

**STATE PUBLIC SERVICE SUPERANNUATION  
(AMENDMENT) ACT 1987 No. 219**

NEW SOUTH WALES



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**STATE PUBLIC SERVICE SUPERANNUATION (AMENDMENT)  
ACT 1987 No. 219**

NEW SOUTH WALES



**Act No. 219, 1987**

An Act to amend the State Public Service Superannuation Act 1985 to close to new entrants the scheme established by that Act and to make other amendments 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]

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

**Short title**

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

**Commencement**

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

(2) Schedule 1 (4), (6) (except paragraph (c)) and (7), and section 3 in its application to those provisions, shall commence on the date of assent to this Act.

(3) Schedule 1 (21) (b), and section 3 in its application to that provision, shall be deemed to have commenced on 30 April 1985.

**Amendment of Act No. 45, 1985**

3. The State Public Service Superannuation Act 1985 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3A—

After section 3, insert:

**Closure of scheme to new entrants**

3A. Notwithstanding any other provision of this Act (including section 54), an employee's election to contribute to the Fund is not operative unless the election is or was lodged—

- (a) in the case of a person who became an employee before 1 February 1988—before 1 April 1988; or
- (b) in the case of a person who became an employee between 1 February 1988 and 31 March 1988 (both dates inclusive)—not later than 2 months after the person became an employee.

(2) Section 5 (**Interpretation**)—

(a) Section 5 (1)—

Omit the definitions of "administration levy" and "Board", insert instead in alphabetical order:

"administration levy" means the amount of a contributor's share of management costs calculated in accordance with the Superannuation Administration Act 1987;

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SCHEDULE 1—AMENDMENTS—*continued*

“Board” means the State Authorities Superannuation Board constituted under the Superannuation Administration Act 1987;

- (b) Section 5 (1), definitions of “Management Account” and “State Superannuation Board”—

Omit the definitions.

- (3) Section 6—

Omit the section, insert instead:

**Salary**

6. (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:

- (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—

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SCHEDULE 1—AMENDMENTS—*continued*

(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) If a contributor is on secondment to another employer, the salary of the contributor for the purposes of this Act is the salary paid or payable to the contributor by the other employer.

(6) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (7) applies—

(a) to a contributor specified in the order who is on secondment but not to another employer; and

(b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.

(7) During the period in which this subsection is declared pursuant to subsection (6) to apply to a contributor on secondment, the contributor's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.

(8) 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.

(9) 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.

(4) Section 7 (**Establishment of the Fund**)—

After section 7 (2) (b) (i), insert:

(ia) the amount of any loss made from realisation of any investment of the Fund;

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SCHEDULE 1—AMENDMENTS—*continued*

- (5) Section 8 (**Investment of the Fund**)—  
Omit the section.
- (6) Section 9 (**Certain accounts to be kept**)—
- (a) Section 9 (1) (a) (i)—  
At the end of the subparagraph, insert “and”.
  - (b) Section 9 (1) (a) (iii)—  
Omit the subparagraph.
  - (c) Section 9 (1)—  
Omit the subsection.
  - (d) Section 9 (2) (a) (i)—  
At the end of the subparagraph, insert “and”.
  - (e) Section 9 (2) (a) (iii)—  
Omit the subparagraph.
  - (f) Section 9 (3) (a)—  
Omit the paragraph, insert instead:
    - (a) to which shall be credited the amounts debited pursuant to subsection (2) (b) (i); and
  - (g) Section 9 (4) (a) (i)—  
At the end of the subparagraph, insert “and”.
  - (h) Section 9 (4) (a) (iii)—  
Omit the subparagraph.
- (7) Section 10—  
Omit the section, insert instead:  
**Adjustment of accounts and reserves for interest etc.**  
10. (1) The Board shall, 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 contributor’s account before paying out the balance at credit in the account, fix a rate for that purpose only.
- (8) Section 11 (**Actuarial investigation of the Fund**)—  
Section 11 (1)—  
Omit “30th June, 1988,” insert instead “31 March 1988”.
- (9) Section 13 (**Supplementary benefit**)—
- (a) Section 13 (11)—

SCHEDULE 1—AMENDMENTS—*continued*

Omit “shall”, insert instead “may”.

## (b) Section 13 (12) (a)—

After “applicant”, insert “(if a contributor)”.

## (c) Section 13 (12) (b)—

After “applicant”, insert “(if a contributor)”.

## (d) Section 13 (12) (c)—

After “applicant”, insert “(whether a contributor or a former contributor)”.

## (10) Section 22A—

After section 22, insert:

**Transfers of credits between employers of transferred contributors**

## 22A. (1) In this section—

“transferred contributor” means a contributor who ceases to be employed by an employer and becomes employed by another employer and a benefit is not paid to the contributor;

“transfer value”, in relation to a transferred contributor, means an amount equal to the benefit that would have been payable if the transferred contributor, on becoming employed by the new employer, had elected to make provision for a preserved benefit under section 34 (1) and the benefit provided by section 34 (5) (b) had thereupon become payable.

(2) The Board shall debit the former employer’s account with the transfer value referable to a transferred contributor and shall credit the new employer’s account with that value.

(3) For the purposes of the definition of “transfer value” in subsection (1), the transferred contributor shall be deemed to have elected to make provision for a preserved benefit under section 34 (1), even though less than 3 years have elapsed since the transferred contributor’s entry date.

(11) Section 34 (**Preserved benefit**)—

After section 34 (7), insert:

(8) Schedule 7 has effect with respect to contributors transferred as a result of Government initiatives.

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SCHEDULE 1—AMENDMENTS—*continued*

(12) Section 35A—

After section 35, insert:

**Interest**

35A. 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.

(13) Part VI (The State Public Service Superannuation Board) (sections 36–50)—

Omit the Part.

(14) Section 54 (Making of elections and applications)—

After section 54 (2), insert:

(3) Where 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 shall be deemed to have taken effect on such an earlier day determined by the Board; and

(b) the election or application takes effect accordingly.

(15) Section 55 (Assignment etc. of benefit)—

After section 55 (3), insert:

(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.

(16) Section 56 (Accounts and records)—

Omit the section.

(17) Section 57—

Omit the section, insert instead:

**Payment without grant of probate etc.**

57. (1) Where a person dies and—

(a) a benefit is or becomes payable from the Fund in relation to the deceased;



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SCHEDULE 1—AMENDMENTS—*continued*

- (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 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.

(18) Section 59 (**Appeals**)—

Omit the section.

(19) Schedule 1 (**Provisions Relating to Elections and Elected Members**)—

Omit the Schedule.

(20) Schedule 2 (**Provisions Relating to the Procedure of the Board**)—

Omit the Schedule.

*State Public Service Superannuation (Amendment) 1987***SCHEDULE 1—AMENDMENTS—*continued*****(21) Schedule 6 (Transitional Provisions)—****(a) Clauses 1 and 2—**

Omit the clauses.

**(b) Clause 3 (4)—**

Omit “later”, insert instead “earlier”.

**(22) Schedule 7—**

After Schedule 6, insert:

**SCHEDULE 7—PRESERVED BENEFIT—CONTRIBUTORS  
TRANSFERRED AS A RESULT OF GOVERNMENT INITIATIVES**

(Sec. 34 (8))

**Transferred contributors to whom this Schedule applies****1. (1) This Schedule applies to a contributor—**

- (a)** who is employed in an area of an employer’s activities that is, or is to be, transferred to another employer who is not, in respect of the contributor, an employer under this Act;
- (b)** who elected or is required to transfer to the employment of that other employer; and
- (c)** whose transfer of employment is declared by the regulations to be a transfer of employment to which this Schedule applies.

**(2)** The regulations may, for the purposes of subclause (1) (c), declare that the transfer of employment of any specified contributors or former contributors is a transfer of employment to which this Schedule applies if the Minister has certified that the transfer is a consequence of a Government initiative.

**Transferred contributor entitled to preserved benefit despite having less than 3 years’ service**

**2.** A transferred contributor to whom this Schedule applies is entitled to make provision for a preserved benefit even though less than 3 years have elapsed since the transferred contributor’s entry date.

**Transferred contributor entitled to immediate payment of preserved benefit (including employer-financed component)**

**3. (1)** A transferred contributor to whom this Schedule applies and who elects to make provision for a preserved benefit is entitled to be paid the benefit provided by section 34 (5) on ceasing to be a contributor, despite anything to the contrary in section 34.

**(2) A preserved benefit is payable under this clause if, and only if—**

- (a)** the Board is satisfied that the benefit will be applied to the credit of the transferred contributor in another superannuation scheme; and
- (b)** any requirements made by the regulations with respect to the payment of the benefit are complied with.

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SCHEDULE 1—AMENDMENTS—*continued*

**Regulations**

4. The Governor may make regulations for the purposes of this Schedule and, in particular, for or with respect to—

- (a) the application of a preserved benefit payable under clause 3; and
- (b) the entitlements and obligations of a transferred contributor under any superannuation scheme to which any such preserved benefit is credited.