

# **SUPERANNUATION (AMENDMENT) ACT 1987 No. 214**

**NEW SOUTH WALES**



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**SUPERANNUATION (AMENDMENT) ACT 1987 No. 214**

NEW SOUTH WALES



**Act No. 214, 1987**

An Act to amend the Superannuation Act 1916 as a consequence of the enactment of the Superannuation Administration Act 1987 and the State Authorities Superannuation Act 1987; and for other purposes. [Assented to 9 December 1987]

*Superannuation (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Superannuation (Amendment) Act 1987.

**Commencement**

2. (1) Except as provided by this section, this Act shall commence on 1 April 1988.

(2) Schedule 1 (12), and section 3 in its application to that provision, shall commence on the date of assent to this Act.

**Amendment of Act No. 28, 1916**

3. The Superannuation Act 1916 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 3 (Interpretation)—**

Section 3 (1), definitions of “Board”, “Salary”—

Omit the definitions, insert instead in alphabetical order:

“Board” means the State Authorities Superannuation Board constituted by the Superannuation Administration Act 1987.

“Salary”, in relation to a contributor, means salary of the contributor, determined in accordance with section 3A and expressed as an annual rate.

**(2) Section 3A—**

After section 3, insert:

**Salary**

3A. (1) For the purposes of this Act, “salary”, in relation to a contributor, means the remuneration, salary or wages payable in money to the contributor in the contributor’s capacity as an employee, as reported to the Board from time to time by the contributor’s employer, including—

- (a) a loading in respect of any shift allowance, as determined in accordance with the regulations; and
- (b) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment,

but does not include the excluded amounts or allowances referred to in subsection (2).

- (2) The excluded amounts or allowances are:

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- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime;
- (b) except to the extent determined in accordance with the regulations, as referred to in subsection (1) (a)—an amount paid as shift allowance;
- (c) except to the extent that this section otherwise provides—a relieving allowance;
- (d) an expense allowance or an allowance for travelling, subsistence or other expenses;
- (e) an equipment allowance; and
- (f) an amount paid for rent or as a residence, housing or quarters allowance.

(3) If a contributor's employer, or a person authorised to do so on behalf of the employer, certifies in writing to the Board that a relieving allowance to be, or being, paid to the contributor in the contributor's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from—

- (a) the date on which the certificate is lodged with the Board; or
- (b) the date from which the allowance becomes payable,

whichever is the later, salary for the purposes of this Act.

(4) If a relieving allowance has been paid to a contributor in the contributor's capacity as an employee for a continuous period of 1 year that ends after the commencement of this section and, during that period, the allowance has not been treated as part of the contributor's salary in accordance with subsection (3), the allowance shall, as from the expiration of that period of 1 year, be treated as part of the contributor's salary while its payment to the contributor continues.

(5) In this section, "shift allowance" means an allowance paid to an employee in respect of shift work performed by the employee, and includes amounts paid as penalty rates.

(6) Any allowances or other kinds of remuneration treated as salary immediately before the commencement of this section in relation to a contributor shall continue to be treated as salary for the purposes of this Act, but only in relation to that contributor.

- (3) Section 4A (**Relationship between powers of Board and powers of trustees**)—

Omit the section.

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- (4) Section 6A (**Investment of Fund**)—  
Omit the section.
- (5) Section 8 (**Financial year of the Board**)—  
Omit the section.
- (6) Section 9 (**Borrowing**)—  
Omit the section.
- (7) Section 12D (**Relieving allowances**)—  
Omit the section.
- (8) Section 12E (**Declarations for the purposes of definition of “Salary”**)—  
Omit the section.
- (9) Section 22 (**Breakdown retirement**)—  
Omit section 22 (2), insert instead:  
(2) The question whether the contributor is an invalid, or is physically or mentally incapable of performing his or her duties, shall be determined by the Board, having regard to medical advice furnished by the Government Medical Officer or any one or more medical practitioners nominated by the Board.
- (10) Section 28A (**Pension on retirement before 60**)—  
Omit section 28A (3), insert instead:  
(3) Except as provided by subsection (3A), a pension payable under this section shall commence and be payable as from the day following the contributor’s exit day.
- (11) Section 28AA (**Pension on retirement before age 60—component pension**)—  
Omit section 28AA (7), insert instead:  
(7) Except as provided by subsection (7A), a pension payable under this section shall commence and be payable as from the day following the contributor’s exit day.
- (12) Section 61U—  
After section 61T, insert:  
**Interest**  
61U. (1) The Board has power, and shall be deemed always to have had power, when paying a benefit under this Act, to pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.

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SCHEDULE 1—AMENDMENTS—*continued*

- (2) This section does not apply in relation to a benefit on which interest is payable under section 21E.
- (13) Part VI (**The State Superannuation Board**) (sections 69A–84)—  
Omit the Part (except section 84A).
- (14) Section 84A (**Superannuation provisions of Public Service Acts vested in Board**)—  
Move the section from Part VI to Part VII.
- (15) Section 85 (**Settlement of disputes**)—  
Omit the section.
- (16) Section 85A (**Accounts and records of Board**)—  
Omit the section.
- (17) Section 88—  
Omit the section, insert instead:  
**Assignment etc. of benefit**  
88. (1) A purported assignment of, or purported charge over, a benefit under this Act is void.  
(2) Where, 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 contributor is not an asset in the contributor'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) shall be deemed to have been made to the person entitled to the benefit.
- (18) Section 88A—  
Omit the section, insert instead:  
**Payment without grant of probate etc.**  
88A. (1) Where a person dies and—  
(a) a benefit is or becomes payable from the Fund in relation to the deceased;  
(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

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- (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 prescribed for the purposes of this section, that other amount.

(2) Where the Board makes a decision under subsection (1), 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;
- (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) Where a contributor or former contributor 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.

(19) Schedule XXI (**Provisions Relating to the Closure of the Scheme**)—

After clause 3, insert:

**Special provisions**

4. (1) The Board may, in its absolute discretion, and subject to such conditions as the Board may impose, allow a person to whom this Schedule applies to elect to contribute to the Fund, or may treat an election invalidly made by such a person under clause 2 as having been validly made.

(2) The Board may not exercise its discretion under this clause unless it is satisfied that—

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SCHEDULE 1—AMENDMENTS—*continued*

- (a) the person's failure to make a valid election in accordance with clause 2 was due (wholly or partly) to an act or omission on the part of the employer concerned or the Board;
- (b) the person has continued to be employed by one or more employers since 1 July 1985 or the only breaks in employment since that date have been caused by invalidity or physical or mental incapacity or are such that the person (had he or she been a contributor) could have made a valid election under section 38c in relation to them;
- (c) the person is employed by an employer when the Board exercises the discretion;
- (d) the person is not medically unfit to become a contributor to the Fund, based on failure to pass since 1 July 1985 a medical examination referred to in Part II A; and
- (e) the person will (if he or she remains in service) have served for at least 10 years with one or more employers before reaching the age of 65 years.