

**STATE AUTHORITIES SUPERANNUATION  
(AMENDMENT) ACT 1988 No. 136**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

- 1 Short title
- 2 Commencement
- 3 Amendment of State Authorities Superannuation Act 1987 No. 211

SCHEDULE 1—AMENDMENTS

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**STATE AUTHORITIES SUPERANNUATION (AMENDMENT) ACT  
1988 No. 136**

NEW SOUTH WALES



**Act No. 136, 1988**

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

*State Authorities Superannuation (Amendment) 1988*

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

**Short title**

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

**Commencement**

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

**Amendment of State Authorities Superannuation Act 1987 No. 211**

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

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**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 11 (Establishment of the Fund)—**

(a) Section 11 (4) (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;

(b) Section 11 (5)—

After section 11 (4), insert:

(5) If a loss is incurred in realising any investment forming part of the assets of the Fund, the Fund is accordingly reduced by the amount of that loss.

(3) **Section 37 (Benefit at or after early retirement or on death at or after early retirement age)—**

(a) Section 37 (1)—

Omit “on a contributor retiring from employment with an employer or, on or after attaining the early retirement age, a contributor dies during employment with an employer”, insert instead “when a contributor retires from employment with an employer on or after reaching the early retirement age or dies during employment with an employer on or after reaching that age”.

*State Authorities Superannuation (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

(b) Section 37 (3)—

After section 37 (2), insert:

(3) If the Board makes a determination under section 45A or 45B in relation to a 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 38 (**Benefit on death before early retirement age**)—

Section 38 (3)—

After section 38 (2), insert:

(3) If the Board makes a determination under section 45A or 45B in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(5) Section 39 (**Benefit on total and permanent invalidity before early retirement age**)—

(a) Section 39 (1)—

Omit "retires from employment with", insert instead "ceases to be employed by".

(b) Section 39 (1) (a)—

Omit "retirement of the contributor", insert instead "contributor's cessation of employment".

(c) Section 39 (4)—

After section 39 (3), insert:

(4) If the Board makes a determination under section 45A or 45B in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(6) Section 40 (**Benefit on partial and permanent invalidity before early retirement age**)—

(a) Section 40 (1)—

Omit "retires from employment with", insert instead "ceases to be employed by".

(b) Section 40 (1) (a)—

Omit "retirement of the contributor", insert instead "contributor's cessation of employment".

(c) Section 40 (3)—

Omit "subsection (1) (a) if", insert instead "subsection (1) if it".

*State Authorities Superannuation (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

(d) Section 40 (4)—

After section 40 (3), insert:

(4) If the Board makes a determination under section 45A or 45B in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(7) Section 41 (**Benefit on resignation, dismissal or discharge before early retirement age**)—

Section 41 (2A)—

After section 41 (2), insert:

(2A) If the Board makes a determination under section 45A or 45B in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(8) Section 42 (**Benefit on retrenchment before early retirement age**)—

Section 42 (2A)—

After section 42 (2), insert:

(2A) If the Board makes a determination under section 45A or 45B in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(9) Section 43 (**Preserved benefit**)—

(a) Section 43 (1)—

Omit the subsection, insert instead:

(1) If—

(a) a contributor becomes entitled to be paid a benefit under section 41; and

(b) the benefit is not less than the prescribed amount, the contributor may elect to make provision for a benefit provided by this section.

(b) Section 43 (7A)—

After section 43 (7), insert:

(7A) If the Board makes a determination under section 45A or 45B in relation to a benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

*State Authorities Superannuation (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

(c) Section 43 (9)—

Omit “transferred as a result of Government initiatives”, insert instead “who are transferred as a result of a Government initiative or who, while remaining with their existing employer, elect or are required to become contributors to another superannuation scheme”.

(10) Section 45A—

After section 45, insert:

**Power of the Board to reduce benefits to offset certain tax liabilities of the Fund**

45A. (1) Whenever—

- (a) a right to a benefit under this Act accrues to or in respect of a contributor or former contributor; and
- (b) the Board has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to the Fund; and
- (c) a portion of that tax is referable to the employer-financed portion of 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 the employer-financed portion of that benefit; and
- (e) accordingly make a determination reducing the employer-financed portion of that 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.

(11) Section 45B—

After section 45A, insert:

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

45B. (1) If—

- (a) the payment of a benefit to or in respect of a contributor would cause the Board or the Fund to be in breach of a prescribed Commonwealth occupational superannuation standard because—
  - (i) the amount of the benefit; or

*State Authorities Superannuation (Amendment) 1988*

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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 contributor from the 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 the 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 the 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 45A 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.

- (12) Schedule 5 (**Preserved benefit—contributors transferred as a result of Government initiatives**)—

- (a) Schedule 5, heading—

Omit the heading, insert instead:

**SCHEDULE 5—SPECIAL PROVISIONS FOR PRESERVING  
THE BENEFITS OF CERTAIN CONTRIBUTORS**

*State Authorities Superannuation (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

(b) Clause 1 (1), (2)—

Omit the subclauses, insert instead:

(1) This Schedule applies—

(a) to contributors—

- (i) who are 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; and
- (ii) who have elected or are required to transfer to the employment of that other employer; and
- (iii) whose transfer of employment is declared by the regulations to be a transfer of employment to which this Schedule applies; and

(b) to contributors—

- (i) who, while remaining with their existing employer, have elected or are required to become contributors to another superannuation scheme; and
- (ii) whose transfer to that scheme is declared by the regulations to be a transfer of superannuation coverage to which this Schedule applies.

(2) The regulations may—

- (a) for the purposes of subclause (1) (a) (iii), declare that the transfer of employment of any specified contributors or former contributors is a transfer of employment to which this Schedule applies; or
- (b) for the purposes of subclause (1) (b) (ii), declare that the transfer of any specified contributors or former contributors to another superannuation scheme is a transfer of superannuation coverage to which this Schedule applies,

but only if the Minister has certified that the transfer of employment or, as the case may be, the transfer of superannuation coverage is a consequence of a Government initiative.

(c) Clause 2—

Omit the clause, insert instead:

**Contributor entitled to preserved benefit despite having contributed less than the prescribed amount**

2. A contributor to whom this Schedule applies is entitled to make provision for a preserved benefit even though he or she is not entitled to a benefit of or exceeding the amount prescribed for the purposes of section 43 (1) (b).



*State Authorities Superannuation (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

- (d) Clause 3—  
Omit “transferred” wherever occurring.
  - (e) Clause 4 (1) (b)—  
Omit “transferred contributor”, insert instead “contributor to whom this Schedule applies”.
  - (f) Clause 4 (2)—  
Omit “transferred”.
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[*Minister's second reading speech made in—  
Legislative Assembly on 29 November 1988  
Legislative Council on 13 December 1988*]

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