

# FIRST STATE SUPERANNUATION ACT 1992 No. 100

NEW SOUTH WALES



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ACT 1991

DICTIONARY

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**FIRST STATE SUPERANNUATION ACT 1992 No. 100**

NEW SOUTH WALES



**Act No. 100, 1992**

An Act to establish a superannuation scheme for certain employees in the public sector; and for other purposes. [Assented to 8 December 1992]

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See also State Authorities Superannuation (Scheme Closure) Amendment Act 1992; Superannuation Legislation (Superannuation Guarantee Charge) Amendment Act 1992.

**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the First State Superannuation Act 1992.

**Commencement**

2. This Act commences on the date of assent to this Act.

**NOTE:** This Act affects employees and employers in respect of periods before the Act commenced, as set out in Schedule 3 (Savings, transitional and other provisions).

**Definitions**

3. The Dictionary at the end of this Act contains definitions of words and expressions used in this Act.

**Notes**

4. Matter appearing under the heading “Note” does not form part of this Act.

**PART 2—MEMBERS OF THE SCHEME**

**NOTE:** This Part sets out the persons who are to be members of the Scheme. Persons who are made members of the Scheme by this Act are generally employees in the New South Wales public sector but categories of employees who are members may be changed by order of the Governor. The Scheme also allows other public sector employees covered by other pre-existing public sector superannuation schemes to make voluntary employee contributions to the Scheme and to become members, despite being members of other schemes.

**Employees are members**

5. (1) Employees of employers are members of the Fund, except as provided by sections 8–10.

(2) An employee described in Schedule 2 is, despite this section, entitled to elect to make employee contributions under section 18 and is a member of the Fund on the election taking effect and while the election is in force.

**Who is an employer?**

6. (1) The employers to which this Act applies are:
  - (a) the Crown, the Government or a Minister of the Crown; and
  - (b) the authorities specified in Schedule 1.

(2) Members of the Police Service are, for the purposes of this Act, taken to be employed in the Police Service by the Crown.

(3) A person appointed by the Coal Industry Tribunal to be a Local Coal Authority in the State is, for the purposes of this Act, taken to be, while holding office as such an Authority, a person employed by the Joint Coal Board.

(4) An employee who is employed by the Crown, the Government or a Minister of the Crown is, for the purposes of this Act, taken to be employed by the person or organisation prescribed by the regulations for the purposes of this section.

#### **Employers may be changed**

**7. (1) Governor may amend Schedule of employers.** The Governor may by order published in the Gazette amend Schedule 1.

(2) **Provisions relating to orders.** An order under this section, and any order revoking or varying such an order, may be made:

- (a) to take effect on and from a day specified in the order, whether or not the day is earlier than the day of publication of the order; and
- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing member.

#### **Employees who are not members of Fund**

**8. (1) Employees not members.** The employees set out in Schedule 2 are not members of the Fund, unless any such employee has commenced to make optional contributions to the Fund and has not ceased to make such contributions.

(2) **Governor may amend Schedule 2.** The Governor may by order published in the Gazette amend Schedule 2.

(3) **Provisions relating to orders.** An order under this section, and any order revoking or varying such an order, may be made:

- (a) to take effect on and from a day specified in the order, whether or not the day is earlier than the day of publication of the order; and
- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing member.

**NOTE:** The employees set out in Schedule 2 include employees who are members of other State Government superannuation schemes in respect of the same contract of employment and Judges, masters of the Supreme Court, the Solicitor General and the Director of Public Prosecutions.

**Application of Act to persons 65 or over**

**9.** (1) A person who is aged 65 or over is not eligible to become a member or to make, or be the subject of, contributions to the Fund.

(2) A member who reaches the age of 65 is taken to have ceased to be employed by an employer on reaching that age.

(3) However, this section does not apply to a person who was, immediately before the commencement of this Act an employee under the Statutory Authorities Non-contributory Superannuation Act 1987.

**Employees may make other arrangements**

**10.** (1) If an employer gives written notice to the Board that the employer is to meet the employer's obligations in respect of an employee under the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth by contributing to another complying superannuation scheme, the employee ceases, on such notice being given, to be a member of the Fund.

(2) However, the employee may elect to make contributions under section 18 and is a member of the Fund on the election taking effect and while the election is in force.

(3) An employer must give written notice to the Board if the employer ceases to meet the employer's obligations in respect of an employee under the Superannuation Guarantee (Administration) Act 1992 in the manner referred to in subsection (1) and, on such notice being given, the employee is a member of the Fund.

**Information that must be disclosed to members**

**11.** (1) The Board must, as soon as practicable after the commencement of this Act or after a person becomes a member, give to each person who is or becomes a member a written statement specifying the information that is required to be given for the purpose of complying with any applicable Commonwealth occupational superannuation standard.

(2) The Board must from time to time give to a member or other person such information as the Board is required to give the member or other person for the purpose of complying with any applicable Commonwealth occupational superannuation standard.

**PART 3—CONTRIBUTIONS TO THE SCHEME****Division 1—Contributions by employers****Compulsory employer contributions**

12.(1) An employer must pay to the Board, for each member employed by the employer, an amount equal to a percentage of the salary or wages of the employee, being the percentage specified below for the financial year (being the year commencing 1 July) in which the contributions are payable.

<b>Year</b>	<b>Percentage</b>
1992–93 (1 July 1992–31 December 1992)	4
1992–93 (1 January 1993–30 June 1993)	5
1993–94	5
1994–95	5
1995–96	6
1996–97	6
1997–98	6
1998–99	7
1999–2000	7
2000–01	8
2001–02	8
2002–03 and subsequent years	9

(2) An employer is not required to make a contribution under this section in respect of a member who is a member only by virtue of having elected to make optional contributions.

(3) An employer's liability under this section to make contributions in respect of a member commences when the member becomes a member in respect of whom contributions must be made under this section.

**Contributions for basic death or invalidity benefit**

**13.** (1) Payment of the basic death or invalidity premium is to be made at such times as may be determined by the Board and is to be made by transfer from that part of the **member's account attributable to compulsory employer contributions.**

(2) Payment is not to be made from the account of a member who is only a member by virtue of having elected to make optional contributions or a member who has ceased under this Act to be liable for payment of the basic death or invalidity premium.



**Member may opt out of basic death or invalidity cover**

14. (1) A member's cover for the basic death or invalidity benefit ceases to be in force on notification by the member to the Board that the member is to cease to provide for the cover.

- (2) The Board may make rules for or with respect to:
- the giving of notice for the purposes of this section
  - liability for payment of the basic death or invalidity premium after giving notice under this section
  - entitlement or otherwise to refunds of the basic death or invalidity premium after giving notice under this section.

**Amount of basic death or invalidity premium**

15. The amount of the basic death or invalidity premium is to be the amount determined in respect of a member by the Board, having regard to the amount of the basic death or invalidity benefit cover.

**Optional employer contributions**

16. (1) An employer may make contributions to the Fund in respect of a member in addition to the compulsory contributions payable by the employer under this Act.

(2) An employer may not make contributions under this section in respect of a member who is only a member by virtue of having elected to make optional contributions.

**Rules as to payment of contributions etc.**

17. The Board may make rules for or with respect to the manner in which the basic death or invalidity premium is to be determined in respect of employees or any class of employees, the periods for which employer contributions are required to be made under this Act in respect of employees or classes of employees, the payment periods for employer contributions under this Act and the manner of payment of contribution by employers.

**Division 2—Contributions by employees****Optional employee contributions**

18. (1) A member may at any time elect to make contributions to the Fund.

(2) An employee who is not a member may at any time elect to make contributions to the Fund.

(3) An election is to be made by lodging with the Board an election in a form approved by the Board and is to be accompanied by such information as the Board may require.

**When does an election to contribute take effect?**

**19.** (1) An election by a member or an employee to make contributions to the Fund takes effect not later than on the day determined under rules made by the Board for the purposes of this section.

(2) An election ceases to be in force (to the extent to which it specifies the amount of any contributions) if a variation of contributions takes effect or on notification by the member to the Board that the member is to cease to contribute to the Fund.

**Rules as to payment of contributions etc.**

**20.** The Board may make rules for or with respect to the periods for which employee contributions are required to be made under this Act by employees or classes of employees, the payment periods for employee contributions under this Act and the manner of payment of contributions by employees.

**Division 3—Variation of contributions**

**Contributions may be varied**

**21.** A member may from time to time, by notice in writing to the Board, vary the amount of contributions to be paid to the Fund by the member.

**Division 4—Contributions for additional death or invalidity cover**

**Members eligible to apply for additional death or invalidity cover**

**22.** (1) A member may apply to the Board to contribute to the Fund for the **additional death or invalidity benefit**.

(2) This section does not apply to a member who is a member only by virtue of having elected to make optional contributions.

(3) A member who has been previously covered for the additional death or invalidity benefit may apply under this section.

**Applications for additional death or invalidity cover**

**23.** (1) An application to be covered for the additional death or invalidity benefit may be made at any time.

(2) An application is to be made by lodging with the Board an application in a form approved by the Board, is to nominate the amount of cover and is to be accompanied by such information as the Board may require.

#### **Board may request medical examinations**

**24.** (1) The Board may require a member who applies to be covered for the additional death or invalidity benefit to submit to such a medical examination or medical examinations as may be required by the Board and to provide such medical reports, evidence and information as are specified by the Board.

(2) For the purpose of deciding whether or not to approve the application, the Board may obtain such evaluations of medical examinations or medical reports as it thinks fit.

#### **Board may refuse or approve an application**

**25.** (1) The Board may approve, or approve with variations, or refuse an application and must, if it approves an application, appoint the day on and from which the cover for the additional death or invalidity benefit commences.

(2) The Board may refuse an application if a person who applies to be covered for the additional death or invalidity benefit fails, in the opinion of the Board, to pass a medical examination to which the applicant has submitted in accordance with a requirement of the Board, or to comply with any other requirement of the Board under this Division.

(3) Nothing in this section prevents the Board from refusing an application where the Board thinks fit.

#### **Amount of contributions payable for additional death or invalidity cover**

**26.** (1) A member whose application to be covered for the additional death or invalidity benefit is approved by the Board becomes, and remains, liable for payment of the additional death or invalidity premium on and from the day that the member's cover for the benefit commences.

(2) The amount of the additional death or invalidity premium is to be the amount or amounts determined from time to time by the Board.

(3) Payment of the additional death or invalidity premium is to be made at such times as may be prescribed by rules of the Board made for the purposes of this section and is to be made by transfer from the member's account.

#### **Member may opt out of additional death or invalidity cover**

**27.** (1) A member's cover for the additional death or invalidity benefit ceases to be in force on notification by the member to the Board that the member is to cease to provide for the cover.

(2) On a notification, the member ceases to be covered for the benefit and ceases to be liable for payment of the additional death or invalidity premium.

(3) A notification has effect as if the member had never been entitled to the cover and a member is not entitled to a refund of any premiums paid for the cover.

#### **Board may revoke additional death or invalidity cover**

**28.** (1) The Board may, in accordance with any rules made by the Board under this Division, at any time revoke its approval for a member to be covered for the additional death or invalidity cover, if it is of the opinion that, in relation to the application approved or any medical examination or report or other information supplied in connection with the application, an untrue statement was made.

(2) The Board may not revoke an approval unless it is also of the opinion that the approval would not have been given if the untrue statement had not been made.

(3) The Board may, for the purpose of deciding whether to revoke an approval, require a member to submit to such a medical examination or medical examinations as may be required by the Board and to provide such medical reports, evidence and information as are specified by the Board.

#### **Effect of revocation of an approval**

**29.** (1) On revocation by the Board of its approval for a member to be covered for the additional death or invalidity benefit, the member ceases to be covered for the benefit and ceases to be liable for payment of the additional death or invalidity premium.

(2) A revocation by the Board has effect as if the member had never been entitled to the cover and a member is not entitled to a refund of any premiums paid for the cover.

**Rules as to applications**

**30.** The Board may make rules for or with respect to the following matters:

- the circumstances in which the Board may refuse or vary an application to be covered for the additional death or invalidity benefit
- the medical requirements for approval of coverage
- the revocation of a member's cover for the additional death or invalidity benefit.

**PART 4—BENEFITS**

**NOTE:** This Part sets out the benefits payable under the Scheme and provides for the circumstances when benefits are payable. The amount payable is the amount credited to a member's account in the Fund. In addition, a member whose employer makes compulsory contributions in respect of the member is entitled to the amount of the basic death or invalidity benefit on death or permanent incapacity or permanent invalidity before reaching the prescribed age (currently 55) and, if also contributing for it, to the additional death or invalidity benefit. If a person ceases to be a member, the benefits are to be preserved in the Fund, or paid, as provided for in this Part.

**Division 1—Amount of benefit****Amount of benefit generally**

**31.** (1) The benefit payable to or in respect of a member under this Act is an amount equal to the balance at credit in the member's account at the time the benefit is paid, except as provided by or under this Act.

(2) The amount of the benefit is reduced by the amount specified by the Board, if the Board makes a determination under section 34 in relation to the benefit.

**Amount of basic death or invalidity benefit**

**32.** (1) The amount of the basic death or invalidity benefit payable to or in respect of a member under this Act is an amount calculated in accordance with rules made by the Board for the purposes of this section, after obtaining actuarial advice.

(2) The Board may make rules for or with respect to the determination of benefits under this section and the rules may provide that different benefits are payable in respect of different classes of employees.

(3) Despite any other provision of this section or rules made under this section, the amount of the benefit is not to be more than the amount

received by the Board from any person providing cover for the basic death or invalidity benefit.

#### **Amount of additional death or invalidity benefit**

**33.** (1) The amount of the additional death or invalidity benefit payable to or in respect of a member under this Act is the amount nominated by the member and approved by the Board in approving the member's application.

(2) Despite subsection (1), the amount of the benefit is not to be more than the amount received by the Board from any person providing cover for the additional death or invalidity benefit.

#### **Power of Board to reduce benefits to comply with certain Commonwealth standards relating to occupational superannuation**

**34.** (1) The Board may make a determination reducing the amount of a benefit by such amount (but no more) as will ensure that neither the Board nor the Fund is in breach of an applicable Commonwealth occupational superannuation standard in the circumstances set out in subsection (2) and consequently liable to a penalty under a Commonwealth taxation law.

(2) The circumstances are that the payment of the benefit to or in respect of a member would cause the Board or the Fund to be in breach of the Commonwealth occupational superannuation standard because:

- (a) the amount of the benefit; or
- (b) the amount of the benefit, together with the amounts of any other benefits that have already been paid, or that are or may become payable, to or in respect of the member from the Fund or under one or more other superannuation schemes,

would, if paid, exceed the relevant level specified in that standard.

(3) In this section, a reference to a penalty under a Commonwealth taxation law includes a reference to (but is not limited to):

- (a) a penalty rate of taxation under that law; and
- (b) the loss of a concessional rate of taxation under that law.

#### **Interest**

**35.** The Board may, when paying a benefit under this Act, pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.

**Division 2—Payment of benefits****When is a benefit immediately payable?**

**36.** (1) The benefit payable under this Act is payable by the Board if the member dies, or ceases to be employed in the circumstances in which it is specified in the Commonwealth occupational superannuation standards applicable to the Scheme that a benefit must or may be paid or that a preserved benefit must or may be paid.

**NOTE:** A benefit is currently payable in accordance with the Commonwealth occupational standards in any of the following circumstances:

- if a member ceases to be employed by an employer after reaching 55 and before reaching the retirement age specified in those standards
- if a member ceases to be employed by an employer before reaching 55 and the Board is satisfied that the retirement is on the ground of permanent incapacity or permanent invalidity
- if a member ceases to be employed by an employer before reaching 55 and the member or another person has produced to the Board written approval of the Insurance and Superannuation Commissioner of the Commonwealth for payment of the benefit
- if a member ceases to be employed by an employer before reaching 55 and the Board has given approval for payment of a benefit under guidelines established by the Insurance and Superannuation commissioner
- if a member ceases to be employed by an employer before reaching 55 and the Board is satisfied that the member is to depart from Australia permanently
- if a member ceases to be employed by an employer before reaching 55 and the member has requested the Board to pay the benefit to an approved deposit fund, another complying superannuation fund or by purchasing a deferred annuity and the Board is satisfied that the benefit is to be paid in a manner that complies with applicable Commonwealth occupational superannuation standards
- the amount of the benefit is less than the amount specified in regulation 12 of the Occupational Superannuation Standards Regulations of the Commonwealth
- there occurs any other event prescribed by rules of the Board for the purposes of this section

(2) A rule made for the purposes of this section may vary the circumstances in which a benefit is otherwise payable under this section if it is necessary to do so for the purpose of compliance with an applicable Commonwealth occupational superannuation standard.

**When is a death or invalidity benefit payable under this Act?**

**37.** (1) The basic death or invalidity benefit payable under this Act is payable to or in respect of a member if the member dies or ceases to be employed and the Board is satisfied that the cessation of employment is on the ground of permanent incapacity or permanent invalidity (not

caused by any act or default of the member intended to produce that incapacity).

(2) The additional death or invalidity benefit payable under this Act is payable if the basic death or invalidity benefit is payable and an approval for additional death or invalidity cover is in force in relation to the member concerned.

(3) The basic death or invalidity benefit is not payable to or in respect of a member who is a member only by virtue of having elected to make optional contributions.

### **Retirement on the ground of permanent incapacity etc.**

**38.** In order to be satisfied that the cessation of employment of a member is on the ground of permanent incapacity or permanent invalidity, the Board must be satisfied that the member is permanently unable, because of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which, in the opinion of the Board, it would otherwise be reasonable to expect the member to engage.

### **When is a benefit to be preserved?**

**39.** A benefit of a member is to be preserved by the Board on the member ceasing to be a member or employed by an employer, if the benefit is not otherwise payable under this Act.

### **When is a preserved benefit payable?**

**40.** The benefit preserved under this Act in respect of a person is payable by the Board if the person dies, or in the circumstances in which it is specified in any Commonwealth occupational superannuation standards applicable to the Scheme that a preserved benefit must or may be paid.

NOTE: The preserved benefit is currently payable in accordance with the Commonwealth occupational superannuation standards in any of the following circumstances:

- if the person ceases to be employed after reaching 55
- if the person ceases to be employed after reaching 55 and the Board is satisfied that the retirement is on the ground of permanent incapacity or permanent invalidity
- if the person ceases to be employed after reaching 55 and the person or another person has produced to the Board written approval of the Insurance and Superannuation Commissioner for payment of the benefit
- if the person ceases to be employed after reaching 55 and the Board has given approval for payment of a benefit under guidelines established by the Insurance and Superannuation commissioner



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- if the person ceases to be employed after reaching 55 and the Board is satisfied that the member is to depart from Australia permanently
- if the Board is satisfied that the benefit is to be paid to an approved deposit fund, another complying superannuation fund or by purchasing a deferred annuity and the Board is satisfied that the benefit is to be paid in a manner that complies with the applicable Commonwealth occupational superannuation standards.

**Division 3—Other provisions relating to benefits**

**Rules to be made by Board**

**41.** The Board may make rules for or with respect to the following matters:

- the circumstances in which employees other than full-time employees are taken to have ceased to be employed for the purposes of this Act
- the calculation of salary and wages for the purpose of calculating death or invalidity benefits
- the payment and preservation of benefits (including death or invalidity benefits), and the variation of the circumstances under this Act in which benefits may be paid or preserved, for the purpose only of compliance with applicable Commonwealth occupational superannuation standards
- applications for payment of benefits

**Power of Board to purchase annuities etc.**

**42.** (1) Whenever a benefit has become payable to or in respect of a member or former member under this Part, the Board must, on a request under this section, apply the benefit, or a specified part of the benefit in purchasing for the person making a request under this section a right to an annuity or other form of pension from a person nominated in the request.

(2) A request may be made by the member or former member or, if the member or former member has died, by the member or former member's personal representatives.

**Manner of payment of benefit**

**43.** Despite any other provision of this Act, the Board may pay a benefit in a form, other than a lump sum, if applicable Commonwealth occupational superannuation standards set out that other form as the way in which such a benefit is to be paid.

**Payment of benefit where member is dead**

**44.** A benefit payable in respect of a member who has died is payable to the personal representatives of the member or, if appropriate, in accordance with section 45 (Payment without grant of probate etc.).

**Payment without grant of probate etc.**

**45.** (1) If a person dies and:

- (a) a benefit is, or becomes, payable from the Fund in relation to the deceased; and
- (b) production to the Board of probate of the will, or letters of administration of the estate, of the deceased has not been arranged; and
- (c) the Board has not, within the period of 3 months that next succeeds the death of the deceased, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

the Board may, if it so decides, make a payment of the whole or any part of the benefit in accordance with subsection (2), being a payment that does not exceed \$50,000 or, where some other amount is determined by the Board, that other amount.

(2) The Board may:

- (a) pay the whole or any part of the amount of the benefit to an eligible person within the meaning of the Family Provision Act 1982; or
- (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses—pay the whole or any part of the balance to any person referred to in paragraph (a); or
- (c) in special circumstances, pay the whole or any part of the amount of the benefit, or the balance referred to in paragraph (b), to some other person.

(3) If a member or former member dies and the Board is of the opinion that proceedings might be instituted under the Family Provision Act 1982 in relation to the estate, or notional estate, of the deceased, the Board may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

**Payment where beneficiary incapable**

**46.** (1) If a person to whom a benefit is payable is, in the opinion of the Board, incapable of administering his or her own affairs because of illness, imprisonment or any other cause, the Board may pay the benefit

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to some other person to be applied wholly for the care, maintenance, benefit and support of the person to whom, but for this section, the benefit would be payable, or of any person dependent on him or her.

(2) Any payment made under this section is to be taken to have been made to the person entitled to the benefit.

**Assignment etc. of benefit**

47. (1) A purported assignment of, or purported charge over, a benefit is void.

(2) If, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.

(3) A benefit payable on the death of a member is not an asset in the member's estate that is applicable in payment of the debts and liabilities of the deceased.

(4) Nothing in this section prevents the Board from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.

(5) Any payment made under subsection (4) is to be taken to have been made to the person entitled to the benefit.

**Transfer of benefit from other schemes to Fund**

48. (1) An employee may:

- (a) at the time of becoming a member; or
- (b) at any time after that,

elect to pay a benefit received, or any amount held to the credit of the employee, under another complying superannuation scheme or under an approved deposit Fund into the employee's account or the account to be established for the employee in the Fund.

(2) An election must:

- (a) be in a form approved by the Board; and
- (b) specify the amount to be paid by the employee into the Fund.

(3) An election takes effect on acceptance by the Board.

(4) On payment of an amount into the Fund under this section, the amount paid is, for the purposes of this Act, to be treated as if it were contributed under this Act by the member or the member's employer, as the case requires.

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**PART 5—THE FIRST STATE SUPERANNUATION FUND**

**Establishment of Fund**

**49.** The Board is required to establish, and maintain and administer, the First State Superannuation Fund.

**Payments to Fund**

- 50.** The Board is required to cause to be paid to the Fund:
- (a) contributions made by employers and members; and
  - (b) income derived from investment of the Fund, and any profit made from realisation of any investment of the Fund; and
  - (c) subject to the Public Authorities (Financial Arrangements) Act 1987, money borrowed for the purposes of the Fund; and
  - (d) any other amounts payable to the Fund.

**Payments from Fund**

- 51.** (1) The Board is required to cause to be paid from the Fund:
- (a) the administration costs incurred by the Board in relation to the Fund; and
  - (b) such amounts as are necessary to satisfy any liability of the Fund with respect to tax payable under Commonwealth taxation law; and
  - (c) benefits payable under this Act; and
  - (d) premiums payable for the basic death or invalidity cover or additional death or invalidity cover under this Act; and
  - (e) any other amounts payable from the Fund.
- (2) If a loss is incurred in realising any investment forming part of the assets of the Fund, the Fund is accordingly reduced by the amount of that loss.

**Members' accounts**

**52.** The Board is required to establish and maintain within the Fund a separate account for each member.

**Payments to be credited to members' accounts**

- 53.** There is required to be credited to a member's account:
- (a) any contributions made by the member's employer to the Fund in respect of the member; and
  - (b) any contributions made by the member to the Fund; and
  - (c) any other amounts payable to the account.

**Payments to be debited to members' accounts**

- 54.** There is required to be debited to a member's account:
- (a) if the member is covered for the basic death or invalidity benefit or the additional death or invalidity benefit—the amount of any premiums payable by or in respect of the member; and
  - (b) benefits payable to or in respect of the member; and
  - (c) management costs incurred by the Board as referred to in section 61; and
  - (d) the amount of any income tax as referred to in section 62; and
  - (e) any other amounts payable under this Act by the member or from the member's account.

**Death or Invalidity Benefit Management Reserve**

**55.** (1) The Board is required to establish and maintain a Death or Invalidity Benefit Management Reserve within the Fund.

(2) There is required to be credited to the Death or Invalidity Benefit Management Reserve the amounts of basic death or invalidity premiums or additional death or invalidity premiums debited to members' accounts under this Act.

(3) There is required to be debited to the Death or Invalidity Benefit, Management Reserve any payment of basic death or invalidity benefits or any additional death or invalidity benefits.

**Other accounts and reserves and investment funds**

**56.** (1) The Board may establish and maintain within the Fund such other accounts and reserves as, in the opinion of the Board, are necessary or convenient for the administration of the Fund and this Act.

(2) Without limiting subsection (1), the Board may, for the purposes of the investment of the Fund and with the consent of a member, treat the whole or any part of a member's account as belonging to a particular investment fund and may invest the amount of the Fund attributable to the accounts comprising a particular investment fund differently from any other part of the Fund.

**Adjustment of accounts and reserves for interest etc.**

**57.** (1) The Board may, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by the Board, having regard to the income of the Fund and such other matters as the Board considers relevant.

(2) The Board may, for the purpose of adjusting a member's account before paying out the balance at credit in the account, fix a rate for that purpose only.

(3) In adjusting members' accounts under this section, the Board may fix different rates for accounts or parts of accounts that are treated as belonging to different investment funds.

### **Funds, accounts and reserves generally**

**58.** (1) There may be credited to any fund, account or reserve established by this Act any amount that is required or permitted by or under this or any other Act to be credited to it.

(2) There may be debited to any fund, account or reserve established by this Act any amount that is required or permitted by or under this or any other Act to be debited to it.

### **Management Account**

**59.** The Board is required to establish and maintain a First State Superannuation Management Account.

### **Costs which may be charged to Management Account**

**60.** (1) Administration costs. Management costs incurred by the Board in the administration or execution of this Act, including the remuneration or allowances of the members of the Board, are to be charged against the Management Account.

(2) Investment costs. Management costs incurred in investing the Fund and managing any such investment are (subject to the terms and conditions of any contract or arrangement made or entered into by the Board in relation to this Act under the Superannuation Administration Act 1991) to be paid from the income from investment of the Fund.

### **How other costs may be paid**

**61.** Management costs incurred by the Board other than those incurred in investing the Fund and managing any such investment are (subject to the terms and conditions of any contract or arrangement made or entered into by the Board in relation to this Act under the Superannuation Administration Act 1991) to be paid from the members' accounts, at such times and in such amounts or at such a rate as may be determined by the Board.

**Board must deduct tax liabilities from members' accounts**

**62.** Whenever the Board has paid (or is liable to pay) an amount of income tax under a Commonwealth taxation law in respect of an employer's contributions to a member's account in the Fund, the Board is required to debit to the account the amount of any such income tax.

**PART 6—MISCELLANEOUS****Removal of employers from Act**

**63.** (1) This section applies where an employer is removed from Schedule 1.

(2) On an employer being so removed, an employee of the employer is taken to have ceased to be employed by an employer for the purposes of section 39 and this Act applies accordingly.

**Employer to provide information**

**64.** (1) An employer must submit to the Board such information or evidence relating to employees of the employer as the Board requires.

(2) The Board may, if an employer fails to comply with subsection (1) in relation to an employee:

- (a) refuse an application by an employee to be covered for or to vary the additional death or invalidity benefit if the information sought is relevant to such an application; or
- (b) defer payment of a benefit to, or in relation to, a member if the information sought is relevant to the right to receive the benefit.

**Employee or claimant to provide information**

**65.** The Board may require an employee or a claimant for payment of a benefit:

- (a) to provide the Board with specified information or evidence referred to in section 64; or
- (b) to provide the Board with an authority to obtain from a third person any such information or evidence; or

- (c) in the case of a claimant for a benefit on the ground of permanent incapacity or permanent invalidity—to undergo a medical examination or examinations.

**When may Board require employee or claimant to provide information?**

- 66.** A requirement under section 65 may be made only:
- (a) in the case of an employee—in relation to information or evidence that is relevant to the assessment of an application by the employee to be covered for the additional death or invalidity benefit; or
  - (b) in the case of a claimant for payment of a benefit—in relation to information, evidence or a medical examination or examinations that is or are relevant to the assessment of an application made by the claimant for payment of the benefit.

**Failure to provide information for payment of a benefit**

- 67.** (1) The Board may take the action set out in subsection (2) if:
- (a) the employee or claimant to whom a requirement under section 65 relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement; or
  - (b) a person referred to in section 65 (b) fails to provide information or evidence that the Board has been authorised to obtain from the person or, in purported compliance with the request by the Board for the information or evidence, makes or provides an untrue statement.

(2) The Board may, if the information is required in relation to a claim for a benefit, take such action in relation to the benefit as, in the opinion of the Board, would place the claimant as nearly as possible in the same position as the claimant would be if the information or evidence had been provided or the medical examination or examinations made or if the statement had not been untrue.

(3) For the purposes of this section, **untrue**, in relation to a statement, includes:

- (a) misleading in the form and context in which the statement appears; or
- (b) misleading because of the omission from the statement of matter that is material.



**How is an application etc. to be made?**

**68.** An application, election or notification under this Act must be in writing signed by the person making it.

**When must an election or application be made?**

**69.** An election or application under this Act is not, subject to section 70, validly made unless it is received in the office of the Board:

- (a) if, by or under this Act (paragraph (b) excepted), a day is specifically prescribed by this Act or rules of the Board for the receipt in the office of the Board of an election or application of that class—not later than on that day; or
- (b) in any other case—not later than at the end of the period of 2 months that next succeeds the vesting of the right to make the election or application.

**Board may accept election or application made out of time**

**70.** (1) The Board may, subject to such terms and conditions as it may impose, accept an election or application which is not received in the office of the Board within the time prescribed by this Act or rules of the Board for the receipt of the election or application if the Board is satisfied that, in all the circumstances of the case, it is desirable that the election or application should be accepted.

(2) The Board may deal with the election or application as if it had been received within the time so prescribed.

**When does an election or application take effect?**

**71.** (1) An election or application under this Act takes effect:

- (a) if, by or under this Act or rules of the Board (paragraph (b) excepted), a day is specifically prescribed for the taking effect of an election of the same class—on that day; or
- (b) in any other case—on a day determined by the Board, being, except as provided by subsection (2), a day that is not earlier than the date of receipt of the election or application in the office of the Board.

(2) If the Board is satisfied that, in all the circumstances of the case, it is desirable that an election or application should take effect on a day that is earlier than the date of receipt of the election or application in the office of the Board:

- (a) the Board may, subject to such terms and conditions as it may impose, determine that the election or application is to be treated as having taken effect on such an earlier day determined by the Board; and
- (b) the election or application takes effect accordingly.

**Amendment or revocation of election or application**

**72.** An election or application under this Act may, with the approval of the Board, be amended or revoked subject to such conditions as the Board may impose, which may include conditions as to:

- (a) in the case of an amendment of an election—the day or days on which, or the manner in which, the election is to take effect; and
- (b) in the case of revocation of an election—the day on which the revocation takes effect.

**Recovery of money owing to Fund**

**73.** (1) Recovery of money owing. The Board may recover any money owing to the Fund by a member, employer or other person, together with interest on that money as provided by subsection (2):

- (a) where any amount is, or becomes, payable from the Fund to the member, employer or other person—by deduction from that amount; or
- (b) in any other case—as a debt in a court of competent jurisdiction.

(2) Interest. Interest at a rate from time to time determined by the Board is payable on any amount owing to the Fund calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

**Restoration of lost right etc. under Act**

**74.** (1) If a person is entitled to exercise a right or enjoy a privilege or benefit under this Act and, without having exercised the right or enjoyed the privilege or benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if:

- (a) the Board, being satisfied that it is just and equitable that it should do so, gives its consent to the exercise by the person of the right or the enjoyment by the person of the privilege or benefit; and
- (b) the person fulfils any conditions imposed, and complies with any requirements made, by the Board in giving its consent.

(2) If under this section the Board consents to an election, or an application to the Board, being made after the time before which, but for that consent, it should have been made, the Board may, if it thinks fit, deal with the election or application as if it had been made before that time.

### **Board may make rules**

**75.** (1) The Board may make rules not inconsistent with this Act or with applicable Commonwealth standards relating to occupational superannuation, for or with respect to any matter for which it is by this Act required or permitted to make rules.

(2) In particular the Board may make rules for or with respect to the following:

- (a) the provision of information to members and other persons;
- (b) the provision of information from time to time by employers as to employees and contributions for employees;
- (c) the remittance and collection of contributions to the Fund;
- (d) the operation of members' accounts;
- (e) agreements or arrangements with employers and employees as to optional contributions.

(3) Except as may be otherwise permitted by this Act, the Board must not make a rule which reduces or compromises the accrued rights of members under this Act or increases the liability of an employer to contribute under this Act.

(4) The Minister may disallow a rule made by the Board under this Act.

### **Regulations**

**76.** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **Savings, transitional and other provisions**

**77.** Schedule 3 has effect.

**Amendment of Superannuation Administration Act 1991 No. 96**

**78.** The Superannuation Administration Act 1991 is amended as set out in Schedule 4.

**Review of Act**

**79.** (1) The Minister is to review this Act to determine whether the policy objectives of this Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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**SCHEDULE 1—EMPLOYERS**

(Sec. 7)

**Part 1—The Crown and other employers**

A Government Department or Administrative Office  
Police Service  
Health Administration Corporation  
Maritime Services Board  
Water Administration Ministerial Corporation  
Water Board  
Hunter Water Corporation Limited  
Upper Parramatta River Catchment Management Trust  
The Director-General of New South Wales Fire Brigades  
Australian Museum Trust  
Electricity Commission  
State Superannuation Investment and Management Corporation  
New South Wales Treasury Corporation  
Judicial Commission  
Independent Commission Against Corruption  
A corporation constituted under the Growth Centres (Development Corporations) Act 1974  
Broken Hill Water Board  
Building Services Corporation  
Clann Limited  
Fish Marketing Authority  
Greyhound Racing Control Board  
Harness Racing Authority  
Homebush Bay Ministerial Corporation  
Hunter Valley Catchment Management Trust  
Justice and Police Museum Limited

SCHEDULE—EMPLOYERS—*continued*

Waste Recycling and Processing Service  
New South Wales Film and Television Office  
New South Wales Meat Industry Authority  
New South Wales Dried Fruits Board  
State Rail Authority of New South Wales  
Sydney Cove Redevelopment Authority  
Sydney Market Authority  
The Trustees of the Anzac Memorial Building  
Garvan Institute of Medical Research  
The New South Wales Teachers' Federation  
Public Service Association of New South Wales  
Joint Coal Board  
Australian Transport Officers Federation (New South Wales Division)  
The Water and Sewerage Employees Union (Salaried Division and Wages Division)  
Australian Railways Union  
The Australian Tramway and Motor Omnibus Employees' Association  
Australian Federated Union of Locomotive Enginemmen  
Police Association of New South Wales  
Forestry Commission  
Public Trust Office  
WorkCover Authority  
Trustees of state recreation areas  
Sydney Opera House Trust  
Department of Local Government and Co-operatives  
Wentworth Park Trust  
Zoological Parks Board of New South Wales

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SCHEDULE 1—EMPLOYER—*continued*

Roads and Traffic Authority  
 State Transit Authority  
 Home Care Service of New South Wales  
 The Hills Centre Limited  
 Parramatta Stadium Trust  
 Royal Botanic Gardens and Domain Trust  
 Ambulance Service of New South Wales  
 New South Wales Lotteries  
 Sydney Electricity  
 Technical and Further Education Commission  
 The Wild Dog Destruction Board  
 Auditor-General's Office  
 Community Welfare Employment Corporation  
 Lord Howe Island Board  
 New South Wales Casino Control Authority  
 Internal Audit Bureau

**Part 2—Local government and other authorities**

A body corporate Constituted under the Local Government Act 1919 as a council or a county council

A committee constituted under the Local Government Act 1919 as an urban committee or a joint committee of 2 or more councils

A rural lands protection board constituted under the Rural Lands Protection Act 1989

The employer of a servant, or class of servants, specified in a proclamation published under section 2 (4) of the Local Government and Other Authorities (Superannuation) Act 1927

A body or association of persons specified in a proclamation published under section 2 (5) of the Local Government and Other Authorities (Superannuation) Act 1927

The N.S.W. Local Government Industry Training Committee Incorporated

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**SCHEDULE 1—EMPLOYERS—*continued*****Part 3—Hospitals and other bodies**

An incorporated hospital specified in the Second Schedule to the Public Hospitals Act 1929

A separate institution specified in the Third Schedule to the Public Hospitals Act 1929

An associated organisation specified in the Fourth Schedule to the Public Hospitals Act 1929

An area health service constituted under the Area Health Services Act 1986

**SCHEDULE 2—EMPLOYEES WHO ARE NOT MEMBERS OF THE FUND**

(Sec. 8)

**General provision**

1. The following employees are not members of the Fund:
  - (a) an employee who is a contributor to or a member of another associated superannuation scheme (within the meaning of the Superannuation Administration Act 1991) in respect of the same contract of employment;
  - (b) an employee who is a Judge within the meaning of the Judges' Pensions Act 1953, a master within the meaning of the Supreme Court Act 1970, the Solicitor General or the Director of Public Prosecutions.

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 77)

**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - this Act
  - Superannuation Legislation (Superannuation Guarantee Charge) Amendment Act 1992
  - State Authorities Superannuation (Scheme Closure) Amendment Act 1992



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**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued***

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Application of Scheme to certain employees from 1 July 1992**

2. For the purpose of calculating a benefit payable to a member who, on or after 1 July 1992, was an employee under the State Authorities Non-contributory Superannuation Act 1987, the member is taken to have been a member since 1 July 1992 or any later date on which the member became such an employee and the benefit payable to the member is to be adjusted accordingly.

**SCHEDULE 4—AMENDMENT OF SUPERANNUATION  
ADMINISTRATION ACT 1991**

(Sec. 78)

**(1) Section 3 (Definitions):**

From the definition of “associated Acts” in section 3 (1), omit paragraph (j), insert instead:

- (j) First State Superannuation Act 1992;
- (k) any other Act declared under subsection (3) to be an associated Act for the purposes of this Act;

**(2) Section 10 (Board may make arrangements etc. for the provision of additional benefits):**

- (a) From section 10 (1) (a), omit “additional death or disability benefits”, insert instead “death or invalidity benefits”.
- (b) From section 10 (1) (b), omit ““additional””.

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SCHEDULE 4—AMENDMENT OF SUPERANNUATION  
ADMINISTRATION ACT 1991— *continued*

(3) Section 10A:

After section 10, insert:

First State Superannuation Scheme—Board must seek tenders for arrangements etc. for administration, investment etc.

10A. (1) The Board must, within the times specified in subsection (2), seek and consider tenders for the carrying out of the Board's functions with respect to the administration of the First State Superannuation Scheme and the investment and management of the First State Superannuation Fund.

(2) Tenders are to be sought and considered:

(a) in the case of the administration of the First State Superannuation Scheme—on or before 30 June 1996;  
or

(b) in the case of the management of the First State Superannuation Fund—on or before 30 June 1994,

or on or before such later time or times as may be approved by the Minister.

(3) The Board must, on or after considering tenders under this section, enter into a contract or an arrangement under this Act with the appropriate person, but only if the requirements of section 9 (4) are met.

(4) Section 11 (**Staff of the Board**):

After section 11 (2), insert:

(3) Without limiting the operation of subsection (1) or any other provision of this Act, the Board may employ such staff under Part 2 of the Public Sector Management Act 1988 as is necessary to provide the following services to the Board:

(a) executive support;

(b) policy and legal advice;

(c) the engagement, on behalf of the Board, of consultants under section 13 to provide independent advice to the Board;

SCHEDULE 4—AMENDMENT OF SUPERANNUATION  
ADMINISTRATION ACT 1991—*continued*

- (d) the arrangement and co-ordination, on behalf of the Board, of the selection on a competitive basis of persons to undertake (on behalf of the Board) any one or more of the Board's functions relating to the administration or investment of an associated superannuation scheme or the insurance of members of such schemes for the payment of additional death or disability benefits;
- (e) the arrangement and co-ordination of the entering into of contracts or arrangements on a competitive basis by the Board;
- (f) the monitoring of the performance of persons who have entered into contracts or arrangements with the Board.

(5) Section 15 (**Delegation**):

At the end of section 15, insert:

(2) The Board may also delegate:

- (a) to a person with whom the Board has entered into a contract or an arrangement; or
- (b) in the case of a person with whom the Board has entered into a contract or an arrangement who is not an individual, the chief executive of that organisation,

any of its functions relating to the administration of associated superannuation schemes or any superannuation scheme the administration of which is transferred to it in accordance with regulations made under section 8.

(6) Section 23 (**Administration costs of the Board regarding preserved benefits**):

(a) At the end of section 23 (b), insert “ ; or”.

(b) After section 23 (b), insert:

- (c) in relation to an employee referred to in the First State Superannuation Act 1992—a benefit which is required to be preserved under that Act.

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SCHEDULE 4—AMENDMENT OF SUPERANNUATION  
ADMINISTRATION ACT 1991—*continued*

- (7) Section 30 (**Functions of the Corporation with respect to certain undertakings**):

In section 30 (8), after “scheme”, insert “not being an activity arising out of a contract or arrangement entered into by the Corporation in respect of the First State Superannuation Scheme after a successful tender under section 10A”.

- (8) Section 35 (**Delegation by the Corporation**):

From section 35 (1), omit “, with the approval of the Board,”.

- (9) Section 43 (**Board to determine certain disputes**):

At the end of section 43 (1), insert:

First State Superannuation Act 1992.

**DICTIONARY**

(Sec. 3)

**additional death or invalidity benefit** means the benefit referred to in section 33.

**additional death or invalidity premium** means the premium that, in order to attract the additional death or invalidity benefit for a member, is paid by transfer from the member’s account.

**approved deposit fund** has the same meaning as in section 3 of the Occupational Superannuation Standards Act 1987 of the Commonwealth.

**basic death or invalidity benefit** means the benefit referred to in section 32.

**basic death or invalidity premium** means the premium that, in order to attract the additional death and invalidity benefit for a member, is paid by transfer from the member’s account.

**benefit** means a benefit payable under this Act.

**Board** means the State Authorities Superannuation Board continued under the Superannuation Administration Act 1991.

DICTIONARY—*continued*

**Commonwealth occupational superannuation standard** means a standard prescribed in respect of occupational superannuation schemes by a law of the Commonwealth.

**Commonwealth taxation law** means a law of the Commonwealth that provides for the levying and collection of a tax.

**complying superannuation scheme** means a superannuation scheme which satisfies the superannuation fund conditions for the scheme under the Occupational Superannuation Standards Act 1987 of the Commonwealth.

**Death or Invalidity Benefit Management Reserve** means the Death or Invalidity Benefit Management Reserve established under this Act.

**employee** means a person who is an employee within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth and who is employed, within the meaning of that Act, by an employer.

**NOTE:** Employees who are to be members of the Scheme are set out in Part 2.

**employer** has the same meaning as in section 6.

**employment** with an employer includes employment with successive employers.

**exercise** of a function includes, if the function is a duty, the performance of the duty.

**exit date**, in relation to a member, means the date on which the member ceases to be an employee, being:

- (a) the only such cessation of employment as an employee; or
- (b) if there has been more than one such cessation of employment as an employee—the later or latest of those cessations of employment.

**function** includes a power, authority and duty.

**Fund** means the First State Superannuation Fund established under this Act.

**Management Account** means the First State Superannuation Management Account established under this Act.

**member** means an employee who is, by virtue of Part 2, a member of the Scheme and who has not ceased to be a member under this Act.

DICTIONARY—*continued*

**member's account** means the account established and maintained under section 52 in respect of a member.

**preserved benefit** means a benefit preserved under this Act.

**salary or wages** means the total of:

- (a) earnings in respect of ordinary hours of work; and
- (b) earnings consisting of over-award payments, shift-loading or commission.

**Scheme** means the First State Superannuation Scheme established by this Act.

**superannuation scheme** means a scheme, fund or arrangement (whether or not established by an Act) under which any superannuation or retirement benefits are provided by an employer.

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*[Minister's second reading speech made in-  
Legislative Assembly on 29 October 1992  
Legislative Council on 26 November 1992]*