

**MISCELLANEOUS ACTS (PUBLIC SECTOR EXECUTIVES
SUPERANNUATION) AMENDMENT ACT 1989 No. 107**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendments

SCHEDULE 1 - AMENDMENTS

**MISCELLANEOUS ACTS (PUBLIC SECTOR EXECUTIVES
SUPERANNUATION) AMENDMENT ACT 1989 No. 107**

NEW SOUTH WALES



Act No. 107, 1989

An Act to amend certain Acts as a consequence of the enactment of the Public Sector Executives Superannuation Act 1989, the Public Sector Management (Executives) Amendment Act 1989 and the Statutory and Other Offices Remuneration (Executives) Amendment Act 1989. [Assented to 15 August 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Miscellaneous Acts (Public Sector Executives Superannuation) Amendment Act 1989.

Commencement

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

Amendments

3. Each Act specified in Schedule 1 is amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENTS

(Sec. 3.)

**Local Government and Other Authorities (Superannuation) Act 1927
No. 35**

(1) Section 1 (**Short title**):

Omit section 1 (4).

(2) Section 3 (**Definitions**):

(a) After the definition of "Provident Fund", insert:

"Public Sector Executives Superannuation Scheme" means
the superannuation scheme established under the
Public Sector Executives Superannuation Act 1989;

(b) Definition of "Salary":

After "section 3A", insert "or 3B".

(3) Section 3A (**Salary**):

Section 3A (1):

After "servant", insert "(other than a servant who is eligible
to become or who is a member of the Public Sector
Executives Superannuation Scheme)".

SCHEDULE 1 - AMENDMENTS - *continued*

(4) After section 3A, insert:

Salary of executive officers

3B. For the purposes of this Act:

"salary", in relation to a servant of an employer who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme, means:

(a) in the case of a chief executive officer or senior executive officer (within the meaning of the Public Sector Management Act 1988):

(i) the monetary remuneration payable to the officer in accordance with a contract of employment under that Act or, if there is no such contract, the monetary remuneration payable in accordance with section 42L (8) of that Act; and

(ii) the cost of employment benefits provided under any such contract, being employment benefits prescribed as salary under the Public Sector Executives Superannuation Act 1989 for the purposes of the definition of the salary of such an officer,

but does not include any performance-related incentive payments made to the officer; and

(b) in the case of an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975:

(i) the remuneration payable to the office holder as reduced (under that section) by the cost of employment benefits provided to the office holder; and

(ii) the cost of employment benefits provided under that section, being employment

SCHEDULE 1 - AMENDMENTS - *continued*

benefits prescribed as salary under the Public Sector Executives Superannuation Act 1989 for the purposes of the definition of the salary of such an office holder; and

- (c) in the case of any other servant - the amount determined in accordance with the regulations.

- (5) After Part 3E, insert:

PART 3F - PROVISIONS RELATING TO CERTAIN SENIOR EXECUTIVES

Person eligible for membership or a member of the Public Sector Executives Superannuation Scheme

15CP. (1) When a person who is insured under Part 2, a contributor to the Provident Fund or a contributor to the Benefits Fund becomes eligible to become a member of the Public Sector Executives Superannuation Scheme, the person must:

- (a) elect to retain any such insurance or continue to be such a contributor; or
- (b) elect to pay any amounts to which the person is entitled under this Act (as determined in accordance with the regulations) at the time of that election to the person's credit in the Public Sector Executives Superannuation Fund established under the Public Sector Executives Superannuation Act 1989.

(2) If a person fails to make an election under subsection (1) within 2 months of being required to make that election, the person is, for the purposes of this section, to be taken to have made the election referred to in subsection (1) (a).

(3) Nothing in this Act prevents a person who elects to retain insurance under Part 2 or to continue to contribute to the Provident Fund or the Benefits Fund from also contributing to the Public Sector Executives

SCHEDULE 1 - AMENDMENTS - *continued*

Superannuation Scheme or another superannuation scheme and such a person is entitled to benefits in accordance with this Act despite being a member of that Scheme or another scheme.

(4) If a person elects to retain insurance under Part 2 or to continue to contribute to the Provident Fund or the Benefits Fund, the person may, at any time thereafter while being eligible to become or being a member of the Public Sector Executives Superannuation Scheme, make the election referred to in subsection (1) (b).

(5) If a person makes an election under subsection (1) (b) or (4):

- (a) the person is entitled to be paid a benefit despite anything to the contrary in this Act; and
- (b) the Board must, as soon as practicable thereafter, pay to the Public Sector Executives Superannuation Board established under the Public Sector Executives Superannuation Act 1989 an amount equal to the total amount to which the person is entitled under this Act (as determined in accordance with the regulations) at the time of making the election; and
- (c) the Public Sector Executives Superannuation Board must credit the amount to the account established or to be established for the person in the Public Sector Executives Superannuation Fund under that Act.

(6) The Governor may make regulations for the purpose of determining the amount to which a person is entitled at the time of making an election under subsection (1) (b) or (4).

SCHEDULE 1 - AMENDMENTS - *continued*

Public Authorities (Financial Arrangements) Act 1987 No. 33:

Schedule 1 (Authorities):

Insert in alphabetical order:

Public Sector Executives Superannuation Board of New South Wales.

Public Finance and Audit Act 1983 No. 152:

Schedule 2 (Statutory Bodies):

Insert in alphabetical order:

Public Sector Executives Superannuation Board of New South Wales.

State Authorities Non-contributory Superannuation Act 1987 No. 212:

(1) Section 3 (Definitions):

- (a) Section 3 (1), after the definition of "part-time employee", insert:

"Public Sector Executives Superannuation Fund" means the fund of that name established under the Public Sector Executives Superannuation Act 1989;

"Public Sector Executives Superannuation Scheme" means the superannuation scheme established under the Public Sector Executives Superannuation Act 1989;

- (b) Section 3 (1), definition of "salary":

After "section 4", insert "or 4A".

(2) Section 4 (Salary):

Section 4 (1):

After "employee" where firstly occurring, insert "(other than an employee who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".

SCHEDULE 1 - AMENDMENTS - *continued*

(3) After section 4, insert:

Salary of executive officers

4A (1) For the purposes of this Act:

"salary", in relation to an employee who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme, means:

- (a) in the case of a chief executive officer or senior executive officer (within the meaning of the Public Sector Management Act 1988):
 - (i) the monetary remuneration payable to the officer in accordance with a contract of employment under that Act or, if there is no such contract, the monetary remuneration payable in accordance with section 42L (8) of that Act; and
 - (ii) the cost of employment benefits provided under any such contract, being employment benefits prescribed as salary under the Public Sector Executives Superannuation Act 1989 for the purposes of the definition of the salary of such an officer,
but does not include any performance-related incentive payments made to the officer; and
- (b) in the case of an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975:
 - (i) the remuneration payable to the office holder as reduced (under that section) by the cost of employment benefits provided to the office holder; and
 - (ii) the cost of employment benefits provided under that section, being employment benefits prescribed as salary under the Public Sector Executives Superannuation

SCHEDULE 1 - AMENDMENTS - *continued*

Act 1989 for the purposes of the definition of the salary of such an office holder; and

(c) in the case of any other employee - the amount determined in accordance with the regulations.

(2) Section 4 (5), (6) and (7) apply to an employee referred to in subsection (1) (a) or (c) and so apply as if references in those subsections:

(a) to an employee were references to such an employee; and

(b) to salary were references to salary within the meaning of subsection (1) (a) or (c).

(4) Section 24 (**Benefit to be preserved**):

(a) Omit section 24 (1), insert instead:

(1) The basic benefit must be preserved by the Board when:

(a) an employee ceases to be an employee of an employer; or

(b) an employee who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme ceases to be a contributor to any other superannuation scheme established by or under an Act,

otherwise than in the circumstances mentioned in section 23 (1).

(b) Section 24 (3):

Omit "If", insert instead "Except as provided by subsection (4), if".

(c) After section 24 (3), insert:

(4) The basic benefit provided by this section to an employee:

(a) who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme

SCHEDULE 1 - AMENDMENTS - *continued*

and who has ceased to be a contributor to any other superannuation scheme established by or under an Act; and

- (b) who has not reached the age of 55 years or died or retired from employment with an employer in the circumstances mentioned in section 23 (1) (c) or (d),

is payable only in the manner set out in subsection (3) (d) or to the Public Sector Executives Superannuation Fund.

(5) Schedule 2 (**Excluded persons**):

- (a) Paragraph (a):

After "employee", insert "(other than an employee who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".

- (b) At the end of paragraph (c), insert:

; or

- (d) if the person is eligible to become or is a member of the Public Sector Executives Superannuation Scheme and is not or ceases to be (otherwise than in the circumstances mentioned in section 23 (1)) a contributor to any other superannuation scheme established by or under an Act.

State Authorities Superannuation Act 1987 No. 211:

(1) Section 3 (**Definitions**):

- (a) Section 3 (1), after the definition of "prospective benefit points", insert:

"Public Sector Executives Superannuation Scheme" means the superannuation scheme established under the Public Sector Executives Superannuation Act 1989;

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Section 3 (1), definition of "salary":

After "section 4", insert "or 4A".

- (2) Section 4 (**Salary**):

Section 4 (1):

After "contributor" where firstly occurring, insert "(other than a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".

- (3) After section 4, insert:

Salary of executive officers

4A (1) For the purposes of this Act:

"salary", in relation to a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme, means:

- (a) in the case of a chief executive officer or senior executive officer (within the meaning of the Public Sector Management Act 1988):

- (i) the monetary remuneration payable to the officer in accordance with a contract of employment under that Act or, if there is no such contract, the monetary remuneration payable in accordance with section 42L (8) of that Act; and
- (ii) the cost of employment benefits provided under any such contract, being employment benefits prescribed as salary under the Public Sector Executives Superannuation Act 1989 for the purposes of the definition of the salary of such an officer,

but does not include any performance-related incentive payments made to the officer; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) in the case of an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975:
 - (i) the remuneration payable to the office holder as reduced (under that section) by the cost of employment benefits provided to the office holder; and
 - (ii) the cost of employment benefits provided under that section, being employment benefits prescribed as salary under the Public Sector Executives Superannuation Act 1989 for the purposes of the definition of the salary of such an officer holder; and
 - (c) in the case of any other contributor - the amount determined in accordance with the regulations.
- (2) Section 4 (5), (6) and (7) apply to a contributor referred to in subsection (1) (a) or (c) and so apply as if references in those subsections:
- (a) to a contributor were references to such a contributor; and
 - (b) to salary were references to salary within the meaning of subsection (1) (a) or (c).
- (4) After section 30, insert:
- Contributor eligible for membership or a member of the Public Sector Executives Superannuation Scheme**
- 30A (1) When a contributor becomes eligible to become a member of the Public Sector Executives Superannuation Scheme, the contributor must:
- (a) elect to continue to contribute to the Fund; or
 - (b) elect to make provision for a benefit provided by section 43 (6).
- (2) If a contributor fails to make an election under subsection (1) within 2 months of being required to make

SCHEDULE 1 - AMENDMENTS - *continued*

that election, the contributor, for the purposes of this section, is to be taken to have elected to continue to contribute to the Fund.

(3) Nothing in this Act prevents a contributor who elects to continue to contribute to the Fund from also contributing to the Public Sector Executives Superannuation Scheme or another superannuation scheme and such a contributor is entitled to benefits in accordance with this Act despite being a member of that Scheme or another scheme.

(4) If a contributor elects to continue to contribute to the Fund, the contributor may, at any time thereafter while being eligible to become or being a member of the Public Sector Executives Superannuation Scheme, elect to make provision for a benefit provided by section 43 (6).

(5) A contributor who elects, under this section, to make provision for a benefit provided by section 43 (6):

- (a) is entitled to make provision for the 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); and
- (b) is not entitled to a benefit payable under any other provision of this Act; and
- (c) is not entitled to elect to take the benefit provided by section 43 (7); and
- (d) may elect at any time before the benefit is paid to have the benefit paid to the credit of the contributor in the Public Sector Executives Superannuation Scheme.

(6) If a contributor makes an election under subsection (5) (d):

- (a) the contributor is entitled to be paid the benefit provided by section 43 (6), but only in accordance with this subsection; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) the Board must, as soon as practicable thereafter, pay to the Public Sector Executives Superannuation Board established under the Public Sector Executives Superannuation Act 1989 the amount of the benefit to which the contributor is entitled; and
 - (c) the Public Sector Executives Superannuation Board must credit the amount to the account established or to be established for the person in the Public Sector Executives Superannuation Fund under that Act.
- (5) Section 42 (**Benefit on retrenchment before early retirement age**):
 - (a) Section 42 (2):

After "more", insert "(other than a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".
 - (b) Section 42 (3):

After "3 years", insert "or who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme".
- (6) Section 43 (**Preserved benefit**):

Section 43 (8):

After "contributor" where firstly occurring, insert "(other than a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".
- (7) Schedule 2 (**Excluded persons**):

At the end of clause 1, insert:

 - (2) Clause 1 (a) does not apply to an employee:
 - (a) who is eligible to become or is a member of the Public Sector Executives Superannuation Scheme; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) who was, at the time of becoming so eligible or such a member, and who continues to be, a contributor to the Fund.

Superannuation Act 1916 No. 28:

(1) Section 3 (**Definitions**):

- (a) Section 3 (1), after the definition of "Prescribed age", insert:

"Public Sector Executives Superannuation Scheme" means the superannuation scheme established under the Public Sector Executives Superannuation Act 1989.

- (b) Section 3 (1), definition of "Salary":

Omit "section 3A", insert instead "section 3AA or 3A".

(2) After section 3, insert:

Salary of executive officers

3AA For the purposes of this Act:

"salary", in relation to a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme, means:

- (a) in the case of a chief executive officer or senior executive officer (within the meaning of the Public Sector Management Act 1988):
 - (i) the monetary remuneration payable to the officer in accordance with a contract of employment under that Act or, if there is no such contract, the monetary remuneration payable in accordance with section 42L (8) of that Act; and
 - (ii) the cost of employment benefits provided under any such contract, being employment benefits prescribed as salary under the Public Sector Executives Superannuation

SCHEDULE 1 - AMENDMENTS - *continued*

Act 1989 for the purposes of the definition of the salary of such an officer,

but does not include any performance-related incentive payments made to the officer; and

(b) in the case of an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975:

(i) the remuneration payable to the office holder as reduced (under that section) by the cost of employment benefits provided to the office holder; and

(ii) the cost of employment benefits provided under that section, being employment benefits prescribed as salary under the Public Sector Executives Superannuation Act 1989 for the purposes of the definition of the salary of such an office holder; and

(c) in the case of any other contributor - the amount determined in accordance with the regulations.

(3) Section 3A (**Salary**):

Section 3A (1):

After "contributor" where firstly occurring, insert "(other than a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".

(4) After section 20A, insert:

Contributor eligible for membership or a member of the Public Sector Executives Superannuation Scheme

20AB. (1) When a contributor becomes eligible to become a member of the Public Sector Executives Superannuation Scheme, the contributor must:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) elect to continue to contribute to the Fund; or
- (b) elect to make provision for a benefit provided by Division 3A of Part 4.

(2) If a contributor fails to make an election under subsection (1) within 2 months of being required to make that election, the contributor is, for the purposes of this section, to be taken to have elected to continue to contribute to the Fund.

(3) Nothing in this Act prevents a contributor who elects to continue to contribute to the Fund from also contributing to the Public Sector Executives Superannuation Scheme or another superannuation scheme and such a contributor is entitled to benefits in accordance with this Act despite being a member of that Scheme or another scheme.

(4) If a contributor elects to continue to contribute to the Fund, the contributor may, at any time thereafter while being eligible to become or being a member of the Public Sector Executives Superannuation Scheme, elect to make provision for a benefit provided by Division 3A of Part 4.

(5) A contributor who elects, under this section, to make provision for a benefit provided by Division 3A of Part 4:

- (a) may elect to make provision for the benefit even though he or she has not completed 3 years' continuous contributory service; and
- (b) is not entitled to a benefit payable under any other provision of this Act; and
- (c) is not entitled to elect to take the benefit provided by section 52i; and
- (d) may elect at any time before the benefit is paid to have the benefit paid to the credit of the contributor in the Public Sector Executives Superannuation Scheme.

SCHEDULE 1 - AMENDMENTS - *continued*

- (6) If a contributor makes an election under subsection (5) (d):
- (a) the contributor is entitled to be paid the benefit provided by Division 3A of Part 4 (as determined in accordance with the regulations), but only in accordance with this subsection; and
 - (b) the Board must, as soon as practicable thereafter, pay to the Public Sector Executives Superannuation Board established under the Public Sector Executives Superannuation Act 1989 the amount of the benefit to which the contributor is entitled; and
 - (c) the Public Sector Executives Superannuation Board must credit the amount to the account established or to be established for the person in the Public Sector Executives Superannuation Fund under that Act.
- (5) Section 37 (**Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service**):
- Section 37 (1AA):
- After "employers", insert "or to an employee who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme".
- (6) Section 37A (**Retrenchment benefits payable to contributors having not less than 3 years' contributory service**):
- After section 37A (1), insert:
- (1A) This section does not apply to a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme.
- (7) Section 38B (**Contributor who is retrenched, resigns or is dismissed or discharged to be entitled to the greatest available benefit**):

SCHEDULE 1 - AMENDMENTS - *continued*

Section 38B (1) (a):

Omit "a contributor", insert instead "any such contributor".

- (8) Section 52_{1A} (**Effect of contributor becoming a contributor to another scheme while employed by the same employer**):

After "A contributor", insert "(other than a contributor who is eligible to become or who is a member of the Public Sector Executives Superannuation Scheme)".

[*Minister's second reading speech made in -
Legislative Assembly on 27 July 1989
Legislative Council on 8 August 1989*]