

1995—No. 395

**NEW SOUTH WALES RETIREMENT BENEFITS
ACT 1972—REGULATION**

(New South Wales Retirement Benefits (Savings and Transitional) Regulation
1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council,
and in pursuance of the New South Wales Retirement Benefits Act 1972,
has been pleased to make the Regulation set forth hereunder.

BOB CARR,
Premier.

Citation

1. This Regulation may be cited as the New South Wales Retirement Benefits (Savings and Transitional) Regulation 1995.

Declaration as to certain periods of employment

2. (1) The Board may, by its order, declare that the whole or any part of a period of continuous employment served by an employee with a former employer is a period of service for the purposes of the Act.

(2) A period of service declared in relation to an employee in an order in force under this Regulation is a period of service for the purposes of the Act in relation to that employee.

(3) In this clause, “the Act” means the New South Wales Retirement Benefits Act 1972.

Requirements for order

3. (1) The Board is not to make an order referred to in this Regulation unless:

- (a) it has received a written application for the order; and
- (b) it is satisfied that the period of service concerned was concluded by an involuntary termination.

(2) In this clause, “**involuntary termination**” means a termination of employment of an employee:

- (a) because of the retrenchment of the employee; or
- (b) by the employee’s former employer because of the employee’s infirmity of mind or body that, at the time, temporarily incapacitated the employee from performing his or her duties, whether or not that incapacity was work-related; or
- (c) by the employee’s former employer at the end of the employee’s apprenticeship, because a suitable appointment with that former employer was not available; or
- (d) because of pressing domestic necessity; or
- (e) for any other reason agreed by both the Board and the former employer as giving rise to an involuntary termination of the employee’s employment,

but does not include a termination of employment arising from voluntary resignation, or from resignation or dismissal as a result of disciplinary action by the former employer.

Grounds for refusal of order

4. The Board may refuse to make an order referred to in this Regulation for any of the following reasons:

- (a) the applicant for the order has not supplied the Board with a certificate from the former employer certifying:
 - (i) the circumstances in which the employment of the employee with the former employer was terminated; and
 - (ii) the period of continuous employment of the employee with the former employer up to that termination;
- (b) the Board has requested the applicant to furnish it with particulars reasonably related to the question of whether the order should be made and the applicant has not supplied those particulars;
- (c) for any other reason that the Board considers sufficient.

Repeal

5. (1) The New South Wales Retirement Benefits Regulation 1983 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the New South Wales Retirement Benefits Regulation 1983 had effect under that Regulation, is taken to have effect under this Regulation.

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EXPLANATORY NOTE

The main object of this Regulation is to repeal the New South Wales Retirement Benefits Regulation 1983.

The New South Wales Retirement Benefits Act 1972 now applies only to those persons to whom a benefit under that Act was payable on 1 July 1985, the date of the commencement of certain provisions of the Public Authorities Superannuation Act 1985. (The latter Act superseded the New South Wales Retirement Benefits Act 1972.) Accordingly, most of the provisions of the New South Wales Retirement Benefits Regulation 1983 are no longer necessary.

However, it is necessary to remake, as a savings and transitional provision, a clause of that Regulation that deals with declarations that certain periods of employment constitute “periods of service” for the purpose of the New South Wales Retirement Benefits Act 1972. Such declarations may still be required in respect of persons transferred from the superannuation scheme established by that Act to a scheme established by a later Act. In this Regulation, the clause is broken into several different clauses for greater clarity.

The Regulation is made under the New South Wales Retirement Benefits Act 1972 and, in particular, sections 3 (6A) and 54 (the general regulation-making power). It is also made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
