

New South Wales



ANNO VICESIMO QUINTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 28, 1976.**

**An Act to amend the New South Wales Retirement Benefits Act, 1972, with respect to part-time employees and in certain other respects; and to resolve certain doubts arising under that Act and the Transport Employees Retirement Benefits Act, 1967. [Assented to, 1st April, 1976.]**

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*New South Wales Retirement Benefits (Amendment).*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "New South Wales Retirement Benefits (Amendment) Act, 1976".

**Commencement.**

2. (1) This subsection and subsection (2), and sections 1 and 3, shall commence on the date of assent to this Act.

(2) Subsections (3) and (4), and sections 5, 8 and 9, shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Sections 4 and 7 shall be deemed to have commenced on 1st July, 1973.

(4) Section 6 shall be deemed to have commenced on 8th May, 1973.

**Schedules.**

3. This Act contains the following Schedules:—

**SCHEDULE 1.—AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972.**

**SCHEDULE 2.—FURTHER AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972.**

**SCHEDULE 3.—AMENDMENT TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972, BY WAY OF STATUTE LAW REVISION.**

**SCHEDULE**

*New South Wales Retirement Benefits (Amendment).*

SCHEDULE 4.—AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS (AMENDMENT) ACT, 1973.

SCHEDULE 5.—AMENDMENTS TO THE TRANSPORT EMPLOYEES RETIREMENT BENEFITS ACT, 1967.

SCHEDULE 6.—SAVINGS AND TRANSITIONAL PROVISIONS.

4. The New South Wales Retirement Benefits Act, 1972, <sup>Amendment of Act No.</sup> 70, 1972. is amended in the manner specified in Schedules 1 and 3.

5. The New South Wales Retirement Benefits Act, 1972, <sup>Further amendment of Act No.</sup> 70, 1972. is further amended in the manner specified in Schedule 2.

6. The New South Wales Retirement Benefits (Amendment) Act, 1973, is amended in the manner specified in <sup>Amendment of Act No.</sup> 43, 1973. Schedule 4.

7. The Transport Employees Retirement Benefits Act, 1967, <sup>Amendment of Act No.</sup> 96, 1967. is amended in the manner specified in Schedule 5.

8. (1) The orders made, or purporting to have been made, under section 64 of the New South Wales Retirement Benefits Act, 1972, and published in the Gazette on 15th June, 1973, 14th September, 1973, 30th November, 1973, 15th March, 1974, and 14th February, 1975, are hereby revoked and shall be deemed to have been of no effect. <sup>Revocation of certain orders.</sup>

(2)

*New South Wales Retirement Benefits (Amendment).*

(2) To the extent only to which it amends Schedule 2 to the New South Wales Retirement Benefits Act, 1972, the order made under section 64 of that Act and published in the Gazette on 31st January, 1975, is hereby revoked and shall be deemed to have been of no effect.

**Savings  
and transi-  
tional  
provisions.**

9. Schedule 6 has effect.

**Sec. 4.****SCHEDULE 1.****AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT  
BENEFITS ACT, 1972.**

(1) Section 3 (1), definition of "employee"—

Omit paragraph (a), insert instead :—

(a) does not include a person employed on a part-time basis ;

(2) Section 3 (1A), (1B), (1C), (1D), (1E)—

After section 3 (1), insert :—

(1A) For the purposes of paragraph (a) of the definition of "employee" in subsection (1), a person is employed on a part-time basis if, and only if—

(a) he is a person specified in Schedule 2A or is a member of a class of persons so specified ; or

(b) he—

(i) is not a person referred to in paragraph (a) ;

**SCHEDULE**

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*New South Wales Retirement Benefits (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972—*continued.*

- (ii) is classified by his employer as a person employed on a part-time basis and the Minister has not directed the employer to withdraw that classification;
- (iii) would be an employee if he were employed otherwise than on a part-time basis; and
- (iv) has failed before the day prescribed for him by subsection (1B) to appeal to the Minister, in the manner prescribed, against the classification referred to in subparagraph (ii) or, where he has so appealed, his appeal has been dismissed.

(1B) For the purposes of subsection (1A) (b) (iv), the day prescribed for a person by this subsection is—

- (a) the day that is three months after the day appointed under section 2 (2) of the New South Wales Retirement Benefits (Amendment) Act, 1976; or
- (b) the day on which that person would, if he were not a person employed on a part-time basis, be entitled to elect to contribute to the Fund,

whichever is the later day.

(1C) In determining an appeal referred to in subsection (1A) (b) (iv), the Minister shall have regard to—

- (a) the hours and days during which work is ordinarily done at the appellant's place of employment by persons employed at that place; and
- (b) such other matters as the Minister considers to be relevant.

SCHEDULE

*New South Wales Retirement Benefits (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972—*continued.*

(1D) Where an appeal referred to in subsection (1A) (b) (iv) is upheld, the Minister may direct any employer of a person within a specified class of persons (being a class of which the successful appellant is a member) to withdraw any classification of that person as a person employed on a part-time basis and the employer shall forthwith—

- (a) inform that person of the direction and of the days specified by the Minister under subsections (1E) (a) (ii) and (1E) (b) (ii); and
- (b) give effect to the direction.

(1E) Where an appeal referred to in subsection (1A) (b) (iv) is upheld, section 10 or 12, whichever is appropriate, applies to and in respect of the successful appellant, and any person in respect of whom a direction under subsection (1D) applies, as if—

- (a) in the case of section 10, the day on which an election may be made under that section were any day that is—
  - (i) not earlier than the day specified in section 10 (1); and
  - (ii) not later than a day specified by the Minister for the purposes of this paragraph when giving his decision on the appeal and when giving any direction under subsection (1D); and
- (b) in the case of section 12, the day on which an election may be made under that section were any day that is—
  - (i) not earlier than the election date under that section for that appellant or person; and

## SCHEDULE

*New South Wales Retirement Benefits (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972—*continued.*

(ii) not later than a day specified by the Minister for the purposes of this paragraph when giving his decision on the appeal and when giving any direction under subsection (1D).

## (3) Section 18 (1)—

Omit the subsection, insert instead—

(1) Where a person is liable initially to contribute to the Fund or becomes liable to contribute to the Fund in respect of an increased amount, the amount of his initial fortnightly contribution or, as the case may be, the amount of his additional fortnightly contribution in respect of that increased amount is the amount determined in accordance with the formula—

$$c = \frac{b \times r}{1000} + z$$

where—

“c” represents the amount of the fortnightly contribution or, as the case may be, the additional fortnightly contribution, to be paid by the contributor to the Fund;

“b” represents the amount in respect of which or, as the case may be, the amount of the increase in respect of which, the contributor is liable to contribute;

“r” represents the amount specified—

- (a) in the Second Column of Schedule 3;  
or
- (b) where the contributor is a person who has made an election under subsection (2)—in the Second Column of Schedule 4,

opposite the age specified in the First Column of that Schedule that is the age next birthday of the contributor;

SCHEDULE

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*New South Wales Retirement Benefits (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT  
BENEFITS ACT, 1972—*continued.*

“z” is to be disregarded where the calculation to be made is a calculation relating to a contribution in respect of an increased amount but otherwise represents the amount of twelve cents.

## (4) Section 23 (4)—

After section 23 (3), insert :—

(4) This section applies to and in respect of a person who, having ceased to be an employee by reason of his becoming employed on a part-time basis, again becomes an employee by being employed otherwise than on a part-time basis, and it so applies as if, on ceasing to be an employee, he ceased to be employed by an employer and as if, upon again becoming an employee, he had resumed employment with an employer.

## (5) Section 28 (1)—

Omit “a contributor dies before he is paid any benefit under this Act”, insert instead “the employment of a contributor ceases because of his death”.

## (6) Section 64 (1A)—

After section 64 (1), insert :—

(1A) On the recommendation of the Minister, the Governor may, by order published in the Gazette, amend Schedule 2A by inserting matter therein or by omitting matter therefrom.

SCHEDULE

*New South Wales Retirement Benefits (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT  
BENEFITS ACT, 1972—*continued.*

## (7) Schedule 2—

Omit the Schedule, insert instead :—

SCHEDULE 2		Sec. 3 (1). Sec. 64.
First Column	Second Column	
Employers	Employees	
Board of Fire Commissioners of New South Wales.	All persons employed by the Board.	
Builders Licensing Board .. .	All persons employed by the Board.	
Dairy Industry Authority of New South Wales.	All persons employed by the Authority.	
Fish Marketing Authority .. .	All persons employed by the Authority.	
General Manager, Government Insurance Office.	All persons employed by the General Manager, Government Insurance Office, pursuant to the Government Insurance (Enabling and Validating) Act, 1927.	
Greyhound Racing Control Board ..	All persons employed by the Board.	
Metropolitan Waste Disposal Authority.	All persons employed by the Authority.	
New South Wales Meat Industry Authority.	All persons employed by the Authority.	
New South Wales Retirement Board	All persons employed by the Board.	
Public Transport Commission of New South Wales.	All persons employed by the Commission pursuant to— (a) the Government Railways Act, 1912; (b) the Transport Act, 1930; and (c) sections 16 and 18 of the Public Transport Commission Act, 1972.	
Rural Bank of New South Wales ..	All persons employed by the Bank.	
The Commissioner for Main Roads	All persons employed by the Commissioner.	
The Commissioner for Motor Transport.	All persons employed by the Commissioner.	
The Crown or a Minister of the Crown	All persons employed by the Crown or a Minister of the Crown.	
The Electricity Commission of New South Wales.	All persons employed by the Commission.	
The Grain Elevators Board of New South Wales.	All persons employed by the Board.	
The Hunter Valley Conservation Trust	All persons employed by the Trust.	
The Maritime Services Board of New South Wales.	All persons employed by the Board.	
The Metropolitan Water Sewerage and Drainage Board.	All persons employed by the Board.	

## SCHEDULE

*New South Wales Retirement Benefits (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT  
BENEFITS ACT, 1972—*continued.*SCHEDULE 2—*continued.*

First Column	Second Column
Employers	Employees
The State Planning Authority of New South Wales.	All persons employed by the Authority.
The Water Conservation and Irrigation Commission.	All persons employed by the Commission.
Water and Sewerage Employees Union (Salaried Division and Wages Division).	All appointed officers and staff.

## (8) Schedule 2A—

After Schedule 2, insert :—

Sec. 3 (1A)  
(a).

## SCHEDULE 2A

## PERSONS EMPLOYED ON A PART-TIME BASIS

1. A person who is employed as part of the ancillary staff in the Department of Education and—
  - (a) as a General Assistant has ordinary weekly working hours totalling less than 40;
  - (b) as a Clerical Assistant (Library) employed in a Secondary or Central School has ordinary weekly working hours totalling less than 36½;
  - (c) as a—
    - (i) Senior Clerical Assistant, Grade 1 or 2;
    - (ii) Clerical Assistant;
    - (iii) Clerical Assistant (Library) employed in a Primary School;
    - (iv) Clerical Aide;
    - (v) Teachers Aide;

## SCHEDULE

*New South Wales Retirement Benefits (Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972—*continued.*

(vi) Teachers Aide (Special); or

(vii) Science Attendant,

has ordinary weekly working hours totalling less than 31½.

2. A person who is employed as a Farm Assistant in a School and has ordinary weekly working hours totalling less than 40.

3. A person who is part of the General Division of the Public Service, is employed in the Department of Education and has ordinary weekly working hours totalling less than 35.

4. A person who is employed as a Kitchen Assistant in a School and has ordinary weekly working hours totalling less than 33½.

5. A person who is employed in the Government Stores Department as a Female School Cleaner and has ordinary weekly working hours totalling less than 33.

6. A person who is employed in the Government Stores Department as a Male School Cleaner and has ordinary weekly working hours totalling less than 40.

7. A person who is employed by the Public Transport Commission of New South Wales as part of the Trading and Catering Staff and has ordinary weekly working hours totalling less than 40 or, in the case of a member of a train catering crew, has ordinary fortnightly working hours totalling less than 80.

8. A person who is employed by the Public Transport Commission of New South Wales as a Rest House Attendant and has ordinary weekly working hours totalling less than 40 or ordinary fortnightly working hours totalling less than 80.

SCHEDULE

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*New South Wales Retirement Benefits (Amendment).*

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Sec. 5.

## SCHEDULE 2.

FURTHER AMENDMENTS TO THE NEW SOUTH WALES  
RETIREMENT BENEFITS ACT, 1972.

## (1) Section 25 (2)—

At the end of section 25, insert :—

(2) Where, during any period of his service, an employee is employed on a part-time basis, the amount of the benefit that would, but for this subsection, be payable to him, or in consequence of his death, shall be reduced as prescribed.

## (2) Section 58 (1)—

Omit "\$1,000", insert instead "\$2,000".

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Sec. 4.

## SCHEDULE 3.

AMENDMENT TO THE NEW SOUTH WALES RETIREMENT  
BENEFITS ACT, 1972, BY WAY OF STATUTE LAW REVISION.

## Section 12 (2)—

Omit the subsection, insert instead :—

(2) Subject to this section and the regulations, an employee who—

(a) is an employee to whom an election date specified in an order under subsection (1) relates; and

(b) if he were to remain in the employment of an employer until immediately before that election date would complete not less than twelve months' service,

may, subject to section 3 (9), elect on that election date to contribute to the Fund.

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## SCHEDULE

*New South Wales Retirement Benefits (Amendment).*

SCHEDULE 4.

Sec. 6.

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT  
BENEFITS (AMENDMENT) ACT, 1973.

(1) Section 2 (b) (iii)—

After “service”, insert “where secondly occurring”.

(2) Schedule 2, Second Column—

After “who” in the matter relating to the Public Transport Commission of New South Wales, insert “have not received a benefit pursuant to section 132A of the Transport Act, 1930, or from the Account, or from the Transport Retirement Fund, in respect of a period of service with the Commissioner for Government Transport, the Commissioner for Railways or the Public Transport Commission of New South Wales and who”.

SCHEDULE 5.

Sec. 7.

AMENDMENTS TO THE TRANSPORT EMPLOYEES RETIREMENT  
BENEFITS ACT, 1967.

(1) Section 3 (1), definition of “average earning rate on the Fund”—

Omit the definition, insert instead :—

“average earning rate on the Fund” means, in respect of a financial year which commences on or after 1st July, 1973, the percentage rate per annum calculated by the formula—

$$\frac{200 \times I}{A + B - I}$$

where I, A and B have the meanings ascribed thereto in section 8 (3);

SCHEDULE

*New South Wales Retirement Benefits (Amendment).*SCHEDULE 5—*continued.*AMENDMENTS TO THE TRANSPORT EMPLOYEES RETIREMENT BENEFITS ACT, 1967—*continued.*

## (2) Section 8 (3) (a)—

Omit the paragraph, insert instead :—

## (a) In this section, in respect of a financial year—

“I” means the total amount of interest, dividends and rents credited to the Fund during that financial year, together with any profit derived from the realisation or appreciation of assets, reduced by—

- (i) the amount of any interest charges against the Fund;
- (ii) the amount of any depreciation of assets and the amount of any loss on the realisation of assets; and
- (iii) costs of management of the Fund as referred to in section 52B;

“A” means the amount of the Fund at the beginning of that financial year;

“B” means the amount of the Fund at the end of that financial year.

## (3) Sections 52A, 52B—

After section 52, insert :—

Delegation by Board.

52A. (1) The Board may delegate any of its powers, authorities, duties or functions under this Act or the regulations, except this power of delegation, to any member or employee of the Board.

## SCHEDULE

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*New South Wales Retirement Benefits (Amendment).*

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SCHEDULE 5—*continued.*

AMENDMENTS TO THE TRANSPORT EMPLOYEES RETIREMENT  
BENEFITS ACT, 1967—*continued.*

(2) The decision of any member or employee of the Board made when he is acting in pursuance of a delegation under subsection (1) is a decision of the Board.

(3) A delegation under this section may be revoked by the Board at any time and does not prevent the exercise of any power, authority, duty or function by the Board.

52B. The cost of management of the Fund is a Cost of management of Fund. charge against, and shall be paid out of, the Fund.

(4) Section 58 (1)—

Omit “one thousand”, insert instead “two thousand”.

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SCHEDULE 6.

Sec. 9.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. (1) In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“Principal Act” means the New South Wales Retirement Benefits Act, 1972, as enacted immediately before the appointed day.

(2) In this Schedule, references to employment on a part-time basis have the same meaning as the reference to employment on a part-time basis in paragraph (a) of the definition of “employee” in section 3 (1) of the Principal Act.

SCHEDULE

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*New South Wales Retirement Benefits (Amendment).*

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SCHEDULE 6—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

2. Where, before the appointed day, a person employed on a part-time basis commenced paying contributions to the Fund and, immediately before that day, was liable to continue contributing to the Fund, he shall be deemed not to have ceased before that day, and does not cease on or after that day, to be an employee only by reason of his being employed on a part-time basis before, on or after that day.

3. A person who before the appointed day had received, or immediately before that day was in receipt of, a benefit under the Principal Act may not be deprived of that benefit by reason only that he, or a person in consequence of whose death the benefit was paid or is being paid, was at any time employed on a part-time basis.

4. (1) In this clause “prescribed day” means a day that falls during the period of 12 months that commences on the appointed day.

(2) Where, but for his being, or having been, employed on a part-time basis a person would be entitled on a prescribed day to make an election under section 10 of the Principal Act, he shall be deemed to be an employee for the purposes of making such an election on that day and of matters incidental to, and consequential upon, the making of such an election by an employee.

5. Where, but for his being, or having been, employed on a part-time basis a person would be entitled on or before the day appointed under section 16 (2) of the Principal Act during the year commencing on 1st July, 1976, to make an election under section 16 (3) of that Act, he shall be deemed to be an employee for the purposes of making such an election on or before that day and of matters incidental to, and consequential upon, the making of such an election by an employee.

SCHEDULE

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*New South Wales Retirement Benefits (Amendment).*

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SCHEDULE 6—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

6. Notwithstanding paragraph (a) of the definition of "employee" in section 3 (1) of the Transport Employees Retirement Benefits Act, 1967, a person who, being entitled so to do, did not make an election under section 12 (4) of the Principal Act shall be deemed not to have ceased, and does not cease, to be an employee within the meaning of that definition by reason only that the terms of his employment did not, or do not, prohibit him from engaging in any employment outside the duties of his office.

7. Notwithstanding paragraph (a) of the definition of "employee" in section 3 (1) of the Transport Employees Retirement Benefits Act, 1967, a person who before the election date referred to in section 12 (3) of the Principal Act had received, or immediately before that day was in receipt of, a benefit under the Transport Employees Retirement Benefits Act, 1967, may not be deprived of that benefit by reason only that he, or a person in consequence of whose death the benefit was paid or is being paid, was not at any time prohibited by the terms of his employment from engaging in any employment outside the duties of his office.

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