

Act No. 40

SUPERANNUATION (RETRENCHMENT) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Public Authorities Superannuation (Retrenchment) Amendment Bill 1987;

State Public Service Superannuation (Retrenchment) Amendment Bill 1987.

The object of this Bill is to amend the Superannuation Act 1916 to make better provision for superannuation payments to those contributors under that Act who are retrenched from the service of their employer on or after 13 February 1987.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act shall be deemed to have commenced on 13 February 1987.

Clause 3 provides for the Superannuation Act 1916 to be referred to in the proposed Act as the Principal Act.

Clause 4 is a formal provision which gives effect to the Schedule of amendments to the Principal Act.

Clause 5 makes it clear that the Principal Act, as in force immediately before the commencement of the proposed Act, will continue to apply to those former contributors to the Fund established under the Principal Act who were retrenched, resigned, or were dismissed or discharged before 13 February 1987.

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Schedule 1 (1) amends section 3 (1) of the Principal Act, which defines certain expressions for the purposes of that Act, by replacing the definition of "Discharged" and by inserting definitions of "Dismissed", "Resigned" and "Retrenched". (See Schedule 1 (3) and (5).)

Schedule 1 (2) amends section 21 of the Principal Act, which prescribes the ages of retirement of contributors to the Fund established under the Principal Act. The amendment is consequential on the repeal of section 23A of the Principal Act. (See Schedule 1 (4).)

Schedule 1 (3) replaces section 23 of the Principal Act, which defines the expressions "retrenchment" and "discharge". The substituted definition of "retrenched" no longer requires that a period of service be served before an employee is regarded as being retrenched for the purposes of the Principal Act, nor does it require the Superannuation Board to be satisfied as to the bona fides of the employee's termination of service. The substituted definition will include not only compulsory retrenchment of a contributor but also the termination of a contributor's employment as a result of the acceptance by the contributor of an offer by the contributor's employer of terms of retrenchment.

Schedule 1 (4) repeals section 23A of the Principal Act, which provides for the computation of service for the purposes of sections 21 and 23 of the Principal Act. Section 23A will become redundant as regards section 23 and section 21 is being consequentially amended to include the substance of section 23A.

Schedule 1 (5) replaces sections 24 and 25 of the Principal Act, which respectively define the expressions "dismissal" and "resignation" for the purposes of the Principal Act. The substituted provisions are consequential on the replacement of section 23 of the Principal Act. (See Schedule 1 (3).)

Schedule 1 (6) and (7) amend sections 28A and 28AA of the Principal Act. These sections provide for the payment of pensions to contributors to the Fund who retire before attaining 60 years of age. The amendments are designed to make it clear that contributors who are retrenched from the service of their employers and who elect to take pensions instead of lump sum payments will be entitled to receive their pensions as soon as their retrenchments take effect.

Schedule 1 (8) amends section 37 of the Principal Act, which provides for certain retrenchment benefits to be payable to an employee who is retrenched after completing 10 years' service with one or more employers (as defined by the Principal Act). The amendments are consequential on the redefinition of "retrenchment", the repeal of section 23A of the Principal Act and the replacement of section 38B of the Principal Act. (See Schedule 1 (3), (4) and (12).)

Schedule 1 (9) inserts into the Principal Act proposed section 37A, which specifies benefits that will be payable to contributors to the Fund who are retrenched from the service of their employers on or after 13 February 1987. However, in order to qualify for a benefit under the proposed section, it will be necessary for a contributor to have completed at least 3 years' continuous contributory service (including service while a contributor to the Public Authorities Superannuation Fund) before being retrenched. Such a contributor will be entitled to choose between a lump sum payment and a pension. The proposed section also prescribes the formula for calculating the lump sum retrenchment benefit.

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Schedule 1 (10) replaces section 38 of the Principal Act which provides for a refund of contributions to be made from the Fund established under that Act to contributors who are retrenched without being entitled to any other benefit under that Act or who resign or are dismissed or discharged from the service of an employer. The section generally operates when a contributor who is so retrenched or who resigns or is dismissed or discharged is not entitled to a greater benefit under some other provision of the Principal Act. The replacement of the section is necessary because of the redrafting of section 38B of the Principal Act. (See Schedule 1 (12).)

Schedule 1 (11) amends section 38A of the Principal Act, which provides for the payment of a withdrawal benefit from the Fund to a contributor who is retrenched, resigns or is dismissed or discharged from the service of an employer. The amendments to the section are consequential on the replacement of section 38B of the Principal Act. (See Schedule 1 (12).)

Schedule 1 (12) replaces section 38B of the Principal Act, which currently requires a contributor who is retrenched, resigns or is dismissed or discharged from the service of an employer to make an election among the various kinds of benefits conferred by the Principal Act on contributors who are retrenched, resign or are dismissed or discharged from the service of an employer. The substituted section will provide for the Superannuation Board to calculate the various benefits payable to retrenched contributors under the Principal Act and to pay from the Fund the greater or greatest of the benefits so calculated. Under the substituted section a contributor will still be able to elect between taking a lump sum payment and a pension if that option is available or may elect to have a benefit preserved in accordance with Division 3A of Part IV of the Principal Act (which provides for the preservation of pensions and other benefits of persons who cease to be contributors before reaching the normal retirement age).

Schedule 1 (13) amends section 38C of the Principal Act, which enables breaks in service to be disregarded when certain conditions are fulfilled. The amendments are consequential on the insertion in the Principal Act of proposed section 37A and the replacement of section 38B of that Act. (See Schedule 1 (9) and (12).)

Schedule 1 (14) amends section 47C of the Principal Act, which provides for the allocation of reduced value units. The amendment is consequential on the insertion in the Principal Act of proposed section 37A. (See Schedule 1 (9).)

Schedule 1 (15) makes a consequential amendment to section 49 of the Principal Act, which relates to continuity of service for the purposes of calculating a "breakdown" pension.

Schedule 1 (16) makes a consequential amendment to section 52A of the Principal Act, which provides for the calculation of preserved benefit components.

Schedule 1 (17) and (18) amend sections 52I and 52J of the Principal Act (which deal with the preservation of benefits under Division 3A of Part IV of that Act). The amendments to those sections are consequential on the insertion in the Principal Act of proposed section 37A and the replacement of section 38B of that Act. (See Schedule 1 (9) and (12).)

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Schedule 1 (19) provides that, if a contributor or pensioner who retires under section 21 (1B) of the Principal Act as a result of being retrenched elects to commute a pension as provided by section 21C of that Act, the requirement that the election is to take effect at least 6 months later, or when the contributor or pensioner attains the maturity age prescribed by the Principal Act, is not applicable.

Schedule 1 (20) provides for the removal of all short headings from the Principal Act.
