

**SUPERANNUATION (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 44, 1974.**

An Act to increase certain pensions payable under the Superannuation Act, 1916; to enable certain persons to elect to become contributors to the State Superannuation Fund; to facilitate the investment of that Fund; to validate certain matters; for these and other purposes to amend the Superannuation Act, 1916, the Electricity Commission Act, 1950, the Superannuation (Amendment) Act, 1971, and the University of Wollongong Act, 1972; and for purposes connected therewith. [Assented to, 24th April, 1974.]

BE

*Superannuation (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by **No. 44, 1974** 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:—

**PART I.****PRELIMINARY.**

**1.** This Act may be cited as the "Superannuation **Short title.** (Amendment) Act, 1974".

**2.** (1) This Part and sections 18 and 20 commence on **Commence-** the date of assent to this Act. **ment.**

(2) Part II shall be deemed to have commenced on 7th December, 1973.

(3) Part III commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Part IV commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(5) Section 17 shall be deemed to have commenced on 28th November, 1972.

(6) Section 19 shall be deemed to have commenced on 13th May, 1971.

**3.** This Act shall be read and construed with, and as if it **Principal** formed part of, the Superannuation Act, 1916, which is in **Act.** this Act referred to as the Principal Act.

**4.** This Act is divided, as follows :—

**PART I.—PRELIMINARY—ss. 1–4.**

**PART II.—INCREASE OF PENSIONS—ss. 5–9.**

**Division  
of Act.**

**PART**

*Superannuation (Amendment).*

No. 44, 1974

PART III.—GOVERNMENT MEDICAL OFFICER—  
ss. 10–12.PART IV.—ELECTION BY CERTAIN PERSONS TO  
BECOME CONTRIBUTORS—ss. 13–16.

PART V.—GENERAL—ss. 17–20.

## PART II.

## INCREASE OF PENSIONS.

Inter-  
pretation of  
Part.5. (1) In this Part, except to the extent that the context  
or subject-matter otherwise indicates or requires—“eligibility period” in relation to an eligible person  
means—

- (a) in the case of an eligible person referred to in paragraph (a) of the definition of “eligible person”—the period specified in the First Column of the Table to this section during which her late pensioner husband last became a pensioner;
- (b) in the case of an eligible person referred to in paragraph (b) of that definition—the period so specified during which, disregarding any retirement of that person to which section 51 (2) (b) of the Principal Act applied, he last retired before 1st April, 1973;
- (c) in the case of an eligible person referred to in paragraph (c) of that definition—
  - (i) where her late husband had been retired under section 22 of the Principal Act once only—the period so specified during which he was so retired; or

(ii)

*Superannuation (Amendment).*

- (ii) where her late husband had been so retired more than once—the period so specified during which, disregarding any retirement of her late husband to which section 51 (2) (b) of the Principal Act applied, he had been last retired under section 22 of the Principal Act before 1st April, 1973; or
- (d) in the case of any other eligible person—the period so specified during which that person last became a pensioner;

“eligible person” means—

- (a) the widow of a pensioner, where that pensioner last became a pensioner before 1st April, 1973, and died before 7th December, 1973;
- (b) a person retired under section 22 of the Principal Act on or after 1st April, 1973, within five years of having again become a contributor following a previous retirement under that section before 1st April, 1973;
- (c) the widow of a contributor, being a contributor who died or dies on or after 1st April, 1973, within five years of his having again become a contributor following a retirement under section 22 of the Principal Act before 1st April, 1973; or
- (d) except as provided by paragraphs (a), (b) and (c)—a pensioner who last became a pensioner before 1st April, 1973;

“pension”

*Superannuation (Amendment).*

No. 44, 1974

“pension”—

(a) subject to paragraph (b), means—

(i) pension payable under the Principal Act; and

(ii) pension wholly paid or recouped from the Consolidated Revenue Fund or the funds of an employer,

whether or not payment of the pension, or any part thereof, has been suspended by the operation of a provision of the Principal Act or any other Act; and

(b) does not include—

(i) pension that has been commuted under section 21A or 21B of the Principal Act; or

(ii) pension payable in respect of a child or a student.

(2) For the purposes of this or any other Act—

(a) where a person referred to in paragraph (b) of the definition of “eligible person” in subsection (1) retires as referred to in that paragraph and pension thereupon becomes payable to him under section 29 of the Principal Act, payment of that pension shall be deemed to be payment of a previously suspended pension;

(b) payment of a pension to a widow in consequence of a death referred to in paragraph (c) of the definition of “eligible person” in subsection (1) shall be deemed to be payment of a previously suspended pension;

(c)

*Superannuation (Amendment).*

- (c) where, on or after 7th December, 1973, an increase in pension is paid to a pensioner under the Superannuation (Amendment) Act, 1970, the payment shall, for the purposes of this Part, be deemed to be payment of a previously suspended part of his pension;
- (d) where any part of an increase of pension is not paid because of the operation of section 2 (5) of the Superannuation (Amendment) Act, 1971, or of section 7 of this Act, the unpaid part of the increase shall be deemed to be a suspended part of the pension; and
- (e) where—
- (i) a pension was not payable at 7th December, 1973, under section 30 or 31 of the Principal Act by reason only of the marriage of the pensioner; or
  - (ii) a pension was not payable at 7th December, 1973, by reason only of the operation of section 94 of the Principal Act,
- the pension shall be deemed to be a suspended pension.

(3) Subject to section 7, a suspended pension or part of a pension shall, in calculating a pension payable under section 30 or 31 of the Principal Act, be taken into account as if it had been payable.

**6.** Subject to this Part—

- (a) the pension (other than a suspended pension or a suspended part of a pension) payable to an eligible person on 7th December, 1973, is hereby increased on and from that date;

(b)

*Superannuation (Amendment).*

No. 44, 1974

- (b) a pension (other than a suspended pension or a suspended part of a pension) that first becomes payable to an eligible person after 7th December, 1973, is hereby increased on and from the date on which it first becomes payable; and
- (c) a suspended pension, or a suspended part of a pension that becomes payable on or after 7th December, 1973, to an eligible person (whether or not it is payable on and from an earlier date) is hereby increased on and from 7th December, 1973, or on and from the date on which it so becomes payable, whichever is the later,

by the percentage specified in the Second Column of the Table to this section opposite the eligibility period for that person specified in the First Column of the Table.

TABLE

First Column	Second Column
Eligibility Period	Percentage
Before 1st October, 1971 .....	12.5
1st October, 1971, to 31st December, 1971 .....	10
1st January, 1972, to 31st March, 1972 .....	9
1st April, 1972, to 30th June, 1972 .....	8
1st July, 1972, to 30th September, 1972 .....	6.5
1st October, 1972, to 31st December, 1972 .....	5
1st January, 1973, to 31st March, 1973 .....	3

Suspension of increase in pension in certain circumstances.

7. Where the operation of the provisions of this Part would increase the pension payable to a person, or a widow's pension would be increased by reason of the operation of those provisions in relation to her late husband, and that person or widow would, in the opinion of the Board, thereby be prejudicially affected in respect of any benefits otherwise receivable by that person or widow, the amount of the increase

shall

*Superannuation (Amendment).*

shall be such lesser amount than that referred to in section 6 as the Board from time to time determines, and the amount of the increase so determined shall be payable in respect of such periods or at such times by way of lump sum or otherwise as the Board from time to time determines. No. 44, 1974

**8.** (1) Where, pursuant to section 6, an increased pension is payable to a pensioner or to the widow of a deceased pensioner or contributor, the employer in whose service the pensioner or deceased pensioner was employed at the date of his retirement or retrenchment, or in whose service the contributor was employed at the date of his death, shall pay to the Fund at fortnightly intervals, or at such other intervals as may be determined by the Board and on the requisition of the Board, an amount equal to the difference between the amount of the pension payable under sections 6 and 7 and the amount of pension that would have been payable had sections 6 and 7 not been enacted. Additional payment by employers.

(2) An amount payable by an employer under this section is additional to any contribution or other payment that the employer is required to make under the Principal Act.

**9.** The Principal Act is amended—

- (a) by inserting at the end of section 17B the following subsection :— Amendment of Act No. 28, 1916.
- (9) The liability of employers to make payments to the fund pursuant to this section shall be calculated as if the Superannuation (Amendment) Act, 1974, had not been enacted. Sec. 17B. (Additional payment by employers in respect of increase in pension unit value.)

(b)



*Superannuation (Amendment).*

No. 44, 1974

Sec. 17c.

(Additional payment by employers in respect of persons becoming contributors after 1.7.63.)

Sec. 21A.

(Commuting of pension.)

(b) by inserting at the end of section 17c the following subsection :—

(6) The liability of employers to make payments to the fund pursuant to this section shall be calculated as if the Superannuation (Amendment) Act, 1974, had not been enacted.

(c) by inserting after section 21A (1) the following subsection :—

(1A) Notwithstanding anything in subsection (1), this section does not authorise the commutation of the amount of any increase of pension payable under the Superannuation (Amendment) Act, 1974.

## PART III.

## GOVERNMENT MEDICAL OFFICER.

Further amendment of Act No. 28, 1916.

10. The Principal Act is further amended—

Sec. 3.

(Interpretation.)

(a) (i) by omitting from section 3 the definition of "Chief Medical Officer of the Government";

(ii) by inserting in section 3 after the definition of "Employer" the following definition :—

"Government Medical Officer" means the person, or the nominee of the person, who for the time being holds an office prescribed by regulations made for the purposes of this definition with the concurrence of the Health Commission of New South Wales.

(b)

*Superannuation (Amendment).*

- (b) (i) by omitting from section 11A (1) the words "Chief Medical Officer of the Government" and by inserting instead the words "Government Medical Officer"; **No. 44, 1974**  
**Sec. 11A.**  
 (Medical examination.)
- (ii) by omitting from section 11A (2) the word "Chief" wherever occurring and by inserting instead the word "Government";
- (c) by omitting from section 11AA the word "Chief" wherever occurring and by inserting instead the word "Government"; **Sec. 11AA.**  
 (Powers of Board where true status of employee not determined.)
- (d) by omitting from section 11D (1) (a) the words "Chief Medical Officer of the Government" and by inserting instead the words "Government Medical Officer"; **Sec. 11D.**  
 (Contributors for limited benefits may be accepted as contributors.)
- (e) by omitting from section 22 (2) the words "Chief Medical Officer of the Government" and by inserting instead the words "Government Medical Officer"; **Sec. 22.**  
 (Breakdown retirement.)
- (f) (i) by omitting from section 29 (1B) (f) the words "Chief Medical Officer of the Government" and by inserting instead the words "Government Medical Officer"; **Sec. 29.**  
 (Retirement through invalidity not his own fault.)
- (ii) by omitting from section 29 (1J) the word "Chief" and by inserting instead the word "Government";

(g)

*Superannuation (Amendment).*

No. 44, 1974

Sec. 38C.  
(Break in  
service may  
be cured  
on certain  
conditions.)

- (g) (i) by omitting from section 38C (8) the word "Chief" wherever occurring and by inserting instead the word "Government";
- (ii) by omitting from section 38C (8) the words "of the Government".

Amendment  
of Act No.  
22, 1950.

**11.** The Electricity Commission Act, 1950, is amended—

Sec. 72C.  
(Procedure  
where  
prescribed  
person  
applies to  
become con-  
tributor to  
State Super-  
annuation  
Fund.)

- (a) by omitting from section 72C (1) the word "Chief" wherever occurring and by inserting instead the word "Government";
- (b) by omitting from section 72C (1) the words "of the Government".

Validation.

**12.** A requirement of the Principal Act, or of section 72C of the Electricity Commission Act, 1950, for an examination or report by the Chief Medical Officer of the Government shall be deemed to have been sufficiently complied with before the day appointed pursuant to section 2 (3) if the examination were made, or the report submitted, by a person who, at the time of the examination or report was—

- (a) the Director General of Public Health or his nominee;
- (b) the Medical Officer in Charge of the Medical Examination Centre of the Department of Public Health or his nominee; or
- (c) the Director of the Medical Examination and Immunisation Centre of the Health Commission of New South Wales or his nominee.

---

PART

*Superannuation (Amendment).*

## PART IV.

No. 44, 1974

ELECTION BY CERTAIN PERSONS TO BECOME  
CONTRIBUTORS.

13. The Principal Act is further amended by inserting in section 11 (1) after the word "Act" where firstly occurring the words ", or in Part IV of the Superannuation (Amendment) Act, 1974,".

Further amendment of Act No. 28, 1916.  
Sec. 11.  
(Commencement of contributions.)

14. (1) In this section—

"appointed day" means the day appointed pursuant to section 2 (4);

Certain persons may elect to become contributors.

"prescribed period" means the period of six months that next succeeds the appointed day;

"prescribed person" means—

(a) an employee within the meaning of the Principal Act who, before the appointed day and either before or after he became an employee, was granted exemption from contributing to the State Superannuation Fund; or

(b) such an employee who, being eligible to make the election provided by section 11B of the Principal Act, failed to make the election;

"prescribed superannuation scheme" means a retirement scheme, fund or arrangement to or in respect of which an employer within the meaning of the Principal Act or a public or local authority constituted by an Act makes, or is liable to make, a payment in respect of a person who is an employee within the meaning of the Principal Act.

(2)

*Superannuation (Amendment)*

No. 44, 1974

(2) Where a prescribed person—

- (a) applies in writing to the State Superannuation Board before the expiration of the prescribed period (or, where that Board allows an extended period, before the expiration of the extended period) for acceptance as a contributor to the State Superannuation Fund; and
- (b) as soon as practicable thereafter submits himself to medical examination by the Government Medical Officer as if he were an employee referred to in section 11A (1) of the Principal Act,

the Government Medical Officer shall report to the State Superannuation Board whether or not, in his opinion, that person is suffering from any physical or mental defect that is likely to affect his health or longevity or his capacity to continue as an employee.

(3) After receipt of a report referred to in subsection (2) the State Superannuation Board shall notify the prescribed person to whom the report relates—

- (a) that it will accept that person as a contributor to the State Superannuation Fund;
- (b) that it will accept that person as a contributor to the State Superannuation Fund for limited benefits;
- (c) that it has postponed, until a time that the Board having regard to the report specifies in the notification, consideration of the acceptance of that person as a contributor, or as a contributor for limited benefits, to the State Superannuation Fund; or
- (d) that it will not accept that person as a contributor to the State Superannuation Fund.

(4) Where—

- (a) the State Superannuation Board notifies a prescribed person as provided by subsection (3) (b) and that person fails within one month thereafter, or within

such

*Superannuation (Amendment).*

such further period as that Board may allow, to notify the State Superannuation Board in writing that he confirms his application to become a contributor to the State Superannuation Fund; or

- (b) the State Superannuation Board notifies a prescribed person as provided by subsection (3) (d),

that person ceases to be a prescribed person and ceases to be entitled to become a contributor to the State Superannuation Fund as provided by this section.

**15.** (1) Where a prescribed person—

- (a) is notified as provided by section 14 (3) (a) or 14 (3) (b), or is so notified after the expiration of the time specified in a notification under section 14 (3) (c)—

Certain  
prescribed  
persons  
to be  
contributors  
to State  
Superannua-  
tion Fund.

- (i) that he will be accepted as a contributor to the State Superannuation Fund; or
- (ii) that he will be accepted as a contributor to the State Superannuation Fund for limited benefits;
- (b) has, where he has been notified as provided by paragraph (a) (ii), notified the State Superannuation Board in writing within one month after being notified as so provided or within such further period as the Board may allow that he confirms his application to become a contributor to the State Superannuation Fund; and
- (c) withdraws from any prescribed superannuation scheme in which he is a participant and complies with the requirements of the State Superannuation Board with respect to the disposition of any benefit receivable by him upon withdrawing from any such scheme,

he

*Superannuation (Amendment).*

No. 44, 1974 he becomes a contributor within the meaning of the Principal Act on and from a date determined by the State Superannuation Board and, on and from that date, he ceases, in the case of a person withdrawing from a prescribed superannuation scheme, to be entitled to any rights, benefits or privileges that, but for this section, would have accrued to him under the prescribed superannuation scheme.

(2) A prescribed person may, for the purpose of complying with subsection (1) (c), withdraw from a prescribed superannuation scheme as if he had resigned from the service of his employer.

Rate of contribution under this Part.

**16.** Contributions to the State Superannuation Fund in respect of a person who becomes a contributor under section 15 shall be at a rate determined by the Board having regard to the age of that person at the time he becomes such a contributor.

---

PART V.

GENERAL.

Further amendment of Act No. 28, 1916.

**17.** The Principal Act is further amended by inserting after section 3 (7) the following subsection :—

Sec. 3.  
(Interpretation.)

(8) Where a contributor employed at a university referred to in this section ceases to be a contributor by reason only of the operation of this section following his appointment as a professor at that university he shall, for the purposes of sections 38, 38A and 38B, be deemed to have, immediately before that appointment, resigned from the service of that university.

**18.**

*Superannuation (Amendment).***18.** The Principal Act is further amended—

No. 44, 1974

Further  
amendment  
of Act No.  
28, 1916.

- (a) by omitting from section 5B (1) (d) the words  
“, which land the Board has prior to completion  
of the purchase or acquisition contracted to lease  
to the Crown or any other person”;
- (b) by omitting from section 5B (1) (e) the words  
“that the Board has, prior to the completion of the  
purchase or acquisition or the granting of the lease,  
contracted to lease to the Crown or any other  
person”;
- (c) by inserting in section 5B (1) (f) after the word  
“paragraph” the matter “(d) or”.

Sec. 5B.  
(Investment  
upon  
mortgages of  
land, etc.)

**19.** The Superannuation (Amendment) Act, 1971, is  
amended by inserting in section 2 (5) after the word “Board”  
wherever occurring the words “from time to time”.

Amendment  
of Act No.  
7, 1971.Sec. 2.  
(Increase in  
pensions.)

**20.** The University of Wollongong Act, 1972, is amended  
by omitting from the matter relating to the Superannuation  
Act, 1916, in the Schedule to that Act the matter “(5)”  
wherever occurring and by inserting instead the matter  
“(4A)”.

Amendment  
of Act No.  
72, 1972.  
Statute  
law  
revision.