

SUPERANNUATION (FURTHER AMENDMENT) ACT 1985 No. 155

New South Wales



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ELIZABETHÆ II REGINÆ

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Act No. 155, 1985

An Act to amend the Superannuation Act 1916 with respect to contributions and benefits under that Act and the constitution of the State Superannuation Board and in certain other respects. [Assented to, 28th November, 1985.]

Superannuation (Further Amendment) 1985

BE 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 "Superannuation (Further Amendment) Act 1985".

Commencement

2. (1) Except as provided by subsection (2), this Act shall be deemed to have commenced on 1 July 1985.

(2) Schedule 2, and section 5 in its application to that Schedule, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Superannuation Act 1916 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE CONSTITUTION OF THE BOARD

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO THE CLOSURE OF THE SCHEME

Amendment of Act No. 28, 1916

5. The Principal Act is amended in the manner set forth in Schedules 1—3.

SCHEDULE 1

(Sec. 5)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

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

Before the definition of "Employee", insert:

"Discharged" includes ceasing to be employed by an employer by reason of the expiration of the period, or successive periods, of employment.

(2) Section 9C (1), definition of "prescribed amount"—

(a) From paragraph (b) (iii), omit "and".

(b) At the end of paragraph (b) (iv), insert:
; and

(v) the total commutation amount determined in accordance with the regulations for pensions wholly commuted under section 21C (whether by commutation of one amount or otherwise) in respect of preceding financial years commencing on or after 1 July 1985,

(3) Section 9D—

Omit the section.

(4) Section 9E (6)—

Omit ", 9C or 9D", insert instead "or 9C".

(5) Section 10QA (1)—

Omit "On the annual review day of a contributor who has attained the maturity age", insert instead "On a contributor's annual review day".

(6) Section 10QB—

Omit the section, insert instead:

Limitation on increase in contributions by certain contributors

10QB. (1) This section applies to a contributor on an annual review day of the contributor if—

(a) the contributor's entry payment day was before 1 July 1985;

(b) the contributor has any abandoned units; and

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SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) the number of units of pension for which contributions are payable by the contributor on the annual review day is less than the number for which the annual cost is equal to an amount representing 6 per cent of the annual salary of the contributor at the rate actually being paid on the next preceding annual review day of the contributor.

(2) On an annual review day on which this section applies to a contributor, sections 10Q and 10QA shall be construed, in their application to the contributor on that day, as if references in those sections to 6 per cent were references to the minimum prescribed percentage referred to in subsection (3).

(3) For the purpose of subsection (2), the minimum prescribed percentage in relation to a contributor on an annual review day is—

(a) the sum of—

(i) 1 per cent; and

(ii) the percentage, on the next preceding annual review day, of the annual salary of the contributor at the rate actually being paid at that preceding annual review day that represents the amount that is equal to the annual cost to the contributor for the units of pension for which contributions were payable by the contributor on the annual adjustment day of the contributor next following that preceding annual review day; or

(b) 6 per cent,

whichever is the lesser.

(4) In this section—

(a) a reference to a preceding annual review day of a contributor is, if there is no such day, a reference to the contributor's entry review day; and

*Superannuation (Further Amendment) 1985*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) a reference to the annual adjustment day of the contributor next following that annual review day is a reference to the contributor's entry payment day.
- (7) (a) Section 10WC (6) (b) (ii)—
Omit "the last annual review day of the contributor before the change occurred", insert instead "that annual adjustment day".
- (b) Section 10WC (10)—
Omit "the salary actually being paid to a contributor on the day the employment status of the contributor changes", insert instead "the salary certified by the employer of a contributor to be the salary which would be paid to the contributor if employed full-time in the position in which the contributor is employed on a change in employment status".
- (8) Section 12CA (1)—
After "shall", insert ", until the contributor's next annual adjustment day or exit day (whichever first occurs),".
- (9) Section 17CA (4)—
After "a pension payable", insert "to a widower".
- (10) (a) Section 17CB (1)—
Omit "or, as the case may be, in respect of each amount of pension commuted".
- (b) Section 17CB (1)—
Omit " + (b x CF) (1 - pp)".
- (c) Section 17CB (1)—
Omit the description of "a" in the formula, insert instead:
a is the amount which would have been payable by the employer, immediately before the commutation of the whole of the pension, in respect of one fortnightly payment of the pension (including any amount payable in respect of any part of the pension previously commuted);

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SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) Section 17CB (1)—

Omit the descriptions of “b” and “pp” in the formula.

(e) Section 17CB (3)—

After section 17CB (2), insert:

(3) The rate of interest payable by an employer in respect of money owing to the Fund under this section (including money owing to the Fund because of a direction by the Board under this section for a deferral of payment or for payment by instalments) shall be determined by the Minister under section 91A (2) with the concurrence of the Treasurer instead of on the recommendation of the Board.

(11) Section 20 (3)–(5)—

After section 20 (2), insert:

(3) The Board may enter into an arrangement with a contributor, or may require a contributor to enter into an arrangement with the Board, for the payment of arrears of contributions to the Fund that have been incurred, or are expected to be incurred, by the contributor.

(4) Where a contributor—

(a) fails to comply with a requirement under subsection (3) to enter into an arrangement referred to in that subsection;
or

(b) having entered into such an arrangement, fails to comply with its terms,

the Board may direct that any period in respect of which any such arrears are outstanding is not a period of service by the contributor, and the direction shall have effect according to its tenor.

Superannuation (Further Amendment) 1985

SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(5) Arrears in employers' contributions (including arrears arising as a consequence of contributors commencing to contribute to the Fund after the date on which they were required to contribute) shall be payable, and shall be deemed always to have been payable, at such time or times as the Board may determine.

(12) Section 21C (19)—

After section 21C (18), insert:

(19) Nothing in this Act shall be construed as requiring the Board to make inquiries as to whether any pension is payable under this Act as a consequence of the death of a person who has commuted the whole of a pension in accordance with this section.

(13) Section 21D (4)—

Omit the subsection, insert instead:

(4) Where—

- (a) a pension became payable to a person before the person attained the age of 60 years;
- (b) the person has attained the age of 59 years and 6 months; and
- (c) the person, although entitled to do so, has not previously made an election under section 21C (being an election which has taken effect) to commute the whole or any part of that pension,

the person may make an election under that section in relation to that pension before the expiration of the period of 6 months after the day on which the person attains or attained the age of 60 years.

(14) Section 21E—

After section 21D, insert:

*Superannuation (Further Amendment) 1985*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
*continued***Interest on commuted amounts**

21E. Interest at the rate determined by the Minister on the recommendation of the Board is payable from the Fund on any lump sum payable after 1 July 1985 under section 21A, 21B or 21C (less any deduction for money due to the Fund), being interest calculated from the date that the lump sum becomes payable from the Fund to the date it is authorised to be paid.

(15) (a) Section 23A (1)—

Omit “counted as service”, insert instead “treated as service as an employee”.

(b) Section 23A (3)—

Omit the subsection, insert instead:

(3) A reference in subsection (2) to a period of service as an employee with an employer includes a reference to a period treated under subsection (1) or (2) as a period of service as an employee.

(16) Section 46B (4)—

After “death of a person”, insert “or, if any such pension is commuted, withhold the payment of any part of the amount commuted”.

(17) Section 52A (4) (b) (ii)—

Omit “the last annual review day of the person before the person’s exit day”, insert instead “that annual adjustment day”.

(18) (a) Section 75A (2)—

Omit “or suffered”, insert instead “or omitted to be done”.

(b) Section 75A (2A)—

After section 75A (2), insert:

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SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2A) No decision made, or act done or omitted to be done, by the Board, a member of the Board, a member of the staff of the Board or any other person acting under the direction of the Board, in good faith for the purposes of executing this or any other Act subjects a member of the Board, a member of that staff or a person so acting personally to any action, liability, claim or demand.

(19) Section 81A (2)—

At the end of section 81A, insert:

(2) An agent may be employed by the Board to receive or pay money notwithstanding that the agent, or any subagent employed by the agent, is not a bank.

(20) (a) Section 81B—

After “director” wherever occurring, insert “or other officer”.

(b) Section 81B (3)—

After section 81B (2), insert:

(3) A reference in this section to an officer of a company includes a reference to any person concerned in the management of the company.

(21) (a) Section 88A (1) (a)—

Omit “to an amount not exceeding \$2,000”.

(b) Section 88A (1)—

Omit “such money”, insert instead “so much of that money as does not exceed \$2,000 (or, where some other amount is prescribed for the purposes of this subsection, that other amount)”.

(22) (a) Section 91 (5)—

Omit “is made under section 21C by a contributor or pensioner who retired under section 21 (1B), being”, insert instead “payable under section 28A or 28AA is made under section 21C by”.

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SCHEDULE 1—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 91 (6)—

Omit the subsection, insert instead:

(6) Where—

- (a) an election to commute pension payable under section 29 is made under section 21A, 21B or 21C by a pensioner; and
- (b) any employment which, on the pensioner's ceasing to be a contributor, the pensioner was entitled to count as service for the purpose of section 21 was, in total, for less than a period of 10 years,

the date or dates determined by the Board under subsection (1)

(c) as the date or dates as from which the election is to take effect shall not be earlier than—

- (c) the expiration of 6 months after the day the election was made; or
- (d) the expiration of such time after the pensioner ceased to be a contributor as is equivalent to the balance of the period referred to in paragraph (b),

whichever first occurs.

(23) (a) Schedule XX, heading—

After "1985", insert "AND THE SUPERANNUATION (FURTHER AMENDMENT) ACT 1985".

(b) Schedule XX, clause 4 (1A)—

After clause 4 (1), insert:

(1A) The widow of a contributor or pensioner, being a widow who remarried before 27 November 1969 and to whom a pension in accordance with section 30 or 31 was not payable on 30 June 1985 because of that remarriage, shall be paid pension in accordance with section 30 or 31, as the case may be, as from 1 July 1985.

*Superannuation (Further Amendment) 1985*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) Schedule XX, clause 4 (2)—

After “subclause (1)”, insert “or (1A)”.

- (d) Schedule XX, clause 5 (1)—

After “under this Act”, insert “(other than under section 28A)”.

- (e) Schedule XX, clause 5A—

After clause 5, insert:

Date of operation of section 10P (2A) and (3)

5A. A reference in section 10P (2A) and (3) to an entry review day includes a reference to the entry review day of a contributor occurring before 1 July 1985 if the entry payment day of the contributor occurs after that date.

- (f) Schedule XX, clause 6 (1)—

After “1985”, insert “or the Superannuation (Further Amendment) Act 1985”.

SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION OF THE BOARD

- (1) (a) Section 70 (2)—

Omit “5 members”, insert instead “6 members”.

- (b) Section 70 (2) (a)—

Omit “3 members”, insert instead “4 members”.

- (c) Section 70 (2) (a) (ii)—

Omit “and”.

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SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CONSTITUTION OF THE BOARD—*continued*

(d) Section 70 (2) (a) (iv)—

After section 70 (2) (a) (iii), insert:

- (iv) one, being a member of the Public Authorities Superannuation Board, shall, in and by the instrument of appointment, be appointed as the part-time appointed member of the Board; and

(2) Section 75 (1) (d1)—

After section 75 (1) (d), insert:

- (d1) being the part-time appointed member of the Board, ceases to be a member of the Public Authorities Superannuation Board;

(3) Section 75A (4)—

After section 75A (3), insert:

- (4) A decision made, or any act or thing done or omitted to be done, by the Board or by a member of the Board who is also a member of the Public Authorities Superannuation Board in the exercise or performance of a power, authority, duty or function conferred or imposed on the Board or that member by or under this Act shall not be called in question on the ground of an alleged conflict of interest by reason that such a member is a member of both the Board and the Public Authorities Superannuation Board or on the ground that knowledge gained by such a member in one of those capacities is, or may be, relevant to the exercise or performance of a power, authority, duty or function in the other of those capacities.

(4) Section 78—

Omit "Three", insert instead "Four".

SCHEDULE 3

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CLOSURE OF THE SCHEME

(1) Section 1A—

Omit the section, insert instead:

Closure of Scheme to persons employed on or after 1.7.1985

1A. (1) Notwithstanding any other provision of this Act (except subsection (3)), a person is not required or entitled to commence contributing to the Fund on or after 1 July 1985.

(2) Subsection (1) applies, subject to subsection (3), to a person who was previously a contributor to the Fund, whether before or after 1 July 1985.

(3) Subsection (1) does not apply to—

- (a) a person who was, immediately before 1 July 1985, an employee but was not contributing to the Fund, being a person to whom Schedule XXI applies and who elects to become a contributor to the Fund in accordance with that Schedule;
 - (b) a person who makes an election under section 38C and complies with that section;
 - (c) a person who is re-employed by an employer under section 51 (1) after the restoration of the person's health; or
 - (d) a person of a class prescribed by the regulations.
- (4) Schedule XXI has effect.

(5) Regulations may be made for or with respect to elections under Schedule XXI or to any other matter necessary or convenient to be prescribed for the purposes of this section.

(2) Section 38C (2)—

Omit "is required" wherever occurring, insert instead "would (but for section 1A) be required".

(3) Section 86 (1A)—

Omit the subsection.

*Superannuation (Further Amendment) 1985*SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CLOSURE OF THE SCHEME—*continued*

(4) Schedule XXI—

After Schedule XX, insert:

SCHEDULE XXI

(Sec. 1A)

PROVISIONS RELATING TO THE CLOSURE OF THE SCHEME

Existing employees who may elect to contribute to Fund

1. (1) Except as provided by subclause (2), this Schedule applies to a person—

- (a) who was, immediately before 1 July 1985, an employee but was not contributing to the Fund; and
- (b) who would, but for section 1A, be required or entitled, subject to the provisions of this Act, to contribute to the Fund.

(2) This Schedule does not apply to—

- (a) a person exempted from contributing to the Fund under section 10T;
- (b) a person who was, under section 10D, treated by the Board as if he or she were not an employee;
- (c) a person to whom clause 4 (1) of Schedule XVII applies; or
- (d) a person of a class prescribed by the regulations.

Election to contribute to Fund

2. (1) A person to whom this Schedule applies may elect to contribute to the Fund if—

- (a) before 1 July 1985, the employer of the person has notified the Board that the person is an employee; or
- (b) on or before 31 December 1985—
 - (i) the employer of the person notifies the Board that the person is an employee; or
 - (ii) the person lodges at the office of the Board a certificate signed by or on behalf of his or her employer stating that the person is an employee.

*Superannuation (Further Amendment) 1985*SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CLOSURE OF THE SCHEME—*continued*

(2) Where, within the period of 28 days after a person to whom this Schedule applies is given notice by the Board that the employer of the person has notified the Board that the person is an employee, the person does not make an election referred to in subclause (1) or apply to the Board to be excluded from the provisions of this Schedule, the person shall be deemed to have directed that the notification given by the employer be regarded as an election referred to in subclause (1).

(3) Where, immediately before 1 July 1985, a person was an employee but was, under section 10C, being treated by the Board as if he or she were not an employee, the person may elect to contribute to the Fund only if—

- (a) the person has not attained the maturity age before that day or, if the person has attained that age, has not served for at least 10 years with any one or more employers;
- (b) on or before 30 September 1985 the person lodges a request with his or her employer that arrangements be made for the person to submit himself or herself to a prescribed medical examination (as defined in section 10A); and
- (c) the person submits himself or herself to the examination arranged pursuant to that request and, in the opinion of the Board, passes that examination.

(4) A person who would, but for section 1A, be required or entitled, subject to the provisions of this Act, to contribute to the Fund and who makes an election in accordance with this Schedule shall, upon the election taking effect, be so required or entitled to contribute to the Fund.

(5) Subclause (4) ceases to apply in respect of a person to whom this Schedule applies if, pursuant to section 10C, the Board treats the person as if the person had not been an employee and subclause (4) shall not thereafter apply in respect of that person.

(6) Anything done, before the date of assent to the Superannuation (Further Amendment) Act 1985, pursuant to clause 21 of the Superannuation Regulations shall be deemed to have been done pursuant to this Schedule.

Transfer of contributors (formerly medically unfit) from other public superannuation schemes

3. (1) Where a contributor to the State Public Service Superannuation Fund or the Public Authorities Superannuation Fund becomes a contributor to the Fund in accordance with an election made under this Schedule, the contributor shall, for the purposes of the State Public Service Superannuation Act 1985 or the Public Authorities Superannuation Act 1985, as the case requires, be deemed to have resigned from employment with an employer.

Superannuation (Further Amendment) 1985

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
CLOSURE OF THE SCHEME—*continued*

(2) Where a contributor to the Public Authorities Superannuation Fund (being a person entitled to make an election under this Schedule) does not become a contributor to the Fund in accordance with such an election, section 12 (7) of the State Public Service Superannuation Act 1985 applies to the contributor.
