

PUBLIC SECTOR EXECUTIVES SUPERANNUATION BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Public Sector Management (Executives) Amendment Bill 1989.

The object of this Bill is to establish a superannuation scheme for public sector chief executive officers and senior executive officers and other persons employed in senior positions in the public sector.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a proclaimed day or days.

Clause 3 defines terms used in the proposed Act.

Clause 4 makes provision with respect to members who are on secondment.

Clause 5 provides that certain Government or Crown employees may, for the purposes of the proposed Act, be taken to be employed by a person or organisation prescribed by the regulations.

PART 2 - THE PUBLIC SECTOR EXECUTIVES SUPERANNUATION BOARD

Clause 6 constitutes the Public Sector Executives Superannuation Board. The Board will consist of 4 part-time members, 2 of whom will be appointed to represent employers and 2 of whom will be appointed to represent employees.

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Clause 7 sets out the functions of the Chairperson of the Board.

Clause 8 sets out the functions of the Board, the principal one of which is to administer and manage the superannuation scheme to be established by the proposed Act.

Clause 9 empowers the Board to make and enter into contracts or arrangements with a person for the person to carry out any, or all, of the Board's functions (except those under proposed section 33) with respect to the administration and management of the superannuation scheme. Such an agreement may provide for the payment of commission or other fees from the Public Sector Executives Superannuation Fund.

Clause 10 empowers the Board to make and enter into contracts or arrangements with a person to insure members for, or manage an insurance scheme for, additional benefits under the proposed Act.

Clause 11 enables the Board to arrange for the use of the services of staff of a government department, an administrative office or a public or local authority.

Clause 12 empowers the Board to employ and pay agents.

Clause 13 empowers the Board to engage consultants.

Clause 14 empowers the Board to establish committees to assist it in connection with the exercise of any of its functions.

Clause 15 provides that the financial year of the Board is the year ending on 31 March.

Clause 16 gives the Board investment and borrowing powers under the Public Authorities (Financial Arrangements) Act 1987.

Clause 17 provides for delegation by the Board and the Chairperson of the Board.

Clause 18 sets out the extent to which the Board has, in relation to the Fund, the powers of a trustee but makes it clear that the clause does not constitute the Board a trustee of the Fund or any other fund, account or reserve established under the proposed Act.

Clause 19 confers on the Board power to compromise or otherwise settle any claim made against it.

Clause 20 provides for the maintenance of accounts and other records by the Board.

Clause 21 makes it clear that certain people associated with the Board e.g. a member of the Board, may hold office as directors or other officers of a company.

PART 3 - THE PUBLIC SECTOR EXECUTIVES SUPERANNUATION FUND

Clause 22 requires the Board to establish and maintain the Public Sector Executives Superannuation Fund and sets out the amounts that are to be paid to or from the Fund.

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Clause 23 requires the Board to establish and maintain an account within the Fund for each member and sets out the amounts that are to be credited and debited to any such account.

Clause 24 requires the Board to establish and maintain an Additional Benefit Management Fund and sets out the amounts that are to be paid to or from that Fund.

Clause 25 empowers the Board generally to establish and maintain accounts and reserves and also empowers it to create particular investment funds comprising particular members' accounts.

Clause 26 provides for the adjustment of accounts and reserves by the Board and permits the Board to fix different rates for members' accounts in different investment funds.

Clause 27 is a general enabling provision for credits or debits to funds, accounts or reserves established by or under the proposed Act.

Clause 28 empowers the Board to establish and maintain deposit funds.

Clause 29 requires the Board to establish and maintain a Public Sector Executives Superannuation Management Account and sets out the costs that are required to be charged against that Account and the way in which those costs are to be paid.

Clause 30 enables the Board to levy administrative charges in relation to a preserved benefit.

Clause 31 requires the Board to deduct amounts equivalent to its income tax liabilities from members' accounts.

Clause 32 requires the Board to make (by way of written statements) disclosures to members. This requirement complies with relevant Commonwealth legislation.

Clause 33 enables the Minister to require an actuarial investigation to be carried out into the state and sufficiency of any or all of the funds established under the proposed Act.

PART 4 - CONTRIBUTIONS

Clause 34 provides for elections by employees who wish to become members of the scheme established by the proposed Act. An election must specify the contributions to be paid by the employee or the employee's employer or both of them.

Clause 35 provides for annual elections as to contributions for the coming year to be made by a member on or before 1 September in each year.

Clause 36 contains provisions enabling contributions payable by a member or the member's employer to be varied if the member's salary changes or the Board is satisfied that financial hardship would otherwise result.

Clause 37 enables employees to apply to be covered for an additional benefit or to vary the amount of cover for the additional benefit. The additional benefit is a benefit payable when a member dies or is disabled before reaching the early retirement age and is the difference between the member's actual benefit and the

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total amount of benefit specified by the member and approved by the Board under clause 38.

Clause 38 sets out the procedure for approval of additional benefit cover or varied cover and requires a person who is covered to pay an additional benefit premium as determined from time to time by the Board.

Clause 39 enables the Board to require an applicant for additional benefit cover or varied cover to submit to a medical examination or examinations and to do or provide certain other things.

Clause 40 provides that the Board may refuse an application if an applicant fails to comply with any such requirement or it is advised by an insurer, or person arranging or managing an insurance scheme, that an applicant will not be covered.

Clause 41 sets out the circumstances in which the Board may revoke an approval of additional benefit cover or varied cover.

Clause 42 sets out the effect of revocation of an approval of additional benefit cover or varied cover. It also prohibits an approval from being revoked, in the case of additional benefit cover provided by a person other than the Board, unless the relevant insurance contract may be lawfully avoided under the Insurance Contracts Act 1984 of the Commonwealth.

Clause 43 establishes an employee's liability to contribute to the Fund once an election to contribute takes effect and while it is in effect. Contributions must be paid on the basis of contribution periods applicable to the member.

Clause 44 establishes an employer's liability to contribute to the Fund once an election to contribute takes effect. Contributions must be made at such times as may be agreed with the Board but must, in any case, be paid within the year in which the liability arises.

Clause 45 empowers the Board to charge interest on unpaid contributions.

Clause 46 provides for the contributions payable while an employee is on unpaid leave.

PART 5 - BENEFITS

Clause 47 provides for a lump sum benefit to be paid to a member who retires from employment with an employer (i.e. ceases to be an employee within the meaning of the Act), or dies, on or after reaching the early retirement age. The amount of the benefit is the amount at credit in the member's account in the Fund.

Clause 48 provides for a lump sum benefit to be paid where a member dies before attaining the early retirement age while an employee within the meaning of the proposed Act. The amount of the benefit is the amount at credit in the member's account in the Fund together with the amount of any additional benefit payable.

Clause 49 provides for a lump sum benefit to be paid where a member ceases to be employed as an employee within the meaning of the proposed Act because of the member's permanent physical or mental incapacity. The amount of the benefit is the

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amount at credit in the member's account in the Fund together with the amount of any additional benefit payable.

Clause 50 provides for a lump sum benefit to be paid when a member resigns or is discharged or ceases in any other manner to be employed as an employee within the meaning of the proposed Act before reaching the early retirement age, and no other benefit is payable under the proposed Act. The amount of the benefit is the amount at credit in the member's account in the Fund.

Clause 51 requires a member who is entitled to a benefit under clause 50 to preserve the part of the benefit attributable to employer-financed contributions in the Fund until the member reaches the early retirement age, dies or is incapacitated or to pay that part of the benefit into another superannuation scheme.

Clause 52 enables a member who is entitled to a benefit under clause 50 to elect to have that part of the benefit attributable to employee-financed contributions dealt with under clause 51.

Clause 53 sets out the manner in which an application for payment or preservation of a benefit is to be made.

Clause 54 empowers the Board to pay interest (at its absolute discretion) when paying a benefit under the proposed Act.

Clause 55 empowers the Board to reduce any benefit payable to a member under the proposed Act where the Board would otherwise be liable to a penalty under a Commonwealth taxation law because the benefit, or total benefits, received by the member (under this or any other scheme) would exceed a level specified by Commonwealth legislation.

Clause 56 enables an employee to pay a benefit received under another superannuation scheme into the Fund.

Clause 57 is a formal provision giving effect to Schedule 4 which relates to members transferred as a result of a Government initiative or who are required to cease to be members and to become contributors to another scheme.

PART 6 - MISCELLANEOUS

Clause 58 provides for the addition, substitution and omission of employees and employers from Schedule 1 by order of the Governor.

Clause 59 protects persons associated with the Board from liability for certain acts or omissions.

Clause 60 requires employers to submit information relating to employees if required to do so by the Board.

Clause 61 requires employees to provide the Board with specified information or evidence or to undergo a medical examination or examinations if required to do so by the Board.

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Clause 62 makes provision with respect to elections and applications generally.

Clause 63 voids any purported assignment of, or charge over, a benefit and provides that a benefit is not applicable in payment of the debts and liabilities of a deceased member.

Clause 64 provides for payment of a benefit where probate has not been granted or letters of administration have not been arranged in relation to the estate of a deceased member.

Clause 65 sets out the powers of the Board to recover money owing to the Fund, including a power to require deductions to be made from a member's salary.

Clause 66 sets out the circumstances in which the Board may consent to the exercise by a person of a right or the enjoyment of a privilege under the proposed Act which the person has ceased to be entitled to exercise or enjoy.

Clause 67 confers on the Board power to determine disputes under the proposed Act.

Clause 68 provides a right to appeal to the Industrial Commission against a determination of the Board in a dispute under the proposed Act.

Clause 69 provides for the payment of a benefit where the person to whom it is payable is incapable.

Clause 70 sets out the manner in which documents may be served on the Board.

Clause 71 provides for the recovery, in a court of competent jurisdiction, of money owed to the Board.

Clause 72 sets out the regulation making power.

Clause 73 provides for a review of the operation of the proposed Act on or after the first anniversary of the commencement of the clause.

Clause 74 is a formal provision giving effect to Schedule 5 which contains savings and transitional provisions.

SCHEDULE 1 - ADDITIONAL EMPLOYEES AND EMPLOYERS

This Schedule will contain additional employee positions and employers subject to the proposed Act.

SCHEDULE 2 - PROVISIONS RELATING TO MEMBERS OF BOARD

Clause 1 provides for the appointment of acting members and an acting Chairperson.

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Clause 2 sets out the term of office (5 years) of members.

Clause 3 provides for the remuneration of members.

Clause 4 sets out the circumstances in which a member vacates office.

Clause 5 enables a person to be appointed to the vacant office of a member.

Clause 6 provides for the disclosure of pecuniary interests of members in matters being considered, or things being done, by the Board.

Clause 7 excludes the application of certain Acts to members.

**SCHEDULE 3 - PROVISIONS RELATING TO
BOARD PROCEDURE**

Clause 1 enables the Board to determine its meeting procedures.

Clause 2 provides for the quorum at Board meetings.

Clause 3 provides for voting at Board meetings.

Clause 4 provides for the keeping of minutes at Board meetings.

**SCHEDULE 4 - SPECIAL PROVISIONS FOR PRESERVING
THE BENEFITS OF CERTAIN MEMBERS**

Clause 1 sets out the persons to whom the Schedule applies.

Clause 2 entitles a member to whom the Schedule applies to preserve a benefit despite the provisions relating to preserved benefits.

Clause 3 sets out the circumstances and the manner in which benefits preserved under the Schedule may be paid.

Clause 4 is a regulation making power.

SCHEDULE 5 - SAVINGS AND TRANSITIONAL PROVISIONS

Clause 1 contains a power to make regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act and the proposed Miscellaneous Acts (Public Sector Executives Superannuation) Act 1989.