

SUPERANNUATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

- Police Regulation (Superannuation) Amendment Bill 1988;
- State Authorities Non-contributory Superannuation (Amendment) Bill 1988;
- State Authorities Superannuation (Amendment) Bill 1988;
- Superannuation Administration (Amendment) Bill 1988.

The object of this Bill is to amend the Superannuation Act 1916 so as—

- (a) to provide for the reconstitution of the State Superannuation Fund (“the Fund”) by subdividing its assets into—
 - (i) a reserve for employees’ contributions;
 - (ii) a number of reserves for employers or groups of employers;
 - (iii) a reserve for the existing voluntary savings system established under Part 5 of the Principal Act; and
 - (iv) other reserves that the State Authorities Superannuation Board (“the Board”) may wish to establish in the future;
- (b) to enable benefits under that Act to be reduced in order—
 - (i) to offset certain prospective tax liabilities that the Board may incur in respect of contributions paid to the Fund; and
 - (ii) to comply with certain Commonwealth standards with respect to occupational superannuation schemes;
- (c) to provide for fully vested benefits to be transferred to another superannuation scheme when a reorganisation occurs as a result of a Government initiative;
- (d) to reform and simplify the provisions of the Principal Act under which employers are required to contribute to the Fund;
- (e) to provide for a triennial actuarial investigation of the Fund;

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- (f) to revise the provisions of the Principal Act relating to the calculation of pensions payable under that Act;
- (g) to make further provision with respect to the payment of retrenchment and withdrawal benefits under that Act;
- (h) to make fresh provision with respect to prescribing the various Government agencies that are employers for the purposes of the Principal Act;
- (i) to provide, whenever a benefit under the Principal Act becomes payable, for the determination of the respective shares of the benefit to be paid from the relevant employer reserve, and the contributors' (employees') reserve, within the Fund and to provide for shortfalls in amounts of benefit to be met by the appropriate employer;
- (j) to provide for the transfer of credits (and corresponding debits) between employers of contributors who change their employment from one such employer to another;
- (k) to make fresh provision with respect to the fixing of interest rates for the purposes of the Principal Act; and
- (l) to provide for other matters of a consequential, minor or ancillary nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to be taken to have commenced on 1 July 1988, except for the provisions of Schedule 2 which are to commence on a day or days to be fixed by proclamation.

Clause 3 defines the expression "Principal Act" for the purposes of the Bill.

Clause 4 is a formal provision that gives effect to Schedules 1 and 2, which contain amendments to the Principal Act.

Clause 5 repeals miscellaneous Acts which amended the Principal Act. The effect of those Acts is now spent. The clause also formally repeals the Superannuation (Board Elections) Regulation 1979 in consequence of the enactment of the Superannuation (Amendment) Act 1987.

Clause 6 validates certain actions which were taken for the purposes of section 9c of the Principal Act (Fund and employers' contribution to certain increases of pension). Under that section it was necessary to determine "the total commutation amount" in accordance with regulations made in accordance with the Principal Act. In fact no such regulations were ever made and the determination of such amounts was made on actuarial advice. It is now proposed to regularise the determination of total commutation amounts that were made for the purposes of that section.

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

Schedule 1 (1) amends section 3 of the Principal Act (Definitions) by inserting definitions of "Commonwealth taxation law", "Contributors' reserve", "Employer reserve", "Financial year" and "Superannuation scheme" and by altering the definition of "Contributor".

Schedule 1 (2) replaces Part 2 of the Principal Act, which relates to the State Superannuation Fund. The substituted Part contains the following provisions:

Proposed section 4, which provides for the reconstitution of the Fund and, in particular, will require the Board to pay from the Fund amounts necessary to satisfy any liability of the Fund with respect to tax payable under a Commonwealth taxation law.

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Proposed section 5, which will require the Board to establish within the Fund a contributors' reserve, employers' reserves and a reserve in respect of money paid to the Fund under Part 5 of the Principal Act (Voluntary Saving).

Proposed section 6, which prescribes the items that are to be credited and debited to the contributors' reserve.

Proposed section 7, which prescribes the items that are to be credited and debited to employers' reserves.

Proposed section 8, which provides for the adjustment of reserves and accounts for interest payable in respect of amounts standing to the credit or debit of a reserve or account that forms part of the Fund.

Proposed section 9, which will require the Board to debit or credit the Fund and reserves and accounts forming part of the Fund wherever it is appropriate to do so.

Proposed section 10, which provides for the holding of an actuarial investigation into the Fund every 3 years.

Schedule 1 (3) amends section 10O of the Principal Act (Existing contributors and employees). The amendment is consequential on the proposed repeal of section 11 of the Principal Act (Contributor resuming employment after service as member of Parliament).

Schedule 1 (4) replaces Division 7 of Part 3 of the Principal Act. The substituted Division, which relates to contributions by employers, contains the following provisions:

Proposed section 10AJ, which will require an employer listed in the proposed Schedule 3 to the Principal Act to pay the appropriate contributions in respect of contributors employed by them.

Proposed section 10AK, which provides for the calculation of contributions and the time within which they are required to be paid.

Proposed section 10AL, which will require an employer to pay amounts to the relevant employer reserve whenever there is insufficient money in the reserve to pay pensions and other amounts payable from the reserve.

Proposed section 10AM, which will empower the Board to adjust employer reserves, with the concurrence of the Treasurer, to reflect changes of circumstances.

Schedule 1 (5) repeals section 11 of the Principal Act (Contributor resuming employment after service as member of Parliament). The rights of any existing member of Parliament under the section are saved by a provision of proposed Schedule 22 to the Principal Act (Transitional and other provisions arising from the enactment of this Bill). (See Schedule 1 (36) and (40) below.)

Schedule 1 (6) amends section 12 of the Principal Act (Contributions to be related to units of pension). The amendment is consequential on that made by Schedule 1 (19) and (20) below.

Schedule 1 (7)-(11) repeal sections 17, 17A, 17B, 17C and 17CA of the Principal Act. Those sections, which require employers to make payments in order to meet shortfalls in the amounts necessary to fund benefits, will become redundant when the provisions of the proposed Division 7 of Part 3 of the Principal Act come into force. (See Schedule 1 (4) above.)

Schedule 1 (12) amends section 17D of the Principal Act (Orders fixing different tables etc.). The amendment is consequential on the amendments effected by Schedule 1 (4) above.

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Schedule 1 (13) repeals section 18 of the Principal Act (From what fund employer shall pay contributions). The repeal is also consequential on the amendments effected by Schedule 1 (4) above.

Schedule 1 (14) amends section 20 of the Principal Act (Manner of payment—deductions from wages or salaries). The amendment is consequential on the new arrangements for the payment of employers' contributions. (See Schedule 1 (4) above.) As a result of the amendment, the section will deal only with the payment to the Fund of employees' contributions.

Schedule 1 (15) repeals section 20E of the Principal Act (Employer's contribution). This section will become redundant when the new arrangements for the payment of employers' contributions come into force. (See Schedule 1 (4) above.)

Schedule 1 (16)–(18) amend sections 21A, 21B and 21C of the Principal Act. Those sections all contain provisions dealing with the liability of employers with respect to the payment of money to the Fund. Those provisions will become redundant when the new arrangements for satisfying employers' obligations to the Fund come into force and are therefore being repealed.

Schedule 1 (19) repeals section 26 of the Principal Act (Pensions unit and minimum pension) in consequence of the new section 27 of the Principal Act (as substituted by Schedule 1 (20) below).

Schedule 1 (20) replaces section 27 of the Principal Act. The substituted section, which does not involve any significant change of substance, provides that on retirement a contributor will be entitled to be paid a pension of \$5.50 per fortnight for each unit for which the contributor was contributing at the time of retirement.

Schedule 1 (21) replaces section 28A of the Principal Act. The substituted section prescribes the value of each pension unit for those contributors who retire on or after reaching 55 years of age but before reaching 60 years of age.

Schedule 1 (22) and (23) amend sections 28AA and 28B of the Principal Act. Those sections contain provisions dealing with the liability of employers to make payments to the Fund. Those provisions will become redundant when the new arrangements for satisfying employers' obligations to the Fund come into force and are therefore being repealed.

Schedule 1 (24) inserts into the Principal Act proposed section 33B which will require the Board to apportion a benefit payable under the Principal Act between the contributors' reserve and the appropriate employer reserve.

Schedule 1 (25) amends section 37 of the Principal Act (Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service). That section contains provisions which require employers to pay amounts to the Fund. Those provisions will become redundant when the new arrangements for satisfying employers' obligations to the Fund come into force and are therefore being repealed. The amendment also provides that the basis for the payment of a lump sum benefit under the section is the total of the contributions that the contributor has made to the Fund and not just those that the contributor has made under the Principal Act.

Schedule 1 (26) amends section 37A of the Principal Act (Retrenchment benefits payable to contributors having less than 3 years' contributory service). This amendment is also consequential on the new arrangements concerning employers' obligations to the Fund.

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Schedule 1 (27) replaces section 38A of the Principal Act. The substituted section provides for a more generous withdrawal benefit. A contributor who is retrenched, resigns or is dismissed or discharged from the service of an employer after having at least 5 years' contributory service will receive increased benefits after 1 July 1990 because interest in respect of contributions will be payable at the Fund earning rate. This rate will be closer to market rates than the rates currently payable in respect of withdrawal benefits. However, the employer-financed part of a withdrawal benefit payable to a contributor who resigns or otherwise terminates his or her employment after more than 10 years' service will not be altered and that part will continue to be determined by reference to the interest rates currently prescribed by the section (namely, 3.5% per annum in respect of contributory service before 1 July 1972 and 4.5% per annum in respect of contributory service from and including that date).

Schedule 1 (28) amends section 47B of the Principal Act (Employer subsidy not to be of greater benefit if service is not continuous). The amendment is consequential on Schedule 1 (27) above.

Schedule 1 (29) repeals section 47F of the Principal Act (Employer contributions). The repeal is consequential on that effected by Schedule 1 (4) above.

Schedule 1 (30) amends section 52E of the Principal Act (Disability pension). The amendment is intended to make it clear that a person is not to be precluded from receiving a full benefit merely because he or she has received an interim payment of a benefit under the section.

Schedule 1 (31) amends section 52I of the Principal Act (Cash termination benefit). The amendment is consequential on the change of the Fund's financial year to a period of 12 months ending on 31 March.

Schedule 1 (32)–(35) repeal sections 52J, 61J, 61Q and 90 in consequence of the new arrangements effected by Schedule 1 (4) above. Those sections relate to the making of payments to the Fund by employers and will become redundant when those arrangements take effect.

Schedule 1 (36) inserts into the Principal Act proposed section 94B, which will give effect to proposed Schedule 22. That Schedule deals with transitional and other matters that will arise from the enactment of this Bill.

Schedule 1 (37) repeals Schedules 8 and 10 to the Principal Act. Those Schedules will no longer be appropriate in view of the new arrangements for the payment of contributions.

Schedule 1 (38) and (39) amend Schedules 17 and 18 to the Principal Act. The amendments are consequential on the amendments effected by Schedule 1 (4) above.

Schedule 1 (40) inserts into the Principal Act proposed Schedule 22. (See Schedule 1 (36) above.)

SCHEDULE 2—FURTHER AMENDMENTS TO THE PRINCIPAL ACT

Schedule 2 (1) amends section 3 of the Principal Act (Definitions) by omitting the definition of "Department" and substituting a new definition of "Employer".

Schedule 2 (2) inserts into the Principal Act sections 3B and 3C. Proposed section 3B will provide that a person in the employment of the Crown, the Government or the Minister is to be treated as being employed by such person as is prescribed by regulations to be made under that Act. It will also provide, for the purposes of the Principal Act, that a person appointed to be a "Local Coal Authority" is to be treated as being employed by the Joint Coal Board and that a member of the Police Force is to be treated as being employed by the Commissioner of Police. Proposed section 3C is intended to clarify references in the Principal Act to employers.

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Schedule 2 (3) inserts in the Principal Act proposed section 10AN which will provide for the transfer between employers of a credit in respect of contributions made by the former employer where a contributor's services are transferred from that employer to another employer.

Schedule 2 (4) amends section 15A of the Principal Act (Reserve units). The amendment is consequential on the insertion in the Principal Act of proposed section 86A. (See Schedule 2 (26) below.)

Schedule 2 (5) repeals section 17CB of the Principal Act (Payments by employers where the whole of pension commuted).

Schedule 2 (6) replaces section 21E of the Principal Act. The substituted section provides for interest to be paid in respect of commuted amounts of pensions in accordance with proposed section 86A. (See Schedule 2 (26) below.)

Schedule 2 (7)–(13), (15) and (16) respectively amend sections 27, 28A, 28AA, 29, 37, 37A, 38A, 47D and 52A of the Principal Act. Under the amendments, a benefit payable under any of those sections will be reduced if the Board has made a determination in respect of the benefit in accordance with proposed section 61RA or 61RB of that Act. (See Schedule 2 (23) and (24) below.)

Schedule 2 (14) amends section 38C of the Principal Act (Break in service may be carried on certain conditions). The amendment is consequential on the insertion in the Principal Act of proposed section 86A. (See Schedule 2 (26) below.)

Schedule 2 (17) inserts in the Principal Act section 52IA which prescribes the effect of a contributor becoming a contributor under another superannuation scheme while employed by the same employer. Such a contributor will be regarded as having elected to make provision for a preserved benefit under Division 3A of Part 4 of the Principal Act.

Schedule 2 (18) and (19) amend sections 61 and 61A of the Principal Act (which relate to the surrender of certain insurance policies). The amendments are consequential on the insertion in the Principal Act of proposed section 86A. (See Schedule 2 (26) below.)

Schedule 2 (20) and (21) respectively amend sections 61M and 61N of the Principal Act (which relate to children's and orphans' pensions). Under the amendments, a benefit payable under either of those sections will be reduced if the Board has made a determination in respect of the benefit in accordance with proposed section 61RA or 61RB of the Principal Act. (See Schedule 2 (23) and (24) below.)

Schedule 2 (22) repeals section 61U of the Principal Act (Interest). The section is redundant in view of the insertion in the Principal Act of proposed section 86A. (See Schedule 2 (26) below.)

Schedule 2 (23) inserts into the Principal Act proposed Division 7A of Part 4 (section 61RA). Proposed section 61RA will enable the Board to make a determination reducing the amount of a benefit that is payable under the Principal Act to or in respect of a contributor or former contributor where—

- (a) the Board is liable to pay a Commonwealth tax in respect of employers' contributions to the Fund; and
- (b) a portion of that tax is referable to the benefit.

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Schedule 2 (24) inserts into the Principal Act proposed section 61RB. Proposed section 61RB will enable the Board to make a determination reducing the amount of a benefit that is payable under the Principal Act to or in respect of a contributor or former contributor if that amount (together with any other superannuation or retirement benefits that have been paid or may be payable to or in respect of that contributor or former contributor from any source) would exceed a level fixed by or in accordance with a law of the Commonwealth which fixes standards for occupational superannuation schemes. (Such a level is commonly known as a “reasonable benefit limit” or “RBL”.)

Schedule 2 (25) replaces section 64 of the Principal Act (Interest on voluntary savings). The substitution of the section is consequential on the insertion into the Principal Act of proposed section 86A. (See Schedule 2 (26) below.)

Schedule 2 (26) inserts in the Principal Act section 86A which will empower the Board to fix interest rates for the purposes of certain specified sections of the Principal Act.

Schedule 2 (27) amends section 91A of the Principal Act (Recovery of money payable to the Board) by making it clear that the section extends to the recovery of money that is owed by employers. Another amendment made by Schedule 2 (27) is consequential on the insertion into the Principal Act of proposed section 86A. (See Schedule 2 (26) above.)

Schedule 2 (28) replaces section 92 of the Principal Act with a new section which will empower the Governor-in-Council to amend Schedule 3 to the Principal Act (as proposed to be substituted by Schedule 2 (33)). Schedule 3 contains a list of employers.

Schedule 2 (29) inserts into the Principal Act proposed section 92AA which will give effect to the proposed Schedule 23. That Schedule contains provisions for preserving benefits of contributors who are transferred as a result of a Government initiative. If as a result of a Government initiative an employer, for example, ceases to be a Government agency, the Schedule will also apply to contributors who, while they continue to be employed by that employer, are required or elect to become contributors to another superannuation scheme.

Schedule 2 (30) repeals section 92A of the Principal Act (Terms and conditions relating to participants in other schemes), because the scheme contained in that section is now obsolete.

Schedule 2 (31) replaces section 93 of the Principal Act. The substituted section, which makes it clear that members of authorities listed in Schedule 3 to the Principal Act are not liable to retire on reaching 60 years of age, is consequential on the replacement of that Schedule by Schedule 2 (33) below.

Schedule 2 (32) repeals section 94 of the Principal Act (Superannuation allowance while in employment of State). The repeal of the section will remove a barrier to payment of a benefit to a person who has not reached 65 years of age and who is employed in the service of the State or an employer listed in Schedule 3 to the Principal Act (as currently in force).

Schedule 2 (33) replaces Schedule 3 to the Principal Act with a new Schedule 3 containing a list of employers for the purposes of that Act.

Schedule 2 (34) amends Schedule 17 to the Principal Act (Transitional and other amendments arising from the Superannuation (Amendment) Act 1977) in consequence of the repeal of section 92A of that Act by Schedule 2 (30) above.

Schedule 2 (35) amends Schedule 22 to the Principal Act (Transitional and other provisions arising from the enactment of this Bill). The amendment will save the rights of certain persons under section 92A of the Principal Act when that section is repealed by Schedule 2 (30) above.

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Schedule 2 (36) inserts into the Principal Act proposed Schedule 23. (See Schedule 2 (29) above.)

SCHEDULE 3—REPEAL OF ACTS RELATING TO SUPERANNUATION

Schedule 3 specifies the Acts that are to be repealed by proposed section 5 (1).
