

Police Amendment (Death & Disability) Act 2011

Frequently Asked Questions

11 January 2012

1. Why did the Government change the Scheme?

Costs associated with the old Death & Disability Scheme were growing unsustainably.

NSW Treasury estimated that the scheme was consuming the equivalent of half of the NSW Police Force's salary budget, and was on track to equal the entire police budget in just a couple more years.

Importantly, the existing scheme was failing our injured officers. It was poorly designed and encouraged injured officers to leave the Force rather than seek rehabilitation, and once they are discharged officers were having trouble finding work again.

With up to 800 officers currently on long term sick leave, and up to 85% of officers leaving under the old scheme not getting new employment, a new focus on getting officers back to work was needed.

2. What does the new scheme provide?

The scheme will provide death and disability benefits to police officers who die or who are incapacitated as a result of being injured while either on or off duty.

As part of the scheme, the new insurance policy is expected to provide the following benefits:

- A lump sum benefit should an officer die either on or off duty (the benefit scales remains unchanged from the benefits available under the Award)
- A lump sum benefit if an officer is totally and permanently disabled due to an injury that occurs while the officer is either on or off duty
- An income protection benefit for on duty injuries, that begins after a nine month waiting period following an injury (during which time an officer's salary is maintained at 100% by the NSW Police Force).

The on duty income protection benefit will provide 75% of pre-injury salary for up to five years after a nine month waiting period. Officers will receive 100% of salary during the waiting period.

- After five years and nine months, an officer who is still unable to work due to their injury would be eligible for worker's compensation payments at the statutory rate

Ongoing payment of the income protection benefit will be subject to the insurer's assessment of the officer's fitness to work..

It's important to note that an officer need not be medically discharged to be eligible for these benefits.

In the event of a total and permanent disability the insurance policy will pay both the lump sum benefit and the income protection benefit, which can be commuted to a lump sum at the insurer's discretion.

The new scheme also includes:

- A rehabilitation expense benefit to support an injured officer's rehabilitation and return to work, either with the NSW Police Force or an external organisation. The insurer will pay the costs of an approved rehabilitation program direct to the rehabilitation provider in addition to the income protection benefits
- A recurrent disability benefit – if an injured officer returns to work and is then unfit again within six months, and it is due to the same or a related injury, they can recommence their benefits without a further waiting period.

Under the new arrangements all officers currently receiving weekly workers' compensation payments are entitled to a further 9 months of workers compensation top up at full salary while they remain employed with NSW Police Force, irrespective of how long they have been off duty.

3. When do the new arrangements commence?

The new arrangements will commence in stages.

Commencement of Income Protection

The new income protection benefits apply from 9 December 2011.

Commencement of total and permanent disability (TPD) benefits

New total and permanent disability (TPD) benefits will apply early in January 2012. Formal notice of the new arrangements will be provided through First State Super. Please note however, if you are totally and permanently disabled and the date of disablement is before the date the new TPD benefits commence then the old benefit arrangements will apply

Commencement of death benefits

As outlined in question 2, death benefits have not changed under the new scheme so the previous arrangements remain in place.

4. Will all new benefits be paid under an insurance policy?

Over time all officers will be covered by a commercial insurance policy providing death and disability payments.

Officers who are currently on sick leave or who are injured before the policy commences will not be covered immediately. These officers will be covered by the insurance policy in the future once they return to work with an appropriate level of fitness.

While a policy is not in place, or an officer is not covered by it, equivalent benefits will be provided under recent changes to the *Police Act 1990*.

No officer will be without coverage.

5. I've been off work on sick leave for some time - am I covered by the new arrangements?

Officers who are currently off work due to injury will be entitled to have up to the next nine months off at 100% of salary, provided their absence is supported by medical advice.

For these officers, if they have not already returned to full time work by September 2012, the new income protection benefits will apply.

These income protection benefits will top up an officer's workers' compensation entitlements and any income received from part time work to 75% of an officer's pre-injury salary.

Officers who are injured following commencement of the new scheme will continue to be entitled to an initial nine months of 100% salary following injury before the income protection benefits apply.

It is important to note however, that the Government has also extended the arrangements for many officers currently on long term sick leave to continue to be eligible for partial and permanent lump sum benefits under the old scheme.

Officers will retain coverage for partial and permanent lump sum benefits under the old scheme if they:

- Had an independent medical assessment undertaken and the report was received by the NSW Police Force by 30 November 2011;
OR
- Had an independent medical assessment booked by the NSW Police Force by 25 November 2011;
OR
- Had, at 30 November 2011, been unfit for work for 4 of the past 8 months and had a doctor's certificate saying they had reached maximum medical improvement and should be discharged.
AND
- They are medically discharged by 8 December 2012.

6. I'm already off on sick leave. The TAL proposal says I won't be covered by the insurance arrangements. Does this mean I get nothing?

No. All officers will receive the same benefits under the new arrangements.

Officers who are not immediately covered by the new Police Blue Ribbon Insurance scheme will be guaranteed equivalent benefits under recent changes to the *Police Act 1990*. No officer will be without coverage.

7. Do I have to pay more than what I contribute now?

No. Contributions will remain capped at 1.8% of salary and will continue to be made by way of salary sacrifice.

8. I am a SASS member with ABC coverage, am I covered by the new arrangements?

You will be asked to elect whether you wish to relinquish your ABC cover and transfer to the new scheme.

If you choose to retain your ABC cover:

- your contribution rate remains at 0.88% of salary; and
- you will still be eligible for the income protection benefits under the new arrangements.

9. What if someone dies before the new Scheme is implemented?

The death benefits under the new scheme are the same as the old scheme.

There will be no difference in benefits payable under either scheme.

10. What if I get injured off-duty?

New off-duty benefits will be introduced in line with the staged introduction of the new scheme.

The insurer's proposal for the Police Blue Ribbon Insurance scheme includes a 2 year income protection benefit at 75% of salary paid after a 60 day waiting period for off-duty injuries or sicknesses.

Off-duty death lump sums remain unchanged.

Off duty TPD benefits will now match on duty benefits.

11. What sort of assessments will occur under the new arrangements?

Under the Police Blue Ribbon Insurance income protection cover, monthly assessments by the insurer will apply for payment of a claim.

Similar assessments will apply to officers who receive income protection benefits, but are not covered by the revised Police Blue Ribbon Insurance.

12. What disability test will apply for income protection?

Two definitions will apply to income protection benefits for total disability, an “own occupation” and an “any occupation”.

The **own occupation** disability definition applies until the earlier of 2 years after the date of disability or the date a Police Officer is medically discharged.

The **any occupation** disability definition commences at the earlier of 2 years after the date of disability or the date a Police Officer is medically discharged.

While a policy has not been finalised, it is proposed that standard commercial definitions are used. Initial summary definitions are:

Own Occupation:

An insured member is under the regular care of a Medical Practitioner and unable to perform one income producing duty of a police officer.

Any Occupation:

An insured member is under the regular care of a Medical Practitioner and unable to perform any occupation for which they are suited by education, training and experience.

In addition the police officer:

- a) is not working in any capacity, Gainful Employment or otherwise; and
- b) is under the regular care of a Medical Practitioner and, in the insurer’s reasonable opinion, is complying with the advice and treatment given by that Medical Practitioner.

For mental health illness claims, Medical Practitioner will include a certification from a Psychiatrist (as defined in the policy).

13. What disability test applies for TPD?

The TPD lump sum definition will be the same as the current First State Super employer scheme definitions.

The following table is from the current FSS Employer sponsored members insurance booklet supplement:

“Under the insurance policy, ‘total and permanent disablement’, or ‘totally and permanently disabled’, means:

1. If, at the incident date, you are aged less than 65 and employed or self-employed, or have been unemployed for 12 months or less, you are eligible to be assessed under paragraphs (i), (ii), (iii), (iv), and (v) below.
2. If, at the incident date, you have been unemployed for greater than 12 months, or you are aged 65 or more, you are eligible to be assessed under paragraphs (i), (iii), (iv), and (v) below.
3. If, at the incident date, you are solely engaged in domestic duties, you are eligible to be assessed under paragraphs (i), (iii), (iv), and (vi) below.
 - (i) you suffer the permanent loss of use of 2 limbs or the sight of both eyes or the loss of use of one limb and the sight of one eye (where limb is defined as the whole hand or the whole foot);
 - (ii) you have been absent from your occupation through illness or injury for 3 consecutive months (where your condition is unclear, it is reasonable to defer assessment) and you have provided proof to the satisfaction of the Insurer that you have become incapacitated to such an extent as to render yourself unlikely ever to engage in or work for reward in any occupation or work for which you are reasonably qualified by reason of education, training or experience;
 - (iii) through illness or injury, you are permanently unable to perform 2 of the following 6 ‘activities of daily living’ unaided and you have provided proof of this to the satisfaction of the Insurer:
 1. *Bathing* – to shower or bathe;
 2. *Dressing* – to dress or undress;
 4. *Toileting* – to use the toilet including getting on and off;
 5. *Feeding* – to eat and drink;
 6. *Mobility* – to get out of bed or chair or wheelchair; or
 7. *Continence* – to control bladder and bowel function.

If you can perform the activity by using special equipment, you will be considered able to undertake that activity unaided.
 - (iv) through illness or injury, you suffer from the permanent deterioration or loss of intellectual capacity and proof to the satisfaction of the Insurer has been provided that you have been required to be under the continuous care and supervision by another adult person for a continuous period of 6 months or more following the incident date and that this care is likely to be on a permanent daily and ongoing basis.

- (v) you have become so disabled by illness or injury that the Insurer is satisfied that you are:
- permanently unable to perform at least 2 of the following 5 'everyday working activities' without the physical assistance of another person, despite the use of appropriate assistive aids, and this permanent inability has lasted for a continuous period of 6 months or more following the incident date; and
 - you are unlikely ever to return to gainful employment.

The 'everyday working activities' are *Mobility, Communicating, Vision, Lifting* and *Manual Dexterity*, each of which is explained as follows:

- a) unable to perform *Mobility* means:
- i. you cannot walk more than 200m on a level surface without stopping due to breathlessness or severe discomfort; and/or
 - ii. you cannot bend, kneel or squat to pick something up from the floor and straighten up again after bending, kneeling or squatting; nor can you get in and out of a standard sedan car.
- b) unable to perform *Communicating* means:
- i. you cannot speak in your first language so that you are understood in a quiet room; nor can you hear (with or without a hearing aid or other aid) an instruction given in a normal voice in your first language in a quiet room; and/or
 - ii. you cannot understand a simple message in your first language, and relay that message to another person.
- c) unable to perform *Vision* means you cannot, with or without glasses or contact lenses, read ordinary newsprint, nor can you pass the standard eyesight test for a car driver licence.
- d) unable to perform *Lifting* means you cannot lift, carry or move objects weighing 5kg using either or both hands.
- e) unable to perform *Manual Dexterity* means you cannot use either or both hands or your fingers to manipulate small objects with precision (such as picking up a coin or fastening shoelaces or buttons, using cutlery, or using a pen or keyboard to write a short note).

- (vi) as a result of illness or injury, you:

- are under the regular care of a medical practitioner; and
 - are unable to perform normal domestic duties; and
 - are unable to leave your home unaided; and
 - have not engaged in any employment for a period of 6 consecutive months; and
- at the end of 6 months, you have provided proof to the satisfaction of the Insurer that you have become incapacitated to such an extent as

to render yourself likely to require ongoing medical care and be unlikely ever to engage in domestic duties or any gainful employment.”

14. How will benefits be taxed?

Officers will need to seek independent financial advice as taxation is based on individual financial circumstances.

Generally, however, income protection benefits are taxed as income. Lump sum payments are usually subject to some concessional tax treatment.

15. How is salary defined?

The new death and disability arrangement will use the same definition of salary as the old Death and Disability Award.

For non-commissioned officers this will be the base (unloaded) rate of pay plus 17%.

For commissioned officers the salary level is the Award rate.

Benefits will be based on an officer's salary at the time they cease work.

16. Does the \$12 000 per month automatic acceptance limit mean higher paid officers will get less than 75%?

The \$12,000 monthly cap refers to the maximum monthly benefit, not the maximum monthly salary.

The maximum benefit payable for any individual is based on 75% of their pre-disability income or \$12,000 per month.

This equates to an annual salary of around \$192,000

17. Will income protection benefits continue if I work outside NSW Police Force?

Officers working reduced hours or duties due to their injuries or illness with an employer outside of the NSW Police Force before and after discharge will be entitled to the same benefits as those on PRD or return to work arrangements in the NSW Police Force.

That is where the earned income and workers compensation benefits fall below 75% of former salary, the income protection benefit will pay the difference.

18. What happens if I go on leave without pay?

If you are on approved leave without pay, the NSW Police Force will continue to contribute to your cover for a period of 12 months. While you are on approved leave without pay, you will be required to arrange to pay the equivalent of 1.8% of your salary to the NSW Police Force to keep your Police Blue Ribbon insurance cover in place.

19. Will the insurer control the medical discharge process under the new arrangements?

Under the new scheme, a key change is that the link between medical discharge and eligibility for benefits will cease.

Income protection benefits would commence after a 270 day waiting period, subject to meeting policy conditions and restrictions including monthly medical assessments.

TPD claims can be made at any time however are subject to assessment by the insurer and Trustee.

Medical discharges will continue in appropriate cases and in line with policy guidelines. Medical discharge can only occur after significant attempts have been made at returning an officer to work. Following an independent medical examination the Medical Discharge Review Panel will continue to make recommendations to the Commissioner with respect to medical discharges pursuant to *Section 72A of the Police Act, Incapable non-executive police officer may be retired*.

20. Scenario 4 shows big reductions for injuries. Does this discriminate against officers with this type of injury?

The new arrangements do not discriminate between physical and psychological injuries. Benefits will be paid based on an officer's medical incapacity, irrespective of whether the injury is physical or psychological.

Scenario 4 shows the least benefits that might be available under the new scheme for an officer that does not return to the NSW Police Force. It could apply equally to a physical or psychological injury, if an officer is able to work without restriction outside of the NSW Police Force.

21. What happens if I come back to work as an officer, but it doesn't work out? Am I still covered?

If you return to work and are then unfit for work again within six months, and it is due to the same or a related injury, it may be considered a continuation of the initial claim. If it is considered a continuation of the initial claim, you will not have to satisfy the waiting period again and the benefit period on an income protection claim will continue to run.

If more than six months has expired since you returned to work and your claim ceased and again you are unable to work, it would be considered a new claim and the waiting period, workers' compensation top up period and 5 year benefit period would start again.

22. If I am considered fit for suitable duties but cannot find work, will I be covered?

The NSW Police Force will always work with officers to place them in suitable duties within the organisation.

Workers' compensation payments are available for officers that are fit, but unable to find suitable duties, for a maximum of 12 months.

After discharge, officers that are assessed as being able to work without restriction may not receive any further income protection benefits.

However, these benefits may be payable where an officer is able to undertake work, but where appropriate work is not available in the geographical area, or the former officer can only work reduced hours.

This essentially means that if because of disability an officer is only able to work part time, TAL may pay a top up benefit (up to a maximum of the relevant benefit level – 75%).

If a Police Officer is certified fit to perform suitable alternative occupations, and chooses not to perform another occupation, benefits may not be payable.

When identifying all suitable alternative occupations, the Insurer and Trustee will as part of the considerations look at the availability of appropriate work in reasonable proximity to where the Police Officer lives. An independent labour market research report is obtained when assessing a claimant's suitability to perform other occupations in the location they live.

If work was available in a location where it would be unreasonable to expect the officer to travel, this will not preclude the payment or continuing payment of benefits. However each claim would be managed on their individual circumstances based on the agreed final policy wording.

Each assessment would be based on individual circumstances

23. What is the role of First State Super?

First State Super (FSS) is the trustee that would purchase the Police Blue Ribbon Insurance on behalf of the NSW Police Force.

This is a similar arrangement to the previous Police Blue Ribbon Insurance policy covering death and TPD benefits.

FSS will communicate with affected officers and provide detailed information about the changes to the existing Police Blue Ribbon Insurance arrangements and the commencement date in the near future.

Using FSS also means that insurance will be compliant with federal superannuation laws and will ensure there is an independent dispute mechanism.

24. Who makes decisions about entitlements to benefits?

The Insurer makes the decision, based on medical advice, about whether an employee is disabled and unable to work for the receipt of an insured benefit in relation to the Police Blue Ribbon Insurance scheme.

The Trustee will review this decision to ensure that the decision is fair and reasonable. If the Trustee disagrees with the Insurer's assessment, the matter is referred to the Claims Review Committee.

25. Who sits on the FSS Claims Review Committee?

The claims review committee is made up of an independent Chair, a Trustee Director and Insurer representative.

The outcome of the claims review is binding on the Trustee and Insurer.

26. How can I make a complaint about the claims process or assessment?

There are a number of ways to make complaints:

- the Insurer has its own complaints mechanisms that can be used,
- complaints may also be lodged with the FSS Complaints Officer.

If the officer remains dissatisfied with the response to their complaint, they can request the matter be referred to the Claims Review Committee.

If an officer is unhappy with this outcome they may approach the Superannuation Complaints Tribunal which is an independent dispute resolution body which deals with complaints at no cost.

27. Will there be a gap between the workers' compensation top up and the income protection benefits?

The NSW Police Force will provide an equivalent income protection benefit if there is any gap between the period of workers' compensation top up and the insured payments.

28. Who is TAL?

- TAL is proposed as the new insurer.
- TAL is a specialist life insurance company with 2.5 million Australian customers. It was formerly known as Tower Australia dating back to 1869 when the Government Life Insurance Office in New Zealand was created.
- In 2008, Dai-ichi Life, one of Japan's and the world's major life insurance companies acquired a 28% shareholding. In May this year, Tower Australia became a wholly owned subsidiary of Dai-ichi Life. In June 2011, the company was renamed TAL.

29. How will all the officers returning to work be managed under the new arrangements?

A number of trial programs to help officers return to pre-injury duties are being set up with the intention of providing meaningful duties for police in the workplace.

.30 Will the number of 'return-to-work' officers have any impact on a command's authorised strength levels?

Authorised strength includes officers on sick leave; however, the actual number of police in the workplace is likely to increase with officers returning to duty.

31. Is the non-renewal benefit affected?

The non-renewal benefit is not affected.

Please note the non-renewal benefit is not considered part of salary for the new scheme.

Award provisions relating to the payment of a benefit on medical retirement are not affected by the new scheme. "Total salary earnings for each completed fixed term appointment" may however vary.

On medical retirement the non-renewal benefit will not be taken into consideration when applying any offsets against an Income Protection benefit.

32. How are officers on PRD or return to work affected?

Officers who return to work on reduced hours or duties due to their injuries or illness will be covered by the death and disability income protection arrangements where their income plus workers' compensation falls below the 75% of the scheme salary.

See fact sheet 4 for more details.

33. If an officer injures themselves while off duty, for example, breaks a leg while playing football, and they are absent from duty for three months, do they have to take the Income Protection benefit after 60 days, or can they elect to use available sick leave, or another form of leave, and therefore remain on full pay?

The officer can elect to use available sick leave at any time however, the Off Duty Income Protection Waiting Period is fixed at 60 days and cannot be extended. Assuming the officer has submitted a claim, that we have accepted, if an officer continues to receive sick leave after the 60 day Waiting Period, the sick leave will offset any Income Protection benefit that may be payable.

34. In the scenario of a police officer who is terminally ill and has been granted special sick leave maintaining the officer's salary at 100%. Under the Income Protection Benefit, the officer's would receive less than that provided for under special sick leave, and potentially causing financial hardship for the officer and their family. Would there be any provision that would allow the officer to remain on special sick leave, rather than going onto the Income Protection Benefit?

As outlined in the answer to 33 above, the 2 year Benefit Period commences at the cessation of the Waiting Period. If an officer receives special sick leave beyond the 60 day waiting period, the sick leave will offset any Income Protection benefit payable and will not extend the benefit payment period.

Plus note that in the example above where a member is diagnosed with a Terminal Illness they may be able to claim, in addition to the Income Protection Benefit, a lump sum Terminal Illness benefit under the Police Blue Ribbon Insurance.

35 Investment Income

As income is offset against the 75%, does this include investment income? Furthermore, how and when would this be assessed and at what point would income (or loss) from a negatively geared property be considered? At what point would dividends or bank interest be considered, etc.

A. Investment income that is not earned through an officer's personal exertion will not impact on IP benefit payments.

36 Death and Disability Coverage for members over 60

The expiry of benefits under the new death and disability arrangements are as follows:

- On or off duty death benefits – expire at 65 years of age
- On or off duty TPD benefits – expire at 65 years of age
- On or off duty Income protection benefits - expire at 60 years of age

Contribution rates for both the old and new benefits remain the same, that is, 1.8% of salary or 0.88% for SASS members with ABC coverage until 65 years of age. The new arrangements provide an enhancement to the expiry of on duty death and TPD benefits, and remain the same for Income Protection benefits vis a vis PPD benefits, based on the previous arrangements.

37 When do new changes introduced by the Police Amendment (Death & Disability) Act 2011 take effect?

20 January 2012.

38 How does the concessional contribution tax affect me under the new changes?

The Federal Government sets a cap on contributions made to a superannuation fund and these funds receive concessional tax treatment. Concessional is a term used to describe favourable tax treatment. The term 'concessional contributions' means that such contributions made receive special tax treatment. For example, earnings into superannuation funds receive concessional tax treatment. Concessional contributions are before-tax contributions that can include employer contributions, contributions made under a salary sacrifice arrangement and tax-deductible contributions by an individual.

Superannuation Guarantee contributions made on your behalf and any salary sacrifice contributions you make as an employee are subject to the concessional contributions cap.

Given recent changes the NSW Government has made a commitment that if the NSW Police superannuation guarantee contribution, plus the Police Blue Ribbon contribution in respect of a police officer under the new D& D insurance arrangement, causes that officer to exceed his/her concessional contribution cap, the NSWPF will reimburse the officer the amount equal to the tax referable to any excess contributions.

To better understand 'concessional contribution tax' you should speak to your accountant, tax agent or financial advisor who can provide you with further information and insight into concessional contribution tax. In addition, FSS has recently forwarded information to Police Blue Ribbon members as to the possible impact of increased employer contribution increases under the new

scheme on some officers' concessional contribution amounts for the 2011-2012 financial year. You should speak to FSS as to your specific circumstances (FSS customer service contact number is 1300 650 873).

39 In the recent First State Super 'Significant Event Notice' – the term 'civil unrest' is mentioned under the section 'When benefits are not payable'? This would appear to be an issue given the nature of policing.

The use of 'civil unrest' has been discussed with First State Super. The NSWPF has been advised that reference to civil unrest in respect of the Significant Event Notice only related to war and civil unrest. There was and is no intention that this condition would apply to situations like the Cronulla and Macquarie Field riots. The insurer has agreed to delete the wording 'civil unrest' from this condition in the policies currently being prepared and Supplementary Product Disclosure Statement will also not refer to this wording.

Further information as to this change will be published once completed and will be provided to all police through the D&D information page on the NSWPF Intranet and Internet sites.

Disclaimer:

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