When does payment of any increase commence?

The earliest that an HOD pension increase will be payable is from the date of commencement of your HOD pension. Any increase would be payable from the earlier of:

1. the date of your application for an increase, or
2. if the application for an increase is made within 12 months after the commencement of your HOD pension, the date of commencement of your HOD pension, or
3. if it is accepted that there are exceptional circumstances to justify a date earlier than the date of application, the date that is determined, but no earlier than the date of commencement of the HOD pension.

When will my HOD pension be reviewed?

If you are in receipt of a pension of 85% of your attributed salary and apply for a further increase in pension, you may be subject to a review; see PSS Fact Sheet 20: *Review of PSS HOD Pensions*.

In assessing your application, PSAC must be satisfied that you are still totally incapacitated for work outside the Police Force, with the incapacity due to a specified medical condition determined to have been caused by a HOD injury.

Whether or not you apply for an increase in pension to above 85% of your attributed salary, you may be subject to a review of the percentage rate of pension:

- a) at any time if STC has reason to believe that you are no longer totally incapacitated for work outside the Police Force due to an HOD medical condition; or
- b) at five yearly intervals until you reach the age of 60 years.

Where do I get more information?

There are Notes that accompany the Application Form, which contain more details about an increase to an HOD pension and the process for determining an entitlement. The Application Form and Notes are available from the State Super website at www.statesuper.nsw.gov.au or from Customer Service on **1300 130 097**.

How do I apply for an increase in my pension?

To be considered for an increase in the rate of an HOD pension, you should:

1. refer to the Notes that accompany the Application Form, PSS Form 14: *Increase For a Hurt On Duty Pension (S.10(1A))*
2. complete and sign the Application Form (PSS Form 14) and gather any medical records or vocational assessment reports that may assist your application, and
3. send the completed Application Form, together with all the documentation you are providing to:

State Super (PSS)
PO Box 1229
Wollongong NSW 2500

You may be required to undergo a medical examination with a medical specialist nominated by STC. The medical specialist will be one that specialises in the area of medicine relevant to your HOD medical condition.

Lump sum option

A member who is eligible for an invalidity pension has an option to commute all or part of the pension to a lump sum. An election to commute the pension cannot be processed prior to the member turning age 55, and a member can only make one election to commute any part of their pension. The timeframe for commutation elections varies depending on the age of the member when the pension commenced to be paid.

For details of the Lump Sum Option, please refer to PSS Fact Sheet 5: *Invalidity retirement (medical discharge)*.



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More information

If you need more information, please contact us:

Telephone: **1300 130 097** (for the cost of a local call, unless calling from a mobile or pay phone)
8.30 am to 5.30 pm, Monday to Friday.

Personal interviews: Please phone 1300 130 097 to make an appointment.

Postal address: State Super, PO Box 1229, Wollongong NSW 2500

Internet: www.statesuper.nsw.gov.au

Email: enquiries@stc.nsw.gov.au