



**ATTACHMENT to
Proper Instruction dated 30 November 2018**

**Consolidated
SCHEME POLICIES
as determined by
the SAS Trustee Board**

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POOLED FUND POLICY REGISTER

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ALL STC SCHEMES

STC1 Interest (Revoked)

98/018, Board meeting 11.2.98; 98/220, Board meeting 12.8.98;
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STC2 Early release of benefits (Revoked)

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September 2000, 02/256 Board Meeting 11.12.02; 11/270 Board meeting 26.10.11

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SSS s3AA, SASS s4A, SANCS s4A, PSS s1AA

98/116, Board meeting 20.5.98; 11/270 Board meeting 26.10.11

STC4 Entities into which deferred benefits can be transferred or rolled over

99/018, Board meeting 10.2.99; 99/0, Board meeting 9.6.99; 11/270, Board meeting 26.10.11

Where a member wishes to transfer or rollover a deferred benefit into another entity within the 'superannuation system' as defined within Reg 5.01 of SIS, the whole of the deferred benefit must be transferred or rolled over. Part transfers and rollovers are not permitted.

STC5 TFNs (Revoked)

98/154, Board meeting 5.6.98; 11/270 Board meeting 26.10.11

STC6 Determination of a "de facto partner"

"de facto partner" is defined in section 21C of the *Interpretation Act 1987*.

98/154, Board meeting 5.6.98; 99/021, Board meeting 10.2.99; 06/080 Board meeting
26.4.06, 10/152, Board meeting 30.6.10; 12/316, Board meeting 12.12.12

For the purpose of paying a death benefit in respect of a member of an STC Scheme it is sometimes necessary to determine if a person is the de facto partner of the deceased.

A person is the de facto partner of another person of the same or a different sex if:

- (a) the person is in a registered relationship or interstate registered relationship with the other person within the meaning of the *Relationships Register Act 2010*, or
- (b) the person is in a de facto relationship with the other person.

A person is in a de facto relationship with another person if:

- (a) they have a relationship as a couple living together, and
- (b) they are not married to one another or related by family.

A de facto relationship can exist even if one of the persons is legally married to someone else or in a registered relationship or interstate registered relationship with someone else.

In determining whether 2 persons had a relationship as a couple, all the circumstances of the relationship are to be taken into account, including any of the following matters that are relevant in a particular case:

1. the duration of the relationship;
2. the nature and extent of common residence;
3. whether a sexual relationship exists;
4. the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
5. the ownership, use and acquisition of property;
6. the degree of mutual commitment to a shared life;
7. the care and support of children;
8. the performance of household duties;
9. the reputation and public aspects of the relationship.

Other things to consider

- It is not necessary to make a finding in any one of the above nine factors, or in any combination of them, for the existence of a de facto relationship.
- In addition to the above nine factors, regard should be had to such matters as seem appropriate in the circumstances of the particular case.
- Such weight may be attached to any matter as may seem appropriate in the circumstances of the case.
- Each case is to be considered on its merits. There is no single test that can be applied to all cases.

Guidelines

Guidelines have been developed to assist in determining a 'de facto' partner.

Evidence

Evidence is to be collected to assist in determining whether or not a de facto relationship existed between the deceased and the applicant. The Guidelines list what evidence should be collected.

STC7 Sundry debtors (Revoked)

98/023, Board meeting 11.2.98; 98/147, Board meeting 17.6.98; 98/218, Board meeting 12.8.98; 11/270, Board meeting 26.10.11

STC8 Retention of higher salary and benefit cover where a member's salary is reduced (Revoked)

SASS only (please refer to SSS14 for SSS members)

98/154, Board meeting 5.6.98; 03/280, Board meeting 10.12.03

STC9 Allocation of (non-investment) management charges

Super Admin Act 1996 s85 SASS s14B SANCS s11A, SSS s8A, PSS s5AA

00/263, Board meetings 15.11.2000, 13.12.2000; 01/017, Board meeting 21.02.2001
01/239 Board Meeting 21.11.2001; 03/168 Board meeting 30/7/2003

The total cost of administering the State Superannuation Scheme, the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be determined and allocated between schemes as follows.

Calculation order of precedence

Fees for SASS contributors, SASS deferred members and SANCS – only deferred members are to be fixed at a standard per member recoupment of \$40 per annum (to be reassessed from time to time) and fees for SANCS – joint deferred accounts at \$20 per annum (to be reassessed from time to time).

The balance of management charges are to be recouped from employer reserves in the respective schemes using a per capita principle based on cost ratio factors. These factors are equivalent to the per member per week fees payable to the administrator, subject to indexation adjustments, from time to time.

The balance of the recoupment from employer reserves is defined as the total costs less amounts recouped from the respective categories of contributors, pensioners, and deferred members.

Calculation Methodology

The apportionment of fees is to be based on the following table and to be applied in the order of precedence noted above. The cost ratio factors are to be reassessed annually in accordance with the 'per member per week' charges in the STC/Pillar administration contract.

Type of Account	Scheme	Member Recoupment	Employer Recoupment	Cost Ratio Factor
Contributor	SASS	\$40pmpa – up to 31/12/03 \$45pmpa – on & from 1/1/04	Allocation less member recoupment	1.2360
	SSS	Nil	All costs	2.0085
	PSS	Nil	All costs	1.7510

Deferred	SASS only	\$40pmpa – up to 31/12/03 \$45pmpa – on & from 1/1/04	Allocation less member recoupment	.6514
	SSS only	Nil	All costs	.6180
	PSS only	Nil	All costs	.6180
	SANCS only	\$40pmpa	Allocation less member recoupment	.6514
	SSS and SANCS	\$20pmpa	Allocation less member recoupment	.3257
	PSS and SANCS	\$20pmpa	Allocation less member recoupment	.3257
	SASS and SANCS	\$60pmpa – up to 31/12/03 \$65pmpa – on & from 1/1/04	Allocation less member recoupment	.9771
Pension	SASS	Nil	All costs	1.0300
	SSS	Nil	All costs	1.0300
	PSS	Nil	All costs	1.0300

STC10 Distribution to employer reserves of the Pooled Fund's monthly earnings or losses.

98/315, Board meeting 18.11.98

Distributions are to be based on the total reserve balance for each employer. The interest rate (negative or positive) is to be multiplied by the individual employer reserve using strict mathematical principles.

The administrator is to inform STC of any circumstances where an employer significantly increases debt repayments following distribution of a negative interest rate.

STC 11 Rollovers from STC schemes (*Revoked*)

99/018, Board meeting 10.2.99; 99/113, Board meeting 9.6.99; 11/270, Board meeting 26.10.11

STC12 Recovery of pension overpayments following death of a pensioner (*Revoked*)

06/218, Board meeting 27.9.06; 11/270, Board meeting 26.10.11

STC 13 Competing spouse claims

SANCS s24B, SASS s43AB, SSS s 46B, PSS s 17A

11/270, Board meeting 26.10.11

Where there is more than one claim for a spouse benefit following the death of a member, STC must determine the spouse or spouses to whom the benefit should be paid and, if more than one, the proportion of the benefit to be paid to each spouse.

Communication with claimants

Where information is received which indicates that the member is survived by more than one spouse (including a de facto partner), STC will inform each potential claimant:

- of the competing claims provisions of the governing legislation;
- of the matters which will be considered in making a determination on:
 - the spouse or spouses to whom the benefit should be paid; and
 - if more than one, the proportion of the benefit that should be paid to each spouse;
- that they are invited to make a written submission on their eligibility and the apportionment of the benefit, addressing the issues that STC will consider (as outlined below); and
- that they are requested to give authorisation for STC to provide a written summary of their submission and information to the other claimants and that such summary and information relating to the other claimants will be sent to them if authority is given by the relevant claimant.

Determination

STC should assess the legitimate expectations of the claimants to be provided financial support as a consequence of the member's death and, as part of this assessment take into account relevant factors, including the following:

- *The financial circumstances and needs of the claimants and the extent to which they were financially dependent on the member at the time of the member's death.* This would include the income available to each claimant, the relative differences in income, and whether any of the claimants have special needs. It would also include whether any of the claimants have third party assistance or support.
- *The period of each relationship.* This would include consideration of the extent to which the relationship may have spanned the period over which the member paid contributions to the fund thereby depleting household income.
- *The late member's Will.* While the superannuation benefit does not form part of the late member's estate and cannot be bequeathed under the Will, the provisions of the Will may be relevant as they may indicate the deceased's wishes and tend to confirm or refute the claimants' submissions. For example, the late member may have indicated in their Will that
 - They have not made provision from the estate for their spouse because of the member's understanding that the spouse would be paid the superannuation benefit; or

- They intended their de facto partner to be paid the superannuation benefit because other provision has been made for the spouse.
- Family law property settlement information to the extent that it is relevant. For example such information may indicate that the reversionary superannuation benefit has already been taken into account in the division of matrimonial property prior to the member's death such that on settlement the spouse may be regarded as having been compensated out of other matrimonial property and ought not to have an expectation of payment of the reversionary superannuation benefit.
- Correspondence from the member or other documentation indicating the circumstances of the relationship and the deceased's intentions. The legislation does not provide for members to nominate beneficiaries. However, the member's intentions may be taken into account where relevant.
- Any agreement the claimants may come to regarding the apportionment of the benefit.

After considering all submissions and the claimants' comments on the competing submissions and any other relevant information, STC will make a *preliminary determination* on any apportionment of the benefit. STC will advise the claimants to whom it proposes to pay the spouse benefit and, if the benefit is to be payable to more than one spouse, the amount to be given to each and that they have 30 days to 'show cause' why the benefit should not be paid on the basis of the preliminary determination.

No objections

If no objections to the preliminary determination are received within 30 days, STC is to confirm the preliminary determination as a *final determination* and advise the claimants of their dispute rights and request that any notice of dispute be lodged within 30 days.

Objections

If objections to the preliminary determination are received within 30 days, STC is to review its preliminary decision and advise the claimants of the *final determination* and their dispute rights and request any dispute be lodged within 30 days.

No dispute

If no dispute is lodged within the 30 days of advice of the final determination, STC is to further advise each of the claimants that no dispute has been raised and that the benefit will be paid in accordance with the final determination after 14 days from the date of this advice.

Dispute

If a dispute is lodged, it is to be acknowledged by STC by letter and each claimant informed that the dispute has been referred to the Disputes Officer for submission to the STC Member Services Committee. The letter should foreshadow the possibility of further clarification being sought on relevant issues before a dispute determination is made.

STATE SUPERANNUATION SCHEME

SSS1 Change in contributor status from retirement age 60 (R60) to retirement age 55 (R55)

98/054, Board meeting 18.3.98, 12/128, Board meeting 30.5.12

R60 female contributors who claim to have elected for R55 on joining SSS may transfer to R55 if they:

1. provide satisfactory documentary evidence of that election, such as the election form or other contemporaneous documentary records sufficient to establish that the election was made;
2. agree to pay future contributions at the R55 rate immediately upon being notified by STC that the documentary evidence is satisfactory; and
3. agree to pay the difference between the amounts already contributed and the contributions that would have been payable had the female contributor been contributing at the R55 rate from the time of joining SSS, plus interest on the arrears from the dates the amounts were due for payment at the crediting rate of the investment strategy applicable to the SSS, with payment to be made by means of one of the following alternative payment arrangements:
 - (a) by regular instalments (e.g., payroll deductions) while remaining a contributor; or
 - (b) by lump sum at any time prior to or at exit from the scheme; or
 - (c) by lump sum by reduction of the lump sum benefit or by part commutation of the pension benefit; or
 - (d) if the benefit was crystallised prior to retirement age (55) due to invalidity or benefit preservation, by permanently reducing the relevant pension capitalisation factor as provided to Pillar by the STC; or
 - (e) by any combination of the above,

as agreed in writing between SAS Trustee Corporation and the female contributor.

The transfer to R55 can only occur after arrangements have been agreed for the payment of contribution arrears and interest.

SSS2 Elections, and out of time elections, not relating to commutation (Sections 23BA, 91(1)(d) and 91(2) of the *Superannuation Act 1916* (NSW))

98/088, Board meeting 24.4.98; 00/227, Board meeting 13.9.00; 12/027, Board meeting 29.2.12

	Item	Policy
A	<p>Election to abandon optional units at annual reviews and on exit: s10Q(2) & (3), s10R(2) & (3);</p> <p>Revocation of election to recover abandoned optional units at annual reviews and on exit: 10Y & 10Z;</p> <p>Election to cease contributing for excess units: s10W(2);</p> <p>Election to recover previously abandoned unit: s10Y & s10Z;</p> <p>Election to contribute for reserve units: s15A(2A);</p> <p>Election to appropriate reserve units: s15A(5)</p>	<p>STC will approve a late election if it considers it to be desirable in all the circumstances, and will normally do so for any election received no later than:</p> <ul style="list-style-type: none"> • if the election was made on exit, 1 month after the person was advised of his or her options • otherwise, 4 months after the time has ended. <p>In determining whether it is desirable in the circumstances to approve an election received beyond the times outlined above, STC will consider the following factors:</p> <ul style="list-style-type: none"> • the length of time after the right to elect has lapsed, noting that very strong reasons will be required in order for STC to exercise its discretion to approve an election lodged beyond the times outlined above • the person's actual knowledge of his or her right to elect • whether the person ought to have been aware of his or her right to elect • the time within which the person made the election after becoming aware of his or her right to elect • the reasons given by the person for lodging a late election • whether the person has lodged a statutory declaration in support of his or her assertions

B	Application to revoke election to abandon optional units at annual reviews and on exit s10Q(2)&(3)	<p>STC will approve an application to revoke if it considers it to be desirable in all the circumstances and will normally do so for any application received no later than 4 months after the time has ended.</p> <p>In determining whether it is desirable in the circumstances to approve an application to revoke received more than 4 months late, STC will consider the following factors:</p> <ul style="list-style-type: none">• the length of time after the right to revoke has lapsed, noting that very strong reasons will be required in order for STC to exercise its discretion to approve a revocation lodged more than 4 months late• the person's actual knowledge of his or her right to revoke• whether the person ought to have been aware of his or her right to revoke• the time within which the person made the revocation after becoming aware of his or her right to elect• the reasons given by the person for lodging a late revocation• whether the person has lodged a statutory declaration in support of his or her assertions <p>All applications for revocation must be accompanied by a written acknowledgement that no death or invalidity cover or early retirement rights under s21(1B) or s28A will apply for the 2½ years following the annual adjustment date (for the purposes of s10AA(2)).</p>
C	Application to revoke election to appropriate reserve units s15A(5)	<p>STC will approve an application to revoke an election to appropriate reserve units if it considers it to be desirable in all the circumstances and will normally do so for any application received no later than 4 months after the election.</p> <p>In determining whether it is desirable in the circumstances to approve an application received more than 4 months after the election,</p>

		<p>STC will consider the following factors:</p> <ul style="list-style-type: none"> • the length of time after the election was exercised • the reasons given by the person for lodging a late election • whether the person has lodged a statutory declaration in support of his or her assertions
D	<p>Election to take up abandoned units on exit s10Z(3)</p>	<p>STC will approve a late election if it considers it to be desirable in all the circumstances and will normally do so for any election received no later than one month after the contributor was informed of all available options.</p> <p>In determining whether it is desirable in the circumstances to approve an election received more than one month late, STC will consider the following factors:</p> <ul style="list-style-type: none"> • the length of time after the right to elect has lapsed, noting that very strong reasons will be required in order for STC to exercise its discretion to approve an election lodged more than one month out of time • the person's actual knowledge of his or her right to elect • whether the person ought to have been aware of his or her right to elect • the time within which the person made the election after becoming aware of his or her right to elect • the reasons given by the person for lodging a late election • whether the person has lodged a statutory declaration in support of his or her assertions
E	<p>Election to take up additional units due to a post retirement (or death) increase in salary s23BA</p>	<p>STC will approve a late election if it considers it to be desirable in all the circumstances and will normally do so for any election received no later than one month after the contributor was informed of all available options.</p> <p>In determining whether it is desirable in the circumstances to approve an election received</p>

		<p>more than one month late, STC will consider the following factors:</p> <ul style="list-style-type: none"> • the length of time after the right to elect has lapsed, noting that very strong reasons will be required in order for STC to exercise its discretion to approve an election lodged more than one month out of time • the person's actual knowledge of his or her right to elect • whether the person ought to have been aware of his or her right to elect • the time within which the person made the election after becoming aware of his or her right to elect • the reasons given by the person for lodging a late election • whether the person has lodged a statutory declaration in support of his or her assertions
F	Election to cease contributing for fully paid instalment units s12CA(3)	Revoked: 12/027, Board meeting 29.2.12
G	Application to revoke an election to make provision for a benefit because of Executive Officer eligibility s20AB(1)(b)	Revoked: 12/027, Board meeting 29.2.12
H	Most appropriate benefit for contributor who is retrenched, resigns or is dismissed or is discharged s38B(4)	<p>Where an election under s38B(1) or (2) is not received within the 3 month prescribed period, s38B(4) provides that the contributor is taken to have elected to take the kind of benefit (of those listed in s38B(1) and (2)) that STC decides to be the most appropriate in the circumstances of the case.</p> <p>In the absence of any other information, it is STC's policy that the benefit payable under Division 3A is the most appropriate benefit for a contributor.</p>
I	Election to maintain membership on termination of employment and subsequent employment with scheme employer s38C	Revoked: 12/027, Board meeting 29.2.12

**SSS3 Elections, and out of time elections relating to commutation
(Sections 91(1)(d) and 91(2) of the *Superannuation Act 1916 (NSW)*)**

98/088, Board meeting 24.4.98; 09/334, Board meeting 10.12.09; 12/027, Board meeting 29.2.12

	Item	Policy
A	Date of effect of a commutation election	<p>Section 91(4) provides that the date or dates determined by STC as the date or dates as from which an election to commute is or are to take effect shall not be later than the expiration of 7 months after the last day on which the election could have been made, but STC may determine a later date or later dates if it is satisfied that such special circumstances exist as warrant the determination.</p> <p>Subject to the legislation, the date of effect of the election shall be the latest of:</p> <p>(a) the date application is received by the Trustee or administrator; or</p> <p>(b) the date member attains age 55, or if the member is electing to commute under section 21D(4), the date that the member attains age 60; or</p> <p>(c) the date the pension commenced to be payable; or</p> <p>(d) the date nominated by the member.</p>
B	Application to revoke election to commute pension (ss21C and 21D) and application to amend an election to commute by reducing amount of pension to be commuted (ss21C and 21D)	<p>STC will normally approve the revocation of the election or the amendment to the election where the application is received prior to the date on which commutation is due to take effect.</p> <p>In determining whether to approve an application to amend an election where the commutation has taken effect, STC will consider the following factors:</p> <ul style="list-style-type: none"> • whether the commutation amount has been paid • the reasons given by the person for seeking a revocation or amendment • whether the person has lodged a statutory declaration in support of his or her assertions
C	Application to amend an election to commute by increasing amount of pension to be commuted (ss21C and 21D)	<p>STC will normally approve the amendment to the election where:</p> <p>(a) the application is received prior to date on which commutation is due to take effect; and</p> <p>(b) when the application is received outside the periods prescribed in section 21D, the member does not have a medical condition that may affect his/her longevity, as certified by a medical doctor</p> <p>In determining whether to approve an application to amend an election where the commutation has taken effect, STC will consider</p>

		<p>the following factors:</p> <ul style="list-style-type: none"> • whether the commutation amount has been paid • the reasons given by the person for seeking an amendment • whether the person has lodged a statutory declaration in support of his or her assertions
D	Election to commute a pension where the initial or subsequent elections have been revoked or becomes invalid (ss21C and 21D)	An election will be accepted where there was one or more previous elections only if each previous election was revoked or has become invalid (e.g. retirement date has passed without the contributor retiring) and the new election satisfies the other conditions for making an election.
E	Application to amend an election to commute by deferring the date of effect of election (ss21C and 21D)	<p>STC will normally approve the amendment to the election where the date of effect of the election has not passed and the new date of effect is not later than 7 months after the last day on which the election could have been made.</p> <p>In determining whether to approve an application to amend an election where the commutation has taken effect, STC will consider the following factors:</p> <ul style="list-style-type: none"> • whether the commutation amount has been paid • the reasons given by the person for seeking an amendment • whether the person has lodged a statutory declaration in support of his or her assertions
F	Application to amend an election to advance the date of effect of election to commute (ss21C and 21D)	<p>STC will normally approve the amendment to the election where:</p> <p>(a) the application is received prior to date on which commutation would take effect; and</p> <p>(b) when the application is received outside the periods prescribed in section 21D, the member does not have a medical condition that may affect his/her longevity, as certified by a medical doctor</p> <p>In determining whether to approve an application to amend an election where the commutation has taken effect, STC will consider the following factors:</p> <ul style="list-style-type: none"> • whether the commutation amount has been paid • the reasons given by the person for seeking an amendment • whether the person has lodged a statutory declaration in support of his or her assertions

G	Repayment of proceeds of commutation as part of revoking or amending election to commute pension Section 91(1)(d)	Revoked: 12/027, Board meeting 29.2.12
H	Commutation of pension arising from post retirement salary increase Section 21D(2)	Where the original election makes the intention clear (e.g. all commutation, all pension etc.), that election is to be applied to the post retirement salary increase. Otherwise, the pensioner is to be asked to provide a further election if commutation of the post retirement salary increase is required and such election is to be received within 1 month of the date the member is advised of their options.
I	Election by spouse to commute a pension under s21C(4)	Revoked: 12/027, Board meeting 29.2.12

SSS4 Children's pensions

98/116, Board meeting 12.5.98; 12/027, Board meeting 29.2.12

A Payment of child's pension

(Sections 31A(4), 32A(2) and (4), 32C(3) and 52I(5) of the *Superannuation Act 1916* (NSW))

Introduction

Section 31A specifies the minimum benefit payable in respect of a pensioner who dies in situations where the pensioner leaves no child. However, s31A (4) provides that if these rules would apply but for the pensioner leaving a child or children in respect of whom a pension is otherwise payable, STC may, if it considers it to be in the best interests of the child or children, apply s31A as if there were no such child or children and not pay a pension to the child or children.

Section 32A specifies the benefit payable upon the death of an employee before retirement where the employee leaves no child, as follows:

- (a) Where an employee who does not have a spouse or de facto dies before retirement leaving a child or children in respect of whom a pension is otherwise payable, s32A(2) provides that STC may either apply section 32A as if there was no such or children and not pay a pension to the child or children, or pay a pension to the child or children and pay the total of the contributions paid by the employee to SSS to the deceased employee's personal representative (whichever STC considers to be in the best interests of the child or children).
- (b) Where an employee who has a spouse or de facto dies before retirement leaving a child or children in respect of whom a pension is otherwise payable, s32A(4) provides that STC may, if it considers it to be in the best interests of the child or

children apply s32A(3) as if there were no such child or children and not pay a pension to the child or children.

Section 32C provides for a refund or minimum benefit in certain cases where a spouse or de facto partner dies without leaving a child or children. However, s 32C(3) provides that if s 32C(2) would apply but for the employee or the spouse / de facto leaving a child or children in respect of whom a pension is otherwise payable, STC may, if it considers it to be in the best interests of the child or children, make a payment under s32C(2) as if there were no such child or children and not pay a pension to the child or children.

Section 52I applies where a deferred member dies leaving a child or children in respect of whom a pension is otherwise payable, STC may on receipt by it of an application for a child pension under ss52FA or 52G, pay the cash termination benefit as if the person had not died leaving a child or children and not pay a child's pension, or pay the child's pension and not pay a cash termination benefit, whichever STC considers to be in the best interests of the child or children.

Policy

This policy is to operate on the basis that in all cases payment is to be decided subject to what STC considers to be in the best interests of the child or children.

STC will have regard to the total value of the benefits likely to be received by the child or children of the deceased member or pensioner. The anticipated benefits are to be calculated and where there is more than one option, the option which yields the higher benefit to the child or children is to be paid unless the circumstances indicate that the higher benefit is not in the child's best interest.

Where it is not clear which of these alternatives would provide the higher benefit to the child or children, payment is to be made in accordance with whichever of those alternatives is nominated by the child or children and their parent or guardian, provided such a nomination is unanimous where there is more than one child.

B Approval of institution for the purpose of child pension payment to student

(Section 43A of the *Superannuation Act 1916* (NSW))

Section 43A defines a 'student' as a person who, though having attained the age of 18 years, is under the age of 25 years and is receiving full-time education at a school, college or university approved by STC.

The following schools, colleges and universities are approved for these purposes:

- (a) an educational institution established by or under any State or Commonwealth Act; or
- (b) an institution recognised by a Government body providing accreditation for educational institutions within the relevant jurisdiction; or
- (c) an institution whose students are eligible for Government student assistance; or
- (d) an institution which provides a course leading to a qualification recognised by a Government body or by a professional association.

SSS5 Benefit payable in case of potential entitlement to a second spouse's or de facto partner's pension where a pension was previously commuted (s.46A(3) of the *Superannuation Act 1916*)

98/116, Board meeting 12.5.98; 12/027, Board meeting 29.2.12 (revoked); 18/68, Board meeting 21.6.18 (re-instated)

Subsection 46A(3) of the *Superannuation Act 1916* ("Act") provides that where, but for that subsection, a person would be entitled to more than one spouse's or de facto partner's pension, the person shall be entitled to only one of those pensions, being (where they are not equal) the greater or greatest of them.

To determine the greater of two pensions for the purposes of s.46A(3), the relevant date of comparison is the date on which the person would become entitled to the second such pension (i.e. the day after the death of the person's second spouse or de facto partner).

Where the person had previously elected to commute part or the whole of a spouse's or de facto partner's pension payable to them and the election took effect and was processed, the determination of which of the two pensions is greater should be made on the basis of a comparison of the amount of the pension that would have been payable under the Act had the person not commuted that pension to the amount of the other pension (that is, that commutation is ignored in determining which of the two pensions is the greater), with the higher of those two amounts being the greater for s.46A(3) purposes.

The person shall be entitled to receive the greater of the two pensions (as determined on the basis set out above) to the extent that the pension has not been commuted, but shall not be entitled to receive the other (i.e. lesser) pension.

SSS6 Adjustments of contributions where there is an underpayment or overpayment for units and a small amount is involved

98/154, Board meeting 5.6.98; 12/027, Board meeting 29.2.12

- a) Where a contributor has instalment rate units (is within five years of retirement) and has an underpayment or overpayment of up to \$100, it is to be added to the member's outstanding contribution balance.
- b) Where a contributor is not within five years of retirement and does not have instalment rate units and has an underpayment of up to \$20, STC will take no steps to recover the unpaid amount.

In all other cases, STC will commence debt recovery action to recover the amount of the underpayment, or refund the amount overpaid (as applicable).

SSS7 Leave of absence

98/154, Board meeting 5.6.98; 12/027, Board meeting 29.2.12

A Determination of approved leave without pay

(Sections 19(4) and (5) of the *Superannuation Act 1916* (NSW))

STC thinks it fit to approve leave for the purpose of s19(5) provided that in all circumstances the employer certifies to STC that the employee is, during the period of leave, acting in the interests of the employer or the State.

B Deferral of contributor's contributions while on leave without pay

(Section 19A of the *Superannuation Act 1916* (NSW))

Section 19A permits STC to, in special circumstances, defer the payment of any contribution by a contributor but, where STC so defers a payment interest is payable on the deferred amount.

STC has determined that special circumstances will extend to a person who is on leave without pay and has provided satisfactory evidence that during the period of leave financial hardship would occur if the payment of the member's personal contributions were required to be paid.

Approval may be given to applications where:

- (a) the member demonstrates that he or she would suffer financially if the application were not approved; or
- (b) the member demonstrates that the only income he or she will receive is significantly less than the salary he or she was receiving prior to going on leave without pay; or
- (c) the member demonstrates that he or she will not receive any income whilst on leave without pay.

The amount of interest payable under section 19A is determined in accordance with the SSS Interest Policy.

SSS8 Part-refund of contributions for fully paid up units

(Sections 10WC(16) and 20C(5) of the *Superannuation Act 1916* (NSW))

98/154, Board meeting 5.6.98; 12/027, Board meeting 29.2.12

Where a person has acquired fully paid up units under s10WC following the commencement or change to part-time employment and the person dies, retires before attaining age 60 or is retired under a breakdown retirement before age 60 and contributions have not been refunded, the amount of contributions to be refunded to or in respect of the person is equal to the part of the fully paid up unit cost relating to the time from the exit date to normal retirement age, as calculated in accordance with actuarial advice.

Where a person has transferred to SSS from the Public Service Superannuation Fund and acquired fully paid up units under section 20C, and the person dies, retires before age 60 or is retired under a breakdown retirement before age 55 (in relation to a female) or age 60 (in relation to a male), the amount of contributions to be refunded to or in respect of the person is equal to the part of the fully paid up unit cost relating to the time from the exit date to normal retirement age, calculated in accordance with actuarial advice.

SSS9 Interest on withdrawal benefit (*Revoked*)

98/221, Board meeting 12.8.98; 12/027, Board meeting 29.2.12

SSS10 Commutation factors for calculating the commutation of the residual pre 1 July 1985 pensions (*Revoked*)

98/221, Board meeting 12.8.98; 00/227, Board meeting 13.9.00

SSS11 Elections to defer retrenchment benefit

(Section 37B of the *Superannuation Act 1916* (NSW))

1. Contributions payable following election

99/018, Board meeting 10.2.99; 12/027, Board meeting 29.2.12

Section 37B(4) requires that a member who elects to defer under section 37B benefits on retrenchment must agree to pay to the fund, and does pay to the fund, the present value of all further contributions, as determined by STC on the basis of actuarial advice. STC requires the actuarially determined contributions to be paid as a lump sum within six months of the member being advised of the amount payable.

2. Elections

99/222, Board meeting 5.10.99; 12/027, Board meeting 29.2.12

A member who has elected under s37B to defer a benefit on retrenchment does not have the option of applying for any other benefit under the Superannuation Act 1916. The only exception is where a member who has elected to defer under s37B becomes incapacitated or dies before the early retirement date. In this case the member may be treated as having elected to take the benefit of Division 3A immediately before he or she became incapacitated or died.

SSS12 Withdrawal benefit 'cap' (Revoked)

99/018, Board meeting 10.2.99; 12/027, Board meeting 29.2.12

SSS13 Entitlement of members to revoke s.37B election (Revoked)

02/081, Board Meeting 29.5.2002

SSS14 To approve retention of higher salary and benefit cover in certain circumstances where a member's salary is reduced

89/323; Board Minute, 16.11.89; 96/12, Board Minute 14.2.96; 01/189, Board meeting 26 September 2001; 12/027, Board meeting 29.2.12

(Section 10W(5) of the *Superannuation Act 1916* (NSW))

In regard to the effect of a reduction in salary on superannuation benefits:

A. Non-SES Employees

1. The Superannuation Act 1916 provides that a contributor retains benefit cover at the higher level where salary is reduced due to ill-health (unless the contributor elects to contribute on a lower basis) or for some other reason which STC, having regard to the circumstances of the case, considers warrants the retention of the benefit at the higher level of salary.
2. The Board's policy is that higher benefit cover could also be retained where a reduction in salary arose either immediately, or after the cessation of a "make-up" allowance, due to a contributor accepting re-deployment to a lower paid position in lieu of retrenchment; subject to the employer confirming relevant details.
3. Furthermore, higher benefit cover could also be retained where a contributor is redeployed to a lower paid position not as an alternative to retrenchment but as a

result of a re-organisation or re-structure, and not related to incompetence or disciplinary action; subject to the employer confirming relevant details.

B. SES Officers

1. Where Senior Executive Service ('SES') officers' contracts are terminated and they return to a graded or lower paid position in the public sector, their salary for superannuation purposes is the same as the salary they actually receive in the graded or lower paid position.
2. An exception applies in the case of any former SES officers who were advised, either prior to the Board's policy determination or before the policy could be disseminated to the scheme administrator or employers, that they could maintain their superannuation salary at the SES level. Retention of superable salary at the higher level is subject to the member and the employer coming to an agreement about the payment of the superannuation on-cost for the difference between the actual salary and the salary for superannuation purposes.

SSS15 Interest

04/335, Board meeting 8.12.04; 05/053, Board meeting 30.3.2005; 05/265, Board meeting 7.12.05

This Policy SSS 15 is a guideline on how the Trustee would exercise its discretions under the Act with respect to charging interest on moneys owed to the Fund and paying interest on moneys owed by the Fund, as relevant, and with respect to the amount of any interest so charged or paid. As a general principle, the guidelines are intended to be applied in a fair and equitable manner to all persons who would be affected by the Policy, including all other members of the Fund. If the individual circumstances of a particular case indicate to a delegate (who is exercising the Trustee's discretion) that the application of the policy would not give a fair and equitable result, separate consideration of those circumstances is to be given in the exercise of the Trustee's discretion.

Nothing in this Policy prevents the Trustee from waiving payment of interest payable to the Fund in special circumstances as it may determine or in a particular case, where such power exists (s91A(3)).

This Policy excludes the payment of interest owing to SSS in the event of a contributor status changing from R60 to R55. Refer to Policy SSS1.

PART A

Definitions

In this Policy, unless otherwise indicated:

Member means an employee who is contributing to the SSS.

Pensioner means a person who is receiving a pension from the SSS. This includes the recipient of a spouse pension or child pension.

Spouse, in relation to a member or pensioner who has died, means the widow or widower, as the case may be, of the member or pensioner.

De facto partner, in relation to a deceased member or deceased pensioner, means a person who was in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the deceased member or pensioner at the time of his or her death.

Fund Earning Rate means the interest earnings credited through actual monthly distributions, and for the period since the last actual monthly distribution, the daily interest rates.

PART B

References to section numbers are a reference to the power to charge or pay interest for the particular event.

1. Contributions

(a) Contributions underpaid (Section 91A(4))

Underpaid personal contributions can result if:

- i. a member does not make personal contributions whilst on a period of leave without pay (s19A); or
- ii. a member's employer is not advised of the correct rate of contribution by the administrator; or
- iii. a member's employer deducts contributions at a lesser rate than the rate advised by the administrator; or
- iv. a member has a break in service of less than 3 months and elects to resume contributions (s38C); or
- v. there are retrospective salary changes, reinstatements or late advices of changes in employment status.

If contributions are underpaid, the member, administrator or employer is generally required to pay the arrears including interest.

In the circumstances outlined in 1(a)(i) and (iv) interest at the Fund Earning Rate is to be paid from the date the arrears became due for payment until the arrears are paid off, compounded using the method applied under Section 33B. If the interest calculated is less than \$50, interest is not payable. Repaid interest amounts are to be credited to the member's personal account.

In the circumstances outlined in 1(a) (ii) the payment of interest by Pillar will be as agreed by STC and Pillar.

Payment arrangements in respect of the member are as follows:

Contribution arrears plus interest may be paid:

1. by regular instalments (eg payroll deductions); or
2. by lump sum at any time prior to or at exit from the scheme; or
3. by lump sum at exit by reduction of the lump sum benefit or by part commutation of the pension benefit; or
4. if the benefit was crystallised prior to retirement age (55) due to invalidity or if a benefit is preserved, by permanently reducing the relevant part or whole of the pension; or
5. by any combination of the above.

If the Fund Earning Rate for a particular month is negative, the outstanding debt in respect of that month should reduce accordingly.

Where a contribution debt remains at the time a benefit becomes payable, arrangements must be made by the member to liquidate the debt before the benefit can be paid.

1. (b) Contributions overpaid

If contributions are overpaid, the member is to be paid a refund of the overpaid contributions plus interest. Interest is to be paid from the date the overpaid contributions were received by the Fund until the date the refund of the contributions is authorised at the Fund Earning Rate, compounded using the method applied under Section 33B. If the interest calculated is less than \$50, interest is not payable.

2. Pensions

(a) Pension underpayment to a former member, spouse pensioner or de facto partner pensioner (Section 86A(4))

A pension could be underpaid as a consequence of an error occurring at the time the original pension commenced or if wrong information was provided to the administrator, eg salary.

If a pension has been underpaid, the pensioner is to be paid the amount underpaid plus interest. Subject to paragraph (c), interest is to be paid from the date the underpaid pension commenced until the date the amount owed is authorised to be paid at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

(b) Pension overpayment to a former member, spouse pensioner or de facto partner pensioner (Section 91A)

A pension could be overpaid as a consequence of an error occurring at the time of the original pension commencement or as a consequence of the late notification of a pensioner's death.

If a pension has been overpaid the pensioner will not be charged interest if the debt is paid within one month of the person being informed of the debt, ie the due date. If the debt is not paid by the due date, interest is to be charged from the due date to the date the debt is calculated and advised to the person being informed of the debt, at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared). The recalculated debt and interest applies for one month after the date of calculation.

In circumstances where the overpayment can not be attributed to the person owing the money, (eg where the overpayment resulted from the late notification of a pensioner's death and recovery is to be made from a spouse pensioner) that person will not be required to pay interest on the overpayment if the amount owing is paid within one month.

Where the overpayment occurred as a result of the administrator's action, the payment of interest by Pillar will be as agreed by STC and Pillar.

If the Fund Earning Rate for a particular month is negative, the interest payable on an outstanding debt in respect of that month should reduce accordingly.

(c) Late paid pensions to former members (Section 86A)

If pension payments commence within 30 days of the date the pension was due to be paid, no interest is payable.

If pension payments commence more than 30 days after the date the pension was due to be paid, interest at the Fund Earning Rate is payable from the date the pension was due to be paid. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

(d) Late paid pensions to a spouse or de facto partner after a member's or pensioner's death (Section 86A(4))

If pension payments commence within 30 days of the date the pension was due to be paid, no interest is payable.

If pension payments commence more than 30 days after the date the pension was due to be paid, interest at the Fund Earning Rate is payable from the date the pension was due to be paid. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

If an overpayment is to be recovered from the spouse pensioner's pension, recovery is to be made under para 2(b) and any interest payable on arrears of pension is to be calculated after that deduction.

3. Lump Sums

(a) Commuted lump sums to former members (Section 21E)

Interest is to be paid on the lump sum, less any deduction for money due to the Fund, from the date a commuted lump sum became payable until the date it is authorised to be paid, at the Fund Earning Rate compounded monthly (or daily when the monthly rate has not been declared). The lump sum payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

(b) Late paid lump sums to a spouse or de facto partner after a member's or pensioner's death (Section 21E)

Interest at the Fund Earning Rate is to be paid from the date a lump sum became payable until the date it is authorised for payment. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). The benefit payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

4. Reclassifications (Section 86A(4))

Overpayment

(a) Where a former member's mode of exit has been reclassified and the gross lump sum originally paid to the member is more than the gross accumulated pension arrears:

1. the pension arrears are effectively reduced to zero by offsetting the lump sum against it;
2. no interest is payable on the pension arrears; and
3. only the excess of the net lump sum over the net pension arrears amount can be recovered, ie no interest is payable on the pension arrears nor on the lump sum that is to be recovered to offset the pension arrears. If the member does not elect to pay the debt in

the form of a lump sum, the balance of the arrears are recovered by reducing each of the future fortnightly pension payments by 1/52 of the excess to ensure that the debt is extinguished within 24 months.

Underpayment

4. (b) Where a former member's mode of exit has been reclassified and the gross lump sum originally paid to the member is less than the gross accumulated pension arrears:

1. interest is to be calculated at the Fund Earning Rate on the gross pension arrears from the member's first pension payment date until the Adjustment Date (the pension pay date that next occurs after the date one calendar month after the notification of the reclassification is received);
2. notional interest is to be calculated at the Fund Earning Rate on the original gross lump sum paid to the member from the original date of payment until the Adjustment Date;
3. These interest amounts are then compared;
4. If the interest amount on the gross pension arrears is less than or equal to the notional amount of interest on the gross lump sum, no interest is added to the gross pension arrears (only the amount by which the net pension arrears exceeds the net lump sum benefit is payable);
5. If the interest amount on the gross pension arrears is more than the notional amount of interest on the gross lump sum, the excess interest amount is payable; and
6. the amount by which the net pension arrears exceeds the net lump sum benefit originally paid to the member is also payable.

5. Amounts released under financial hardship or compassionate grounds (Section 61RH and Clause 6 of the Superannuation Regulation 2001)

Where an amount has been released to a SSS member due to financial hardship or on compassionate grounds;

1. a debt account is to be established to which is debited the amount of the benefit released to the member; and
2. interest is to be paid to the debt account on the amount released to the member at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared.)

6. Post-Retirement salary increases

A pension or lump sum could be underpaid as a consequence of a post-retirement amendment to a member's reported retirement salary. In these circumstances, unless the additional payment is made within 30 days of the original payment, interest is to be paid from the date of the original payment to the date of the additional payment at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared.)

7. Excess Surcharge Payments (Section 91C)

If a member's surcharge account is in credit after payment of surcharge has been paid in respect of the member, the credit must be refunded to the member. Interest at the 10 year Commonwealth Bond Rate must be paid if the refund occurs in a financial year after the financial year in which the assessment notice was received by the administrator.

PART C

In all cases relating to Policy SSS15:

- Nothing fetters the exercise of the Trustee's discretion in relation to a member lodging a dispute under section 67 of the Superannuation Administration Act 1996.
- No court action for recovery of interest debts owing to SSS is to be commenced without the authorisation of the Trustee.

SSS16 Anti-Detriment Increase

12/316, Board meeting 12.12.12

Section 61RAA of the *Superannuation Act 1916* allows the Trustee to increase an employer-financed portion of a death benefit where the employer financed portion had previously been reduced for contributions tax. The eligibility of an increase is limited to the circumstances giving rise to a deduction from assessable income under section 295-485 of the *Income Tax Assessment Act 1997* of the Commonwealth. The amount of the increase is determined by the Trustee after obtaining actuarial advice.

For the purposes of section 61RAA, the Trustee after obtaining actuarial advice, has determined that where a deferred SSS lump sum benefit is paid equal to the cash termination benefit (CTP) or resignation benefit and the only surviving family member is an adult child, not entitled to a child's pension, the anti-detriment payment applies. The lump sum death benefit is to be increased by the amount calculated using the following formula below.

The definition of spouse and child in the *Income Tax Assessment Act 1997* apply. Spouse includes a spouse in a same sex relationship and child includes a child of the person's spouse.

Where payment is made to the member's legal personal representative or estate, an increase in the benefit is available to the extent that the benefit will be paid to the deceased's spouse, former spouse or children.

Formula for anti-detriment benefit increase:

$$\frac{0.15P}{R - 0.15P} \times C$$

Where:

- P is the number of days in component R that occur after 30 June 1988 as at the date of death
- R is the total number of days in the service period as defined in section 307-400 of the ITAA 1997 that occur after 30 June 1983 as at the date of death

- C is the taxable component of the employer financed lump sum calculated under section 307-125 of the ITAA 1997
 - as if no deduction under subsection 295-485(2) of the ITAA 1997 (the anti-detriment provisions were allowed),
 - after excluding the actual (if any) insured amount for which deductions have been claimed under section 295-465 or 295-470 of the ITAA 1997. The insured amount is nil unless determined otherwise by STC after receiving actuarial advice
 - includes interest up to the date C is paid

STATE AUTHORITIES SUPERANNUATION SCHEME

SASS1 Date of commencement of additional benefit cover and the date from which the payment of the additional benefit levy commences

Section 22

98/116, Board meeting 12.5.98; 03/280, Board meeting 10.12.03; 11/170, Board meeting 27.7.11

The additional benefit cover commencement date is:

- (a) Except where the circumstances in paragraph (b) apply - the date of approval of the member's application.
- (b) Where a member, who has lodged an application for additional benefit cover, dies or is retired due to total and permanent invalidity before the application has been approved or rejected and the application is subsequently approved - the day prior to the date of the person's death or retirement on the grounds of total and permanent invalidity.

Approval of additional benefit cover under paragraph (b) requires satisfactory evidence that the death or invalidity is unrelated to any pre-existing medical condition or medical history that was or should have been disclosed during the application process.

The payment by a contributor referred to in paragraph (a) of the additional benefit levy will commence from the first day of the month in which the additional benefit application was approved.

SASS2 Acceptance of employer certificate as authority to pay PPI benefit s40 (Revoked)

03/280, Board meeting 10.12.03

SASS3 Approval of application to vary the percentage rate of contribution

Sections 27, 28, 49

98/283, Board meeting 14.10.98; 03/280, Board meeting 10.12.03; 11/170, Board meeting 27.7.11; 11/307, Board meeting 14.12.11

Approval may be given to **increase** contribution rates where -

- (a) the application takes effect from the beginning of the next superannuation year (The year to commence i.e.: 1 April) and is received between 31 December and 31 March; or
- (b) the application takes effect from the beginning of the current superannuation year (The year that commenced i.e.: 1 April) and is received no later than 30 June and the applicant demonstrates that he or she
 - (i) did not receive an election to contribute for that year; or

- (ii) did not submit an election for that year through circumstances beyond the member's reasonable control; or
 - (iii) was unaware of the implications of not electing to contribute at a higher rate.
2. Approval may be given to applications from contributors to **reduce** contribution rates to a minimum of 1% where the application takes effect from the beginning of the next superannuation year i.e.: 1 April and is received between 31 December and 31 March.
 3. Approval may be given to applications from Executive Officers to **reduce** contributions to 6%. Such applications will take effect from the first day of the month in which the contributor's contract as an Executive Officer took effect.
 4. Approval may be given to applications from contributors to **reduce** contribution rates to as low as 0% on the grounds of financial hardship (section 28 applies) where:
 - (a) the contributor demonstrates that he or she would suffer financially if the application were not approved. The application will take effect from the beginning of the next contribution period after receipt and will cease no later than the 1 April succeeding the forthcoming 1 April; or
 - (b) the employer has confirmed that the contributor was on leave without pay for the period for which the reduction is claimed and that the contributor has not as yet personally paid the contributions; or
 - (c) the contributor demonstrates that the only income he or she received was workers' compensation payments for the period for which the reduction is claimed and that these payments were less than the contributor's normal salary.

Applications under (b) and (c) above are to take effect from the first day of the first full calendar month of the period of leave without pay or workers' compensation and will cease from the last full calendar month of the period of leave without pay or workers' compensation, as appropriate.

SASS4 Payment of Spouse Pensions for Ex-employees of the Government Railways Superannuation Scheme (GRSS)

Clause 20, State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) Regulation 1990. Section 44 State Authorities Superannuation Act 1987

01/190, Board meeting 26.9.01; 03/280, Board meeting 10.12.03; 11/170, Board meeting 27.7.11; 11/307, Board meeting 14.12.11

Note: Persons who commenced receiving a spouse pension and then remarried before the GRSS was transferred to SASS on 1 June 1990 were disqualified from receiving the pension during the period of remarriage. The transfer regulation preserves this restriction and provides for persons to apply for resumption of the spouse pension when they cease to be disqualified by providing STC with information it considers necessary to determine entitlement. In addition, former spouses and former de facto partners of members who were disqualified from receiving the spouse pension because of their Commonwealth pension entitlements may apply for resumption of the spouse pension when a change in those entitlements renders them eligible to do so.

An applicant for resumption of spouse pension must apply in writing and provide:

1. A statutory declaration as to the circumstances giving rise to eligibility for resumption of the spouse pension, together with relevant documentary evidence, including evidence of Commonwealth pension entitlements.
2. Where the applicant was disqualified from being entitled to receive a spouse pension because of remarriage before the transfer date, evidence by way of a divorce order or death certificate that the remarriage has ceased.

Spouse pensions are to be paid from the State Rail Authorities' SASS employer reserve. Interest is to be paid on any arrears payments in accordance with the SASS interest policy SASS6.

SASS5 Retention of higher salary and benefit cover where a member's salary is reduced

Sections 27(5), 49

03/280, Board meeting 10.12.03; 11/170, Board meeting 27.7.11

A contributor whose attributed salary has reduced, who applies for the attributed salary to be deemed the same as the attributed salary immediately before the reduction, is to do so by written application, setting out in detail the circumstances giving rise to the reduction in attributed salary. Where the reduction is claimed to be as a consequence of ill health, the contributor should provide an explanation, together with supporting documents, including a statement from the contributor's current employer, indicating the connection between the contributor's ill health and the reduction in attributed salary. Where the contributor claims the reduction in attributed salary was the result of special circumstances, the contributor should provide an explanation why the circumstances are regarded as special and should provide supporting documents substantiating the factual matters claimed in the application.

SASS6 Interest

05/053, Board meeting 30.3.05

This Policy SASS 6 is a guideline on how the Trustee would exercise its discretions under the Act with respect to charging interest on moneys owed to the Fund and paying interest on moneys owed by the Fund, as relevant, and with respect to the amount of any interest so charged or paid. As a general principle, the guidelines are intended to be applied in a fair and equitable manner to all persons who would be affected by the Policy, including all other members of the Fund. If the individual circumstances of a particular case indicate to a delegate (who is exercising the Trustee's discretion) that the application of the policy would not give a fair and equitable result, separate consideration of those circumstances is to be given in the exercise of the Trustee's discretion.

PART A

Definitions

In this policy, unless otherwise indicated:

Member means an employee who is contributing to the SASS.

Pensioner means a person who is receiving a pension from the SASS. This includes the recipient of a spouse pension.

Spouse, in relation to a member or pensioner who has died, means the widow or widower, as the case may be, of the member or pensioner.

De facto partner, in relation to a deceased member or deceased pensioner, means a person who was in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the deceased member or pensioner at the time of his or her death.

Fund Earning Rate means the interest earnings credited through actual monthly distributions, and for the period since the last actual monthly distribution, the daily interest rates.

PART B

References to section numbers are a reference to the power to charge or pay interest for the particular event.

1. Pensions

(a) Pension underpayment to a former member, spouse pensioner or de facto partner pensioner (Section 45)

A pension could be underpaid as a consequence of an error occurring at the time the original pension commenced or if wrong information was provided to the administrator, eg salary.

If a pension has been underpaid, the pensioner is to be paid the amount underpaid plus interest. Subject to paragraph (c), interest is to be paid from the date the underpaid pension commenced until the date the amount owed is authorised to be paid, at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

(b) Pension overpayment to a former member, spouse pensioner or de facto partner pensioner (Section 52(3))

A pension could be overpaid as a consequence of an error occurring at the time of the original pension commencement or as a consequence of the late notification of a pensioner's death.

If a pension has been overpaid the pensioner will not be charged interest if the debt is paid within one month of the person being informed of the debt, ie the due date. If the debt is not paid by the due date, interest is to be charged from the due date to the date the debt is calculated and advised to the person being informed of the debt at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared). The recalculated debt and interest applies for one month after the date of calculation.

In circumstances where the overpayment can not be attributed to the person owing the money, (eg where the overpayment resulted from the late notification of a pensioner's death and recovery is to be made from a spouse pensioner) that person will not be required to pay interest on the overpayment if the amount owing is paid within one month.

Where the overpayment occurred as a result of the administrator's action, the payment of interest by Pillar will be as agreed by STC and Pillar.

If the Fund Earning Rate for a particular month is negative, the interest payable on an outstanding debt in respect of that month should reduce accordingly.

(c) Late paid pensions to former members (Section 45)

If pension payments commence within 30 days of the date the pension was due to be paid, no interest is payable.

If pension payments commence more than 30 days after the date the pension was due to be paid, interest at the Fund Earning Rate is payable from the date the pension was due to be paid. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

(d) Late paid pensions to a spouse or de facto partner after a member's or pensioner's death (Section 45)

If pension payments commence within 30 days of the date the pension was due to be paid, no interest is payable.

If pension payments commence more than 30 days after the date the pension was due to be paid, interest at the Fund Earning Rate is payable from the date the pension was due to be paid. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

If an overpayment is to be recovered from the spouse pensioner's pension, recovery is to be made under para 1(b) and any interest payable on arrears of pension is to be calculated after that deduction.

2. Lump Sums

(a) Late paid lump sums to former members (Section 45)

Interest is to be paid on the lump sum from the date a lump sum became payable until the date it is authorised to be paid, at the Fund Earning Rate compounded monthly (or daily when the monthly rate has not been declared). The lump sum payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

(b) Late paid lump sums to a spouse or de facto partner after a member's death (Section 45)

Interest at the Fund Earning Rate is to be paid on the lump sum from the date a lump sum became payable until the date it is authorised for payment. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). The benefit payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

3. Amounts released under financial hardship or compassionate grounds (Section 43D and Clause 15B of the SAS Regulation 2000)

Where an amount has been released to a SASS member due to financial hardship or on compassionate grounds;

3. a debt account is to be established to which is debited the amount of the benefit released to the member; and
4. interest is to be paid to the debt account on the amount released to the member at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared).

4. Post-Retirement salary increases

A pension or lump sum could be underpaid as a consequence of a post-retirement amendment to a member's reported retirement salary. In these circumstances, unless the additional payment is made within 30 days of the original payment, interest is to be paid from the date of the original payment to the date of the additional payment at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared.)

5. Excess Surcharge Payments (Section 52B)

If a member's surcharge account is in credit after payment of surcharge has been paid in respect of the member, the credit must be refunded to the member. Interest at the 10 year Commonwealth Bond Rate must be paid if the refund occurs in a financial year after the financial year in which the assessment notice was received by the administrator.

PART C

In all cases relating to Policy SASS6:

- Nothing fetters the exercise of the Trustee's discretion in relation to a member lodging a dispute under section 67 of the Superannuation Administration Act 1996.
- No court action for recovery of interest debts owing to SASS is to be commenced without the authorisation of the trustee.

SASS7 Anti-Detriment Increase

05/266, Board meeting 7.12.05; 12/316, Board meeting 12.12.12

Section 45AA of the *State Authorities Superannuation Act 1987* allows the Trustee to increase an employer-financed portion of a death benefit where the employer financed portion had previously been reduced for contributions tax. The eligibility of an increase is limited to the circumstances giving rise to a deduction from assessable income under section 295-485 of the *Income Tax Assessment Act 1997* of the Commonwealth. The amount of the increase is determined by the Trustee after obtaining actuarial advice.

For the purposes of section 45AA, the Trustee after obtaining actuarial advice, has determined that where a deferred SASS benefit is paid as a lump sum benefit to or in respect of an individual who was a spouse, former spouse or child (of any age) of the deceased, the lump sum death benefit is to be increased by the amount calculated using the formula below.

The definition of spouse and child in the *Income Tax Assessment Act 1997* apply. Spouse includes a spouse in a same sex relationship and child includes a child of the person's spouse.

Where payment is made to the member's legal personal representative or estate, an increase in the benefit is available to the extent that the benefit will be paid to the deceased's spouse, former spouse or children.

Formula for anti-detriment benefit increase:

$$\frac{0.15P}{R - 0.15P} \times C$$

Where:

- P is the number of days in component R that occur after 30 June 1988 as at the date of death
- R is the total number of days in the service period as defined in section 307-400 of the ITAA 1997 that occur after 30 June 1983 as at the date of death
- C is the taxable component of the employer financed lump sum calculated under section 307-125 of the ITAA 1997
 - as if no deduction under subsection 295-485(2) of the ITAA 1997 (the anti-detriment provisions were allowed),
 - after excluding the actual (if any) insured amount for which deductions have been claimed under section 295-465 or 295-470 of the ITAA 1997. The insured amount is nil unless determined otherwise by STC after receiving actuarial advice
 - includes interest up to the date C is paid

STATE AUTHORITIES NON-CONTRIBUTORY SUPERANNUATION SCHEME

SANCS1 Payment of benefit on invalidity retirement (*Revoked*)

Section 23(1)(b)

98/116, Board meeting 12.5.98; 99/113, Board meeting 9.6.99; 03/280, Board meeting 10.12.03; 11/270, Board meeting 26.10.11

SANCS2 Interest

05/053, Board meeting 30.3.05

This Policy SANCS 2 is a guideline on how the Trustee would exercise its discretions under the Act with respect to charging interest on moneys owed to the Fund and paying interest on moneys owed by the Fund, as relevant, and with respect to the amount of any interest so charged or paid. As a general principle, the guidelines are intended to be applied in a fair and equitable manner to all persons who would be affected by the Policy, including all other members of the Fund. If the individual circumstances of a particular case indicate to a delegate (who is exercising the Trustee's discretion) that the application of the policy would not give a fair and equitable result, separate consideration of those circumstances is to be given in the exercise of the Trustee's discretion.

PART A

Definitions

In this Policy, unless otherwise indicated:

Spouse, in relation to a member or pensioner who has died, means the widow or widower, as the case may be, of the member or pensioner.

De facto partner, in relation to a deceased member or deceased pensioner, means a person who was in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the deceased member or pensioner at the time of his or her death.

Fund Earning Rate means the interest earnings credited through actual monthly distributions, and for the period since the last actual monthly distribution, the daily interest rates.

PART B

References to section numbers are a reference to the power to charge or pay interest for the particular event.

1. Amounts released under financial hardship or compassionate grounds (Section 23B and Clause 9B of the SANCS Regulation 2000)

Where an amount has been released due to financial hardship or on compassionate grounds;

5. a debt account is to be established to which is debited the amount of the benefit released to the member; and

6. interest is to be paid to the debt account on the amount released to the member at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared).

2. Late payment of a benefit to a former member, spouse or de facto partner or personal representative (Section 26)

Other than for the Co-contribution Account, interest at the Fund Earning Rate is to be paid from the date a lump sum became payable until the date it is authorised for payment. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). The benefit payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

3. Post-Retirement salary increases

A pension or lump sum could be underpaid as a consequence of a post-retirement amendment to a member's reported retirement salary. In these circumstances, unless the additional payment is made within 30 days of the original payment, interest is to be paid from the date of the original payment to the date of the additional payment at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared.)

PART C

In all cases relating to Policy SANCS2:

- Nothing fetters the exercise of the Trustee's discretion in relation to a member lodging a dispute under section 67 of the Superannuation Administration Act 1996.
- No court action for recovery of interest debts owing to the Fund is to be commenced without the authorisation of the trustee.

SANCS3 Anti-Detriment Increase

05/266, Board meeting 7.12.05; 12/316, Board meeting 12.12.12

Section 26AA of the *State Authorities Non-contributory Superannuation Act 1987* allows the Trustee to increase an employer-financed portion of a death benefit where the employer financed portion had previously been reduced for contributions tax. The eligibility of an increase is limited to the circumstances giving rise to a deduction from assessable income under section 295-485 of the *Income Tax Assessment Act 1997* of the Commonwealth. The amount of the increase is determined by the Trustee after obtaining actuarial advice.

For the purposes of section 26AA, the Trustee after obtaining actuarial advice, has determined that where a deferred SANCS benefit is paid as a lump sum benefit to or in respect of an individual who was a spouse, former spouse or child (of any age) of the deceased, the lump sum death benefit is to be increased by the amount calculated using the formula below.

The definition of spouse and child in the *Income Tax Assessment Act 1997* apply. Spouse includes a spouse in a same sex relationship and child includes a child of the person's spouse.

Where payment is made to the member's legal personal representative or estate, an increase in the benefit is available to the extent that the benefit will be paid to the deceased's spouse, former spouse or children.

Formula for anti-detriment benefit increase:

$$\frac{0.15P}{R - 0.15P} \times C$$

Where:

- P is the number of days in component R that occur after 30 June 1988 as at the date of death
- R is the total number of days in the service period as defined in section 307-400 of the ITAA 1997 that occur after 30 June 1983 as at the date of death
- C is the taxable component of the employer financed lump sum calculated under section 307-125 of the ITAA 1997
 - as if no deduction under subsection 295-485(2) of the ITAA 1997 (the anti-detriment provisions were allowed),
 - after excluding the actual (if any) insured amount for which deductions have been claimed under section 295-465 or 295-470 of the ITAA 1997. The insured amount is nil unless determined otherwise by STC after receiving actuarial advice
 - includes interest up to the date C is paid

POLICE SUPERANNUATION SCHEME

**PSS1 Determination of applications for certificates of incapacity
(Revoked)**

98/154, Board meeting 5.6.98; 11/307, Board meeting 14.12.11

PSS2 Redemption of hurt on duty pension for a lump sum

Section 10C

98/154, Board meeting 5.6.98; 06/241, Board meeting 25.10.06; 11/083 Board meeting 27.04.11; 11/270 Board meeting 26.10.11, 12/127 Board meeting 30.5.12

A Commutation factors to be used in commuting the prescribed part of a hurt on duty pension for a lump sum under s10C

The factors below (supplied by the NSW Government Actuary as at June 1998 to age 60 and extended by the Scheme Actuary in April 2011 to age 65) are to be used in determining commutation lump sums under section 10C of the Act in respect of hurt on duty injuries sustained on or after 22 November 1979.

Age	Multiplier
25	12.415
26	12.408
27	12.399
28	12.390
29	12.379
30	12.367
31	12.353
32	12.338
33	12.321
34	12.303
35	12.283
36	12.260
37	12.236

Age	Multiplier
39	12.179
40	12.148
41	12.113
42	12.076
43	12.036
44	11.994
45	11.949
46	11.902
47	11.852
48	11.800
49	11.744
50	11.686
51	11.624

Age	Multiplier
53	11.493
54	11.428
55	11.358
56	11.285
57	11.204
58	11.117
59	11.023
60	10.920
61	10.787
62	10.648
63	10.505
64	10.357
65	10.203

B Special circumstances referred to in s10C(1A)(d)

Under section 10C(1A)(d) STC may approve an application as satisfying special circumstances in which the prescribed part of a hurt on duty pension may be commuted. The following special circumstances are to be taken into account when deciding whether to approve an application for commutation:

- to establish an income-producing business;
- to pay for a move to another location where there are substantial economic grounds for doing so;
- for a purpose that would be likely to assist substantially in the pensioner's rehabilitation and increase the likelihood of the pensioner being able to work in the future;

- for compassionate purposes relating to the pensioner's particular circumstances; and
- in a situation that STC otherwise regards as acceptable in all the circumstances.

Special circumstances applications must be accompanied by written reasons as to why the commutation is required.

**PSS3 Increase in hurt on duty pension due to risk factors s10(1A)c
(Revoked)**

98/154, Board meeting 5.6.98; 02/081, Board meeting 29.5.02; 11/307, Board meeting 14.12.11

**PSS4 Apportionment Of Hurt On Duty Gratuity Benefit To Dependants
(Revoked)**

98/250, Board meeting 16.9.98; 11/307, Board meeting 14.12.11

PSS5 PSS Commutation Elections (Sections 14J and 14K)

Sections 14J and 14K

98/250, Board meeting 16.9.98; Board Resolution 11.7.06; 11/270, Board meeting 26.10.11

For the purpose of this Policy, the date of lodgement of an election or a revocation is the date the written election or revocation, in the form approved by STC, is received by the administrator of the PSS.

1. Section 14J(3) – Commutation on normal or early retirement of member

A. Where the superannuation allowance becomes payable to a member on normal or early retirement of the member:

(a) the member may lodge an election to commute:

(i) at the earliest, not more than 12 months prior to the member's intended last day of service; or

(ii) at the latest, within 6 months after the member's last day of service; and

(b) the member may revoke an election to commute prior to the date of the member's last day of service.

B. Where the superannuation allowance became payable to a member **before** the member attained the age of 60 and the member has not previously elected to commute the whole or any part of the superannuation allowance under s14J:

(a) the member may lodge an election to commute:

- (i) at the earliest, not more than 6 months prior to reaching the age of 60; and
- (ii) at the latest, within 6 months after reaching the age of 60; and
- (b) the member may revoke an election to commute prior to reaching the age of 60.

2. Section 14K(10) Commutation on discharge of disabled member

- A. Where the superannuation allowance became payable to the member before the member attained the age of 55 years:
 - (a) the member may lodge an election to commute:
 - (i) at the earliest, not more than 6 months prior to reaching the age of 55; and
 - (ii) at the latest, within 6 months after the member reaches age 55; and
 - (b) the member may revoke an election to commute prior to reaching the age of 55.
- B. Where the superannuation allowance became payable to the member on or after the member attained the age of 55 years, the member may lodge an election to commute, at the latest, within 6 months after the day on which the member became entitled to the allowance.
- C. Where the superannuation allowance became payable to the member **before** the member attained the age of 60 years and the member has not previously elected to commute the whole or any part of the superannuation allowance under s14K:
 - (a) the member may lodge an election to commute:
 - (i) at the earliest, not more than 6 months prior to reaching the age of 60; and
 - (ii) at the latest, within 6 months after reaching the age of 60; and
 - (b) the member may revoke an election to commute prior to reaching the age of 60.

PSS6 Policy for the approval of student allowances Section 12A

Section 12A

98/284, Board meeting 14.10.98; 11/270, Board meeting 26.10.11

Definition of 'student'

Section 12A defines a 'student' as a person receiving full-time education at a school, college or university approved by STC.

The following schools, colleges and universities are approved for these purposes:

- (a) an educational institution established by or under any State or Commonwealth Act; or
- (b) an institution recognised by a Government body providing accreditation for educational institutions within the relevant jurisdiction; or
- (c) an institution whose students are eligible for Government student assistance; or
- (d) an institution which provides a course leading to a qualification recognised by a Government body or by a professional association.

Conditions for payment of a student allowance (s12(4))

- 1. Satisfactory documentary evidence from the school, college or university that the student is duly enrolled;
- 2. Documentary proof of age and identity.

PSS7 Policy for the duration of section 12 pensions (*Revoked*)

11/307, Board meeting 14.12.11

PSS 8 Effective Date of PSS Pension Increases (*Revoked*)

02/081 Board Meeting 29.05.02; 11/307, Board meeting 14.12.11

PSS9 Interest

05/053, Board meeting 30.03.05

This Policy PSS 9 is a guideline on how the Trustee would exercise its discretions under the Act with respect to charging interest on moneys owed to the Fund and paying interest on moneys owed by the Fund, as relevant, and with respect to the amount of any interest so charged or paid. As a general principle, the guidelines are intended to be applied in a fair and equitable manner to all persons who would be affected by the Policy, including all other members of the Fund. If the individual circumstances of a particular case indicate to a delegate (who is exercising the Trustee's discretion) that the application of the policy would

not give a fair and equitable result, separate consideration of those circumstances is to be given in the exercise of the Trustee's discretion.

PART A

Definitions

In this Policy, unless otherwise indicated:

Member means an employee who is contributing to the PSS.

Pensioner means a person who is receiving a pension from the PSS. This includes the recipient of a spouse pension or child pension.

Spouse, in relation to a member or pensioner who has died, means the widow or widower, as the case may be, of the member or pensioner.

De facto partner, in relation to a deceased member or deceased pensioner, means a person who was in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the deceased member or pensioner at the time of his or her death.

Fund Earning Rate means the interest earnings credited through actual monthly distributions, and for the period since the last actual monthly distribution, the daily interest rates.

PART B

References to section numbers are a reference to the power to charge or pay interest for the particular event.

1. Pensions

(a) Pension underpayment to a former member, spouse pensioner or de facto partner pensioner (Section 18C)

A pension could be underpaid as a consequence of an error occurring at the time the original pension commenced or if wrong information was provided to the administrator, eg salary.

If a pension has been underpaid, the pensioner is to be paid the amount underpaid plus interest. Subject to paragraph (c), interest is to be paid from the date the underpaid pension commenced until the date the amount owed is authorised to be paid at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

(b) Pension overpayment to a former member, spouse pensioner or de facto partner pensioner (Section 23C)

A pension could be overpaid as a consequence of an error occurring at the time of the original pension commencement or as a consequence of the late notification of a pensioner's death.

If a pension has been overpaid the pensioner will not be charged interest if the debt is paid within one month of the person being informed of the debt, ie the due date. If the debt is not paid by the due date, interest is to be charged from the due date to the date the debt is calculated and advised to the person being informed of the debt, at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared). The recalculated debt and interest applies for one month after the date of calculation.

In circumstances where the overpayment can not be attributed to the person owing the money, (eg where the overpayment resulted from the late notification of a pensioner's death and recovery is to be made from a spouse pensioner) that person will not be required to pay interest on the overpayment if the amount owing is paid within one month.

Where the overpayment occurred as a result of the administrator's action, the payment of interest by Pillar will be as agreed by STC and Pillar.

If the Fund Earning Rate for a particular month is negative, the interest payable on an outstanding debt in respect of that month should reduce accordingly.

(c) Late paid pensions to former members (Section 18C)

If pension payments commence within 30 days of the date the pension was due to be paid, no interest is payable.

If pension payments commence more than 30 days after the date the pension was due to be paid, interest at the Fund Earning Rate is payable from the date the pension was due to be paid. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

(d) Late paid pensions to a spouse or de facto partner after a member's or pensioner's death (Section 18C)

If pension payments commence within 30 days of the date the pension was due to be paid, no interest is payable.

If pension payments commence more than 30 days after the date the pension was due to be paid, interest at the Fund Earning Rate is payable from the date the pension was due to be paid. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). If the interest calculated is less than \$50, interest is not payable.

If an overpayment is to be recovered from the spouse pensioner's pension, recovery is to be made under para 1(b) and any interest payable on arrears of pension is to be calculated after that deduction.

2. Lump Sums

(a) Late paid lump sum to a former member (Section 18C)

Interest is to be paid on the lump sum, less any deduction for money due to the Fund, from the date a commuted lump sum became payable until the date it is authorised to be paid, at the Fund Earning Rate compounded monthly (or daily when the monthly rate has not been declared). The lump sum payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

(b) Late paid lump sums to a spouse or de facto partner after a member's or pensioner's death (Section 18C)

Interest at the Fund Earning Rate is to be paid from the date a lump sum became payable until the date it is authorised for payment. Interest is to be compounded monthly (or daily when the monthly rate has not been declared). The benefit payable is not to be reduced if the Fund Earning Rate to be applied is negative or the total interest amount is negative.

3. Reclassifications (Section 18C)

Overpayment

(a) Where a former member's mode of exit has been reclassified and the gross lump sum originally paid to the member is more than the gross accumulated pension arrears:

1. the pension arrears are effectively reduced to zero by offsetting the lump sum against it;
2. no interest is payable on the pension arrears; and
3. only the excess of the net lump sum over the net pension arrears amount can be recovered, ie no interest is payable on the pension arrears nor on the lump sum that is to be recovered to offset the pension arrears. If the member does not elect to pay the debt in the form of a lump sum, the balance of the arrears are recovered by reducing each of the future fortnightly pension payments by 1/52 of the excess to ensure that the debt is extinguished within 24 months.

Underpayment

(b) Where a former member's mode of exit has been reclassified and the gross lump sum originally paid to the member is less than the gross accumulated pension arrears:

1. interest is to be calculated at the Fund Earning Rate on the gross pension arrears from the member's first pension payment date until the Adjustment Date (the pension pay date that next occurs after the date one calendar month after the notification of the reclassification is received);
2. notional interest is to be calculated at the Fund Earning Rate on the original gross lump sum paid to the member from the original date of payment until the Adjustment Date;
3. These interest amounts are then compared;
4. If the interest amount on the gross pension arrears is less than or equal to the notional amount of interest on the gross lump sum, no interest is added to the gross pension arrears (only the amount by which the net pension arrears exceeds the net lump sum benefit is payable);
5. If the interest amount on the gross pension arrears is more than the notional amount of interest on the gross lump sum, the excess interest amount is payable; and
6. the amount by which the net pension arrears exceeds the net lump sum benefit originally paid to the member is also payable.

4. Amounts released under financial hardship or compassionate grounds (Section 12H and Clause 13B of the Police Superannuation Regulation 2000)

Where an amount has been released to a PSS member due to financial hardship or on compassionate grounds;

1. a debt account is to be established to which is debited the amount of the benefit released to the member; and
2. interest is to be paid to the debt account on the amount released to the member at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared.)

5. Post-Retirement salary increases

A pension or lump sum could be underpaid as a consequence of a post-retirement amendment to a member's reported retirement salary. In these circumstances, unless the additional payment is made within 30 days of the original payment, interest is to be paid from the date of the original payment to the date of the additional payment at the Fund Earning Rate, compounded monthly (or daily when the monthly rate has not been declared.)

6. Excess Surcharge Payments (Section 20B)

If a member's surcharge account is in credit after payment of surcharge has been paid in respect of the member, the credit must be refunded to the member. Interest at the 10 year Commonwealth Bond Rate must be paid if the refund occurs in a financial year after the financial year in which the assessment notice was received by the administrator.

PART C

In all cases relating to Policy PSS9:

- Nothing fetters the exercise of the Trustee's discretion in relation to a member lodging a dispute under section 67 of the Superannuation Administration Act 1996.
- No court action for recovery of interest debts owing to PSS is to be commenced without the authorisation of the trustee.

PSS10 Acceptance of applications for HOD pensions and HOD pension increases

00/179, Board meeting 29.07.09; 12/316, Board meeting 12.12.12

Background

STC has discretion under s16A of the *Police Regulation (Superannuation) Act 1906* to accept an application that is not made or received within the time required under s10(1BA) of that Act, if it is satisfied in all the circumstances of the case it is desirable to do so.

Applications made under s10(1BA) are those made for a benefit under:

- S10B(2) for a superannuation allowance to be payable under s10(1A)(a); and
- S10(1D) for an additional amount of superannuation allowance to be payable under s10(1A)(b) or (c).

The time limit specified in s10(1BA) within which applications must be made or received is:

- before the member reaches the age of 60; or
- not later than 5 years after the applicant resigns or retires, whichever is the later.

The decision of the Court of Appeal in *STC v Patterson* [2010] NSWCA 167 means that the time limits in s10(1BA) apply only to those applicants who become entitled to a HOD pension on or after 30 June 2006.

As a result of the decision in *Picker v SAS Trustee Corporation* [2009] NSWIRComm 53, STC is required to consider, under s16A, whether to accept applications not made or received within the time required under s10(1BA).

In *Picker v SAS Trustee Corporation (No. 2)* [2012] NSWIRCComm 68, Boland J held that the following factors are relevant in deciding whether to accept late applications:

- (i) action, or lack of it, taken by the appellant is relevant to the consideration of the question whether an acceptable explanation for the delay has been furnished;
- (ii) any prejudice to STC, including any prejudice in defending proceedings occasioned by the delay, is a material factor militating against acceptance of a late election, application or choice. It is for STC to place in evidence sufficient facts to lead the Court to the view that prejudice would be occasioned by granting a late election, application or choice and is then for the appellant to show that these facts do not amount to material prejudice;
- (iii) the merits of the substantive application are properly to be taken into account in considering whether a late election, application or choice should be accepted. [21]

It follows from the observation of Boland J at (iii) above that, in the context of s.10B(2) applications, it is relevant for STC to take into account whether, had the applicant brought his application earlier, it is likely to have failed after application of the test in *Boland* and, whether, because of the effluxion of time, the duties of office are capable of being ascertained.

The test in *Boland* relates to whether applicants under s.10B(2) whose date of exit from the police force preceded 30 June 2006 were incapable of discharging the duties of office to which they were assigned at the date of exit (and not the general duties of a police officer, including those of a constable, which is the test for those who resigned or retired on or after 30 June 2006).

Submission by applicant

The onus is on the applicant to provide sufficient information and submissions for STC to be satisfied it is desirable that the late application be accepted. The applicant's submission should address:

- a. The reasons for the delay in making the application.
- b. Why the time limits under s10(1BA) should be ignored.
- c. Why it is desirable for STC to exercise its discretion under s16A to allow the out of time application.
- d. Any of the issues that STC will consider in exercising its discretion under s16A.

Issues for STC to consider when exercising discretion under s16A

There may be sound reasons why an application is not made within the statutory time limits and the applicant will be asked to submit their reasons. In assessing a late application under s16A to determine whether it is desirable to accept a late application under s10(1BA), STC will consider the submission of the applicant as well as the following issues.

- 1. Primarily, there is a clear statutory intention of s10(1BA) to restrict the availability of benefits under the Act.
- 2. The length of the delay between the date of the discharge and the application.

3. The explanation of the applicant for the delay in making the application. In particular:
 - a. Whether the nature and seriousness of the applicant's claimed infirmity was partly and justifiably causative of the delay.
 - b. Whether the delay was wholly or substantially beyond the control of the applicant.
4. Whether it is "fair and just" to accept the application. Such assessment includes the wider interests than those of the immediate parties and, in the case of late applications under s10(1BA), the statutory intent and the impact on the fund are considered to be "wider interests".
5. An extensive delay is likely to have a deleterious effect on the quality of evidence available to assess the substantive claim for payment under s10(1A). In particular, the lack of sufficient contemporaneous evidence to assess the application is prejudicial to the Fund.
6. Whether the applicant's information and submission are sufficient to satisfy STC that it is desirable for the time limitations in s10(1BA) to be overridden.
7. Whether, in relation to a s.10B(2) application where the last day of service preceded 30 June 2006, the evidence provided by the applicant and/or NSW Police Force suggests the applicant may have been capable of discharging the duties of office to which he or she was assigned at exit, or whether, with the effluxion of time, those duties of office may not be ascertainable.

STC will consider all the circumstances of a case and will only accept a late application if it is satisfied that it is desirable to do so. Such weight may be attached to any matter as may seem appropriate in the circumstances of the case.

STC will not be satisfied that it is desirable to accept a late application based on an argument that the applicant accrued rights that could not be disturbed by s10(1BA) (*Picker v SAS Trustee Corporation [2009] NSWIRComm 53*).

Conditions

Section 16A(2) permits STC to impose conditions on the acceptance of a late application.

If STC does accept a late application under s16A, the conditions that will apply to such acceptance may include:

1. The commencement date for payment of a pension (in respect of a s10B(2) application) will be the date of the application.
2. The commencement date for payment of an increase to a pension (in respect of a s10(1D) application) will be the date of the application.

PSS11 Anti-Detriment Increase

12/316, Board meeting 12.12.12

Section 14AAA of the *Police Regulation (Superannuation) Act 1906* allows the Trustee to increase an employer-financed portion of a death benefit where the employer financed portion had previously been reduced for contributions tax. The eligibility of an increase is limited to the circumstances giving rise to a deduction from assessable income under section 295-485 of the *Income Tax Assessment Act 1997* of the Commonwealth. The amount of the increase is determined by the Trustee after obtaining actuarial advice.

For the purposes of section 14AAA, the Trustee after obtaining actuarial advice, has determined that where a deferred PSS benefit is paid as a lump sum benefit to or in respect of an individual who was a spouse, former spouse or child (of any age) of the deceased, the lump sum death benefit is to be increased by the amount calculated using the formula below. The definition of spouse and child in the *Income Tax Assessment Act 1997* apply. Spouse includes a spouse in a same sex relationship and child includes a child of the person's spouse.

Where payment is made to the member's legal personal representative or estate, an increase in the benefit is available to the extent that the benefit will be paid to the deceased's spouse, former spouse or children.

Formula for anti-detriment benefit increase:

$$\frac{0.15P}{R - 0.15P} \times C$$

Where:

- P is the number of days in component R that occur after 30 June 1988 as at the date of death
- R is the total number of days in the service period as defined in section 307-400 of the ITAA 1997 that occur after 30 June 1983 as at the date of death
- C is the taxable component of the employer financed lump sum calculated under section 307-125 of the ITAA 1997
 - as if no deduction under subsection 295-485(2) of the ITAA 1997 (the anti-detriment provisions were allowed),
 - after excluding the actual (if any) insured amount for which deductions have been claimed under section 295-465 or 295-470 of the ITAA 1997. The insured amount is nil unless determined otherwise by STC after receiving actuarial advice
 - includes interest up to the date C is paid

