

**STATE AUTHORITIES NON-CONTRIBUTORY
SUPERANNUATION (AMENDMENT) ACT 1988 No. 135**

NEW SOUTH WALES



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**STATE AUTHORITIES NON-CONTRIBUTORY SUPERANNUATION
(AMENDMENT) ACT 1988 No. 135**

NEW SOUTH WALES



Act No. 135, 1988

An Act to amend the State Authorities Non-contributory Superannuation Act 1987 for the purpose of enabling benefits under the Act to be reduced in order to offset certain tax liabilities and in order to comply with certain Commonwealth standards with respect to occupational superannuation schemes; and to provide for related matters. [Assented to 30 December 1988]

*State Authorities Non-contributory Superannuation (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the State Authorities Non-contributory Superannuation (Amendment) Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of State Authorities Non-contributory Superannuation Act 1987 No. 212

3. The State Authorities Non-contributory Superannuation Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (Definitions)—

Section 3 (1)—

After the definition of “Board”, insert:

“Commonwealth taxation law” means a law of the Commonwealth that provides for the levying and collection of a tax;

(2) Section 9 (Funds etc.)—**(a) Section 9 (3) (b)—**

Omit the paragraph, insert instead:

(b) such amounts as are necessary to satisfy any liability of the fund with respect to tax payable under any Commonwealth taxation law; and

(b) Section 9 (4)—

After section 9 (3), insert:

(4) If a loss is incurred in realising any investment forming part of the assets of a fund maintained under subsection (1), the fund is accordingly reduced by the amount of that loss.

(3) Section 22 (Basic benefit)—

Section 22 (4)—

After section 22 (3), insert:

SCHEDULE 1—AMENDMENTS—*continued*

(4) If the Board makes a determination under section 26A or 26B in relation to a basic benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(4) Section 26A—

After section 26, insert:

Power of the Board to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1)

26A. (1) Whenever—

- (a) a right to a benefit accrues to or in respect of an employee or former employee; and
 - (b) the Board has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to a fund maintained under section 9 (1); and
 - (c) a portion of that tax is referable to that benefit,
- the Board must, subject to subsection (2)—
- (d) calculate the amount necessary to offset the Board's liability to pay tax so far as it is referable to that benefit; and
 - (e) accordingly make a determination reducing the benefit by the amount so calculated.

(2) Subsection (1) does not authorise the reduction of a benefit, unless—

- (a) the benefit is of a kind prescribed by the regulations for the purpose of this section; and
- (b) the method of calculating the reduction is so prescribed; and
- (c) the reduction is calculated according to that method.

(5) Section 26B—

At the end of Part 4, insert:

Power of the Board to reduce benefits to comply with certain Commonwealth standards relating to occupational superannuation

26B. (1) If—

- (a) the payment of a benefit to or in respect of an employee would cause the Board or a fund maintained under section 9 (1) to be in breach of a prescribed Commonwealth occupational superannuation standard because—
 - (i) the amount of the benefit; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (ii) the amount of the benefit, together with the amounts of any other benefits that have already been paid, or that are or may become payable, to or in respect of the employee from that fund or under one or more other superannuation schemes, would, if paid, exceed the relevant level specified in that standard; and
- (b) such a breach would cause the Board or that fund to be liable to a penalty under a Commonwealth taxation law, the Board may make a determination reducing the amount of the benefit by such amount (but no more) as will ensure that neither the Board nor that fund is in breach of that standard.
- (2) In subsection (1)—
 - (a) a reference to a Commonwealth occupational superannuation standard is a reference to a standard prescribed in respect of occupational superannuation schemes by a law of the Commonwealth; and
 - (b) a reference to a benefit is a reference to the benefit after reducing the benefit in accordance with section 26A where appropriate; and
 - (c) a reference to a penalty under a Commonwealth taxation law includes a reference to (but is not limited to)—
 - (i) a penalty rate of taxation under that law; and
 - (ii) the loss of a concessional rate of taxation under that law; and
 - (d) a reference to a superannuation scheme is a reference to a scheme, fund or arrangement (whether or not established by an Act) under or from which any superannuation or retirement benefits are provided.

[Minister's second reading speech made in—
Legislative Assembly on 29 November 1988
Legislative Council on 13 December 1988]
