

**SUPERANNUATION (RETRENCHMENT) AMENDMENT  
ACT 1987 No. 40**

NEW SOUTH WALES



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**SUPERANNUATION (RETRENCHMENT) AMENDMENT ACT 1987**  
**No. 40**

NEW SOUTH WALES



**Act No. 40, 1987**

An Act to amend the Superannuation Act 1916 for the purpose of making further provision with respect to retrenched contributors and the payment of benefits to those contributors and for related purposes. [Assented to 21 May 1987]

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See also Public Authorities Superannuation (Retrenchment) Amendment Act 1987; State Public Service Superannuation (Retrenchment) Amendment Act 1987.

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**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 (Retrenchment) Amendment Act 1987".

**Commencement**

2. This Act shall be deemed to have commenced on 13 February 1987.

**Principal Act**

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

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

4. The Principal Act is amended in the manner set forth in Schedule 1.

**Saving**

5. (1) The provisions of the Principal Act, as in force immediately before the commencement of this Act, shall continue to apply to a former contributor who was retrenched, resigned or was dismissed or discharged from the service of an employer before 13 February 1987 as if this Act had not been enacted.

(2) In this section, the expressions "contributor", "employer", "discharged", "dismissed", "resigned", "retrenched" and "service" have the same meanings as in the Principal Act, as in force immediately before the commencement of this Act.

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## SCHEDULE 1

(Sec. 4)

## AMENDMENTS TO THE SUPERANNUATION ACT 1916

(1) Section 3 (**Interpretation**)—

## (a) Section 3 (1), definitions of “Discharged”, “Dismissed”—

Omit the definition of “Discharged”, insert instead:

“Discharged” has the meaning given to that expression by section 23 (2).

“Dismissed” has the meaning given to that expression by section 24.

## (b) Section 3 (1), definitions of “Resigned”, “Retrenched”—

After the definition of “Relieving allowance”, insert:

“Resigned” has the meaning given to that expression by section 25.

“Retrenched” has the meaning given to that expression by section 23 (1).

(2) Section 21 (**Age of retirement**)—

## Section 21 (3)–(5)—

After section 21 (2), insert:

## (3) A person who, before becoming a contributor, was—

(a) employed on terms requiring the contributor to give the whole of his or her time to that employment; and

(b) paid at an hourly, daily, weekly or fortnightly rate, or at piecework rates.

is entitled to have that employment treated as service as an employee for the purposes of this section.

## (4) Whenever—

(a) a period of employment that a contributor has had with an employing authority; and

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- (b) a later period of service that the contributor has had as an employee with an employer are continuous.

the Board may, if satisfied that, having regard to the nature of the work performed by the contributor during that period of employment, it is proper to do so, treat, for the purposes of this section, that period of employment as a period of service as an employee with that employer.

(5) A reference in subsection (4) to a period of service as an employee with an employer includes a reference to a period treated under subsection (3) or (4) as a period of service as an employee.

(3) Section 23—

Omit the section, insert instead:

**Retrenchment and discharge**

23. (1) For the purposes of this Act, a contributor shall be taken to be retrenched when the contributor's service with an employer is terminated and where the service is expressed by the employer to be—

- (a) compulsorily terminated by the employer on the ground that—
- (i) the employer no longer requires the contributor's services and, on termination of the contributor's service, does not propose to fill the contributor's position;
  - (ii) the work which the contributor was engaged to perform has been completed; or
  - (iii) the amount of work that the employer requires to be performed has diminished and, because of that fact, it has become necessary to reduce the number of employees employed by the employer; or
- (b) terminated as a result of the acceptance by the contributor of an offer by the employer of terms of retrenchment made on a ground specified in paragraph (a).

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(2) For the purposes of this Act, a contributor shall be taken to be discharged on the cessation of the contributor's employment with an employer expressed by the employer to be on the ground that the period, or successive periods, for which the contributor was employed has or have ended.

(4) Section 23A (**Computation of service for purposes of secs. 21 and 23**)—

Omit the section.

## (5) Sections 24, 25—

Omit the sections, insert instead:

**Dismissal**

24. For the purposes of this Act, a contributor shall be taken to be dismissed when the employer compulsorily terminates (however expressed) the contributor's service otherwise than—

- (a) by compulsorily retiring the contributor on a pension payable under this Act; or
- (b) by retrenching or discharging the contributor.

**Resignation**

25. For the purposes of this Act, a contributor shall be taken to have resigned from the service of an employer when the contributor terminates (however expressed) that service without—

- (a) being entitled to retire from that service on a pension payable under this Act; or
- (b) being retrenched.

(6) Section 28A (**Pension on retirement before 60**)—

## (a) Section 28A (3)—

Omit "Pension", insert instead "Except as provided by subsection (3A), a pension".

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## (b) Section 28A (3A)—

After section 28A (3), insert:

(3A) A pension payable under this section to a contributor who is retrenched shall be payable as from and including the day after the date on which the contributor actually leaves the service of the employer, whether or not at the contributor's exit day any period of untaken leave was due to the contributor.

## (c) Section 28A (4)—

After "subsection (3)", insert "or (3A)".

(7) Section 28AA (**Pension on retirement before age 60—component pension**)—

## (a) Section 28AA (6)—

Omit "had been on leave of absence pursuant to section 48", insert instead "is treated by section 48 as being on leave of absence without pay".

## (b) Section 28AA (7)—

Omit "Pension", insert instead "Except as provided by subsection (7A), a pension".

## (c) Section 28AA (7A)—

After section 28AA (7), insert:

(7A) A pension payable under this section to a contributor who is retrenched shall be payable as from and including the day after the date on which the contributor actually leaves the service of the employer, whether or not at the contributor's exit day any period of untaken leave was due to the contributor.

## (d) Section 28AA (8) (b)—

After "subsection (7)", insert "or (7A)".

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## (8) Section 37 (Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service)—

## (a) Section 37 (1AA)—

Before section 37 (1), insert:

(1AA) This section does not apply to an employee who is retrenched before having completed 10 years' service with any one or more employers.

## (b) Section 37 (1)—

Omit "he shall, if he elects under section 38B to take the benefit of this section, be entitled to choose at the time of making that election", insert instead "the contributor is, subject to section 38B, entitled to".

## (c) Section 37 (2)—

Omit "he shall, if he elects under section 38B to take the benefit of this section, be entitled to choose at the time of making that election", insert instead "the contributor is, subject to section 38B, entitled to".

## (d) Section 37 (3)—

Omit the subsection.

## (e) Section 37 (6)—

Omit " , as in force at any time."

## (f) Section 37 (11)–(13)—

After section 37 (10), insert:

(11) A person who, before becoming a contributor, was—

- (a) employed on terms requiring the contributor to give the whole of his or her time to that employment; and



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- (b) was paid at an hourly, daily, weekly or fortnightly rate, or at piecework rates,

is entitled to have that employment treated as service as an employee for the purposes of this section.

- (12) Whenever—

- (a) a period of employment that a contributor has had with an employing authority; and  
 (b) a later period of service that the contributor has had as an employee with an employer are continuous,

the Board may, if satisfied that, having regard to the nature of the work performed by the contributor during that period of employment, it is proper to do so, treat, for the purposes of this section, that period of employment as a period of service as an employee with that employer.

(13) A reference in subsection (12) to a period of service as an employee with an employer includes a reference to a period treated under subsection (11) or (12) as a period of service as an employee.

- (9) Section 37A—

After section 37, insert:

**Retrenchment benefits payable to contributors having not less than 3 years' contributory service**

37A. (1) This section applies to a contributor who is retrenched from the service of an employer on or after 13 February 1987 and who, at the time of retrenchment, has completed 3 years' continuous contributory service.

(2) For the purpose of subsection (1), a contributor who is retrenched shall be taken to have completed 3 years' continuous contributory service when—

- (a) the contributor has, for a continuous period of 3 years or more immediately preceding the retrenchment, been employed in the service of an employer or employers; and

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(b) during the continuous period of 3 years immediately preceding the retrenchment, the contributor has been a contributor under this Act or has been a contributor under this Act and a contributor to the Public Authorities Superannuation Fund.

(3) For the purposes of subsection (1), the period of continuous contributory service by a contributor at the contributor's exit day is—

- (a) subject to paragraph (b)—the period that commenced when the contributor last became a contributor to the Fund and ended on that exit day; or
- (b) if immediately before becoming a contributor to the Fund the contributor was a contributor to the Public Authorities Superannuation Fund—the period that commenced when the contributor last became a contributor to the Public Authorities Superannuation Fund and ended on that exit day.

but excluding in either case any part of that period during which the contributor is treated by section 48 as being on leave of absence without pay.

(4) A contributor to whom this section applies is, subject to section 38B, entitled to either—

- (a) a lump sum benefit calculated in accordance with the formula set out in subsection (5); or
- (b) such pension as is determined by the Board to be the equivalent of the contributor's rights in the Fund.

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(5) The formula referred to in subsection (4) (a) is as follows:

$$B = C + E$$

where—

B represents the benefit to be determined;

C is equal to—

(a)  $P_1 \times (0.92^{M-A}) \times F$ ; or

(b) the contributions paid by the contributor,

whichever is the greater; and

E is equal to  $P_2 \times (0.98^{M-A}) \times F$ .

(6) For the purposes of subsection (5)—

A represents the contributor's age in years and any fractional part of a year (that part to be calculated on a daily basis) on the contributor's exit day;

F is equal to—

(a) if "M" is 60 or more—285; and

(b) if "M" is less than 60— $320 - (M - 55) \times 7$ ;

M represents the greater of the following:

(a) the contributor's maturity age;

(b) the contributor's age in years and any fractional part of a year (that part to be calculated on a daily basis) at the date on which the contributor last became a member of the Fund + 10;

$P_1$  is the employee-contributed pension component calculated in accordance with subsection (7) (a); and

$P_2$  is the employer-financed pension component calculated in accordance with subsection (7) (b).

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(7) In subsection (6)—

$$(a) P_1 = 2.20 \times \text{EPU}$$

where EPU is the sum of—

$$(i) \text{UHn} - \frac{\text{Cn}}{\text{Rn}} \text{ (except where } \frac{\text{Cn}}{\text{Rn}} \text{ exceeds UHn);}$$

$$(ii) \frac{\text{TCB}}{\text{RB}}; \text{ and}$$

(iii) UC; and

$$(b) P_2 = 3.30 \times \text{UE} \times \frac{\text{S}}{\text{S} + \text{T}}$$

where—

UE is the number of units of pension that, pursuant to section 12 (1), is appropriate to the salary payable to the contributor on the contributor's exit day plus, in a case to which section 10w applies, the number of any excess units of pension referred to in section 10w (1) and in respect of which the Board considers, in accordance with section 10w (5), that the retention of entitlement to benefits under this Act is warranted;

S is the number of years (including any fractional part of a year calculated on a daily basis) of continuous contributory service by the contributor with any one or more employers;

T is the number of years, if any, (including any fractional part of a year calculated on a daily basis) by which the contributor's exit day precedes—

(a) the date on which the contributor attains the maturity age; or

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- (b) where any employment which, on the contributor's exit day, the contributor is entitled to count as service for the purposes of section 21 is, in total, for less than a period of 10 years—the expiration of the balance of that period of 10 years,

whichever is the later.

- (8) For the purposes of subsection (7) (a)—

UHn is the number of units of pension for which contributions were payable by the contributor on the contributor's exit day in accordance with the tables of contributions fixed by or under this Act, but excluding—

- (a) any such units of pension which are excess units of pension referred to in section 10w (1) and in respect of which no person has any rights in the Fund; and
- (b) any such units of pension, being reserve units, for which contributions were being made under section 15A;

Cn is the amount of contributions due for the last contribution period for which contributions were payable by the contributor before the contributor's exit day, in respect of that number of units of pension;

Rn is the relevant amount under subsection (9) in relation to the contributor for an additional unit of pension on the contributor's exit day;

TCB is the total amount paid in respect of instalments payable by the contributor on or before the contributor's exit day for units of pension for which the contributor contributed in accordance with Division 6 of Part III (but deducting from that amount any part allocated under this Act to the purchase of fully paid up units);

RB is the amount specified in section 10AG (1) as the cost of a unit of pension in relation to the contributor; and

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UC is the number of units (if any) purchased by the contributor and credited to the contributor as fully paid up units under section 20C or otherwise.

(9) For the purposes of subsection (8), the relevant amount in relation to a contributor for an additional unit of pension on the contributor's exit day is—

- (a) where the contributor has attained the prescribed age on or before that day, the amount which, if the contributor were required under Division 5 of Part III to commence to contribute for an additional unit of pension on that day, would be the amount payable in accordance with the tables of contributions fixed under section 10AD for that unit for a contribution period; or
- (b) where the contributor has not attained the prescribed age on or before that day, the amount equal to the sum of—
  - (i) the amount payable by the contributor for any additional unit of pension for which the contributor had been required to commence contributing on and from the contributor's last annual adjustment day for a contribution period or, as the case may be, the amount that would have been so payable if the contributor had been so required; and
  - (ii) for each day of the period commencing on the day following that annual adjustment day and ending on the contributor's exit day, the amount equal to 1/364th part of the difference between the amount referred to in subparagraph (i) and the amount that that amount would have been if, on the contributor's last annual review day before the contributor's exit day, the contributor had been 1 year older than the age actually attained.

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(10) For the purposes of subsection (7) (b), the period of continuous contributory service by a contributor on the contributor's exit day is the period that commenced when the contributor last became a contributor and ended on that day, but excluding any part of that period during which the contributor is treated by section 48 as being on leave of absence without pay.

(11) If a former employee who—

(a) has been retrenched; and

(b) has received a retrenchment benefit under this section,

subsequently enters the service of the same or another employer, the former employee is not entitled to claim any further benefit in respect of previous service with an employer unless the former employee has complied with section 38c.

(12) If an employee who was a contributor at 30 June 1963 and has since been retrenched is entitled to a lump sum payment under subsection (4) (a), the employer from whose service the employee has been retrenched shall pay to the Fund on requisition by the Board a lump sum calculated in accordance with the following formula:

$$S = E - \left[ G + \frac{10H}{11} \right]$$

where—

S represents the lump sum to be determined;

E has the same meaning as that symbol has in subsection (5);

G represents the amount of contributions paid by the employee under this Act before 13 January 1952; and

H represents the amount of contributions paid by the employee under this Act on or after 13 January 1952.

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(13) If an employee who became a contributor on or after 1 July 1963 and has since been retrenched is entitled to a lump sum payment under subsection (4) (a), the employer from whose service the employee has been retrenched shall pay to the Fund on requisition by the Board a lump sum calculated in accordance with the following formula:

$$S = E - \frac{5J}{8}$$

where—

S represents the lump sum to be determined;

E has the same meaning as that symbol has in subsection (5);

J represents the amount of contributions paid by the employee under this Act.

(10) Section 38—

Omit the section, insert instead:

**Refund of contributions**

38. (1) If a contributor—

(a) is retrenched from the service of an employer; or

(b) resigns or is dismissed or discharged from the service of an employer,

the contributor is, subject to section 38B, entitled to be paid a lump sum (without interest) equal to the contributions (other than contributions refundable under section 15A (6) (b)) paid by the contributor under this Act, irrespective of the cause of the retrenchment, resignation, dismissal or discharge.

(2) Whenever a lump sum is paid under subsection (1), there shall, subject to subsection (3), be deducted from that sum any amount received by the contributor as a pension before the contributor's retrenchment, resignation, dismissal or discharge.



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(3) A deduction under subsection (2) must not reduce the amount paid to a contributor under this section to an amount below the contributions paid by the contributor since the contributor last received any amount as pension.

(4) If a former employee who—

(a) has been retrenched, dismissed or discharged, or has resigned; and

(b) has received a benefit under this section or section 38A,

subsequently enters the service of the same or another employer, the former employee is not entitled to claim any further benefit in respect of previous service unless the former employee has complied with section 38C.

(11) Section 38A (**Withdrawal benefit**)—

(a) Section 38A (2)—

Omit “Subject to this section, where a contributor is retrenched or resigns or is dismissed or discharged from the service of an employer and elects under section 38B to take the benefit of this section, there shall be paid to him from the Fund—”, insert instead:

If a contributor is retrenched, resigns or is dismissed or discharged from the service of an employer, the contributor is, subject to this section and section 38B, entitled to be paid from the Fund—.

(b) Section 38A (2) (b) (i)—

Omit “that would have been payable had he elected to take the benefit of”, insert instead “to which the contributor would be entitled under”.

(c) Section 38A (2A)—

Omit “elects under section 38B to take the benefit of this section and the amount payable to that contributor under subsection (2)”, insert instead “takes a benefit provided by subsection (2) and the amount of that benefit”.

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## (d) Section 38A (3)—

Omit “paragraph (c) of subsection (2)” where firstly occurring, insert instead “subsection (2) (c)”.

## (e) Section 38A (3) (a)—

Omit “subparagraph (ii) of paragraph (c) of subsection (2)”, insert instead “subsection (2) (c) (ii)”.

## (12) Section 38B—

Omit the section, insert instead:

**Contributor who is retrenched, resigns or is dismissed or discharged to be entitled to the greatest available benefit**

38B. (1) A contributor who is retrenched from the service of an employer and who, at the date when the retrenchment takes effect, is not entitled to elect to retire on a pension under section 27, 28, 28A or 28AA may, at any time before the end of 3 months after that date, elect between taking—

- (a) a lump sum benefit payable under a provision of this Part to a contributor who is retrenched;
- (b) if such a provision also confers an entitlement to a pension—a pension; or
- (c) subject to subsection (7)—the benefit of Division 3A.

(2) A contributor who resigns or is dismissed or discharged from the service of an employer may, at any time before the end of 3 months after the date when the resignation, dismissal or discharge takes effect, elect between taking—

- (a) a lump sum benefit payable under a provision of this Part to a contributor who has resigned or is dismissed or discharged; or
- (b) subject to subsection (7)—the benefit of Division 3A.

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SCHEDULE 1—*continued*AMENDMENTS TO THE SUPERANNUATION ACT 1916—*continued*

(3) If a contributor is retrenched, resigns or is dismissed or discharged from the service of an employer, the employer must take all practicable steps to obtain from the contributor an election under subsection (1) or (2) and, after obtaining such an election, must forward it immediately to the Board.

(4) If a contributor who is entitled to make an election under subsection (1) or (2) to take a particular kind of benefit does not make such an election before the end of the prescribed period, the contributor shall be taken to have elected to take the kind of benefit that the Board decides to be the most appropriate in the circumstances of the case.

(5) If a contributor elects under this section to take a particular kind of benefit under subsection (1) and would, but for subsection (6), be entitled to a benefit of that kind under 2 or more provisions of this Part, the Board must calculate which of the benefits under those provisions would be the greater or greatest.

(6) A contributor referred to in subsection (5) is entitled to receive only the greater or greatest of the benefits calculated under that subsection.

(7) A contributor who is retrenched, resigns or is dismissed or discharged from the service of an employer is not entitled to elect under subsection (1) or (2) to take the benefit of Division 3A unless the contributor has completed 3 years' continuous contributory service.

(8) For the purposes of subsection (7), a contributor to whom that subsection applies shall be taken to have completed 3 years' contributory service when—

- (a) the contributor has, for a continuous period of 3 years or more immediately preceding the retrenchment, been employed in the service of one or more employers; and
- (b) during the period of 3 years immediately preceding the retrenchment, the contributor has been a contributor under this Act or has been a contributor under this Act and a contributor to the Public Authorities Superannuation Fund.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE SUPERANNUATION ACT 1916—*continued*

(9) For the purposes of subsection (7), the period of continuous contributory service by a contributor at the contributor's exit day is—

- (a) subject to paragraph (b)—the period that commenced when the contributor last became a contributor to the Fund and ended on that exit day; or
- (b) if immediately before becoming a contributor to the Fund the contributor was a contributor to the Public Authorities Superannuation Fund—the period that commenced when the contributor last became a contributor to the Public Authorities Superannuation Fund and ended on that exit day,

but excluding in either case any part of that period during which the contributor is treated by section 48 as being on leave of absence without pay.

(13) Section 38C (**Break in service may be cured on certain conditions**)—

(a) Section 38C (2)—

After “subsection (8),”, insert “elect to”.

(b) Section 38C (3)—

After “section 37,”, insert “37A,”.

(14) Section 47C (**Allocation of reduced value units**)—

(a) Section 47C (1A)—

Omit the subsection, insert instead:

(1A) This section does not apply to—

- (a) a person who is entitled to a pension under section 28AA or to a pension under Division 3A; or
- (b) a person who is retrenched from the service of an employer and who is to receive or is receiving a pension under section 37A.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE SUPERANNUATION ACT 1916—*continued*

(b) Section 47C (1B)—

Omit the subsection.

(15) Section 49 (**Continuity of service**)—

Omit “section 28B or 38A”, insert instead “sections 28AA, 28B, 37A, 38A and 52A”.

(16) Section 52A (**Calculation of preserved pension components**)—

Section 52A (5)—

Omit “had been on leave of absence pursuant to section 48”, insert instead “is treated by section 48 as being on leave of absence without pay”.

(17) Section 52I (**Cash termination benefit**)—

Section 52I (2) (a), (b)—

Omit the paragraphs, insert instead:

- (a) if the person was retrenched from the service of an employer—the lump sum payment to which the person would have been entitled under section 38B in consequence of the retrenchment if the person had elected under that section to take a lump sum benefit; or
- (b) if the person resigned or was dismissed or discharged from the service of an employer—the lump sum payment to which the person would have been entitled under section 38A in consequence of the resignation, dismissal or discharge,

(18) Section 52J (**Liability etc. of employers in respect of persons preserving benefit**)—

Section 52J (1) (a)—

Omit the paragraph, insert instead:

- (a) the amount that the person would have been entitled to be paid under section 38A; and

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SCHEDULE 1—*continued*

AMENDMENTS TO THE SUPERANNUATION ACT 1916—*continued*

(19) Section 91 (**Time for making elections, applications etc.**)—

(a) Section 91 (5)—

After “take effect shall”, insert “, subject to subsection (5A),”.

(b) Section 91 (5A)—

After section 91 (5), insert:

(5A) Subsection (5) does not apply to an election to commute a pension that is made under section 21C by a contributor or pensioner referred to in subsection (5) who retires under section 21 (1B) as a result of being retrenched from the service of an employer.

(20) Short headings—

Omit the italicised short headings before sections 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32A, 33A, 37, 39, 43, 53, 90, 92 and 94.