

**HUNTER DISTRICT WATER BOARD EMPLOYEES'
PROVIDENT FUND (SPECIAL PROVISIONS) ACT 1987
No. 213**

NEW SOUTH WALES



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**HUNTER DISTRICT WATER BOARD EMPLOYEES' PROVIDENT
FUND (SPECIAL PROVISIONS) ACT 1987 No. 213**

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Act No. 213, 1987

An Act to facilitate the transfer to the Public Authorities Superannuation Fund of contributions made by the Hunter District Water Board to the Hunter District Water Board Employees' Provident Fund, to validate the transfer to the New South Wales Retirement Fund of contributions made by employees of that Board to the Hunter District Water Board Employees' Provident Fund, and to provide for related matters. [Assented to 9 December 1987]

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WHEREAS on 1 February 1982, 504 employees of the Hunter District Water Board who were members of the Hunter District Water Board Employees' Provident Fund purported to elect to become contributors to the New South Wales Retirement Fund established under the New South Wales Retirement Benefits Act 1972 and subsequently a further 13 such employees purported to elect to become contributors to that Retirement Fund:

AND WHEREAS contributions and other money which those employees would have been entitled to receive from the Provident Fund were subsequently transferred to the New South Wales Retirement Fund, but the transfer was not effected according to law and doubts have arisen as to whether or not those employees have effectively terminated their membership of the Provident Fund:

AND WHEREAS those employees have, by virtue of the enactment of the Public Authorities Superannuation Act 1985, since become contributors to the Public Authorities Superannuation Fund:

AND WHEREAS, before those employees became contributors to the New South Wales Retirement Fund, the Hunter District Water Board made contributions to the Provident Fund in respect of those employees and has, for some time, wished to have those contributions transferred to the Public Authorities Superannuation Fund in order to offset its liability in respect of benefits payable in respect of those employees under the Public Authorities Superannuation Act 1985, but the trustees of the Provident Fund have not been able to make that transfer without being in breach of trust:

AND WHEREAS it is desirable that the position of those employees with respect to the Provident Fund be clarified and that the contributions made to the Provident Fund by the Hunter District Water Board in respect of those employees be transferred to the Public Authorities Superannuation Fund for the benefit of those employees:

AND WHEREAS it is also desirable that the Hunter District Water Board's contributions to the Provident Fund made in respect of other employees of that Board who may subsequently become contributors to the Public Authorities Superannuation Fund or to some other superannuation or retirement fund established by the New South Wales Government should be transferred to that Superannuation Fund or to that other fund without the trustees of the Provident Fund being in breach of trust:

The Legislature of New South Wales therefore enacts as follows:

Short title

1. This Act may be cited as the Hunter District Water Board Employees' Provident Fund (Special Provisions) Act 1987.

Hunter District Water Board Employees' Provident Fund (Special Provisions)
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Definitions

2. In this Act—

“Provident Fund” means the Hunter District Water Board Employees’ Provident Fund established under a trust deed which took effect on 1 February 1971;

“relevant day”, in relation to a transferred contributor, means—

- (a) if the contributor purported to elect to become a contributor to the Retirement Fund on 1 February 1982—that day; or
- (b) if the contributor purported to elect to become a contributor to the Retirement Fund on a later day—that later day;

“Retirement Fund” means the New South Wales Retirement Fund established by the New South Wales Retirement Benefits Act 1972;

“Superannuation Board” means the Public Authorities Superannuation Board continued by the Public Authorities Superannuation Act 1985;

“Superannuation Fund” means the Public Authorities Superannuation Fund established by the Public Authorities Superannuation Act 1985;

“transferred contributor” means a person who, immediately before 28 October 1981, was a member of the Provident Fund and who, on or after 1 February 1982, purported to elect to become a contributor to the Retirement Fund;

“Water Board” means the Hunter District Water Board constituted under the Water Supply Authorities Act 1987.

Contributions to the Provident Fund made by the Water Board

3. (1) The trustees of the Provident Fund must, within 12 months after the commencement of this Act, pay to the Superannuation Board such part of the money credited to the Past Service Credit Account and the Board’s Contributions Reserve Account of the Provident Fund as relates to each of the transferred contributors, including interest in that part at the rate determined in accordance with Subclause A8.2 (h) of the Provident Fund trust deed, credited up to and including the date on which the money is paid.

(2) On receipt of the money payable under subsection (1), the Superannuation Board must credit the amount of the money to the reserve established under section 9 (3) of the Public Authorities Superannuation Act 1985 in respect of the Water Board.

(3) The money payable under subsection (1) becomes, at the end of the period referred to in that subsection, a debt due to the Superannuation Board and is recoverable accordingly.

(4) The Superannuation Board must apply the money paid or recovered under this section—

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- (a) for the purpose of discharging the liability of the Water Board in relation to employer-financed benefits payable from the Superannuation Fund in respect of transferred contributors or their dependants; or
- (b) to the extent that the money so paid or recovered exceeds that liability—for the purpose of discharging the Water Board's liability in relation to employer-financed benefits payable from the Superannuation Fund in respect of other persons employed or formerly employed by the Water Board or their dependants.

Transfer from the Provident Fund to the Retirement Fund of transferred contributors' contributions

4. (1) The transfer to the Retirement Fund on or after the relevant day of contributions made to the Provident Fund by a transferred contributor shall be taken to have been done lawfully and not in breach of trust.

(2) On the relevant day, each transferred contributor shall be taken to have—

- (a) elected to have become a contributor to the Retirement Fund;
- (b) withdrawn from membership of the Provident Fund;
- (c) directed that the whole of any benefit payable to the contributor from the Sub-accounts 1 and 2 of the contributor's member's account in the Provident Fund be paid to the Retirement Fund; and
- (d) on payment from the Provident Fund of the benefit referred to in paragraph (c)—surrendered all rights of membership and all benefits in respect of the Provident Fund.

Protection of certain persons from liability for breaches of trust etc.

5. (1) Where, but for this subsection, the trustees of the Provident Fund are or could be liable for a breach of trust arising from—

- (a) the payment from the Provident Fund in good faith of contributions made to that Fund by the Water Board in respect of transferred contributors; or
- (b) the payment to the Retirement Fund of contributions made to the Provident Fund by transferred contributors and the termination of rights of those transferred contributors in respect of their membership of the Provident Fund,

those trustees are, despite any enactment or rule of law to the contrary, absolved from that liability.

(2) Subsection (1) applies in respect of a breach committed either before the commencement of this Act or, for the purpose only of giving effect to this Act, after that commencement.

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(3) Where, but for this subsection, the Water Board or any employee of the Water Board is or could be liable for any act or thing done or omitted to be done in good faith before the passing of this Act in relation to the contributions made to the Provident Fund by the Water Board in respect of transferred contributors, the Water Board and any such employee are, despite any enactment or rule of law to the contrary, absolved from that liability.

Existing contributors to the Provident Fund

6. (1) In this section, a reference to a prescribed fund is a reference to—

- (a) the Superannuation Fund; or
- (b) such other retirement or superannuation fund as may be specified in the regulations for the purposes of this section.

(2) This section applies to an employee of the Water Board who, at the commencement of this Act, is a member of the Provident Fund.

(3) If, in accordance with a right conferred by or under an Act, an employee of the Water Board to whom this section applies elects—

- (a) to withdraw from membership of the Provident Fund; and
- (b) to become a contributor to a prescribed fund,

the trustees of the Provident Fund are authorised to transfer to the body responsible for the administration of that fund—

- (c) such part of the money credited to the Past Service Credit Account and the Board's Contributions Reserve Account of the Provident Fund as relates to that employee, including interest on that part at the rate determined in accordance with Subclause A8.2 (h) of the Provident Fund trust deed, credited up to and including the date on which the money is paid; and
- (d) such money as the employee would have been entitled to receive as benefits from Sub-accounts 1 and 2 of the employee's member's account in the Provident Fund if the employee had resigned from his or her employment with the Water Board.

(4) Whenever money is transferred to the body responsible for administering a prescribed fund in accordance with subsection (3), that body must—

- (a) pay into that fund to the credit of the reserve or other account established in respect of the Water Board the part of the money referred to in subsection (3) (c) and apply that money—
 - (i) for the purpose of discharging the Water Board's liability in relation to employer-financed benefits payable from that fund in respect of the employee concerned or that employee's dependants; or

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- (ii) if that part exceeds that liability—for the purpose of discharging the Water Board's liability in relation to employer-financed benefits payable from that fund in respect of other persons employed or formerly employed by the Water Board or their dependants; and
- (b) pay into that fund to the credit of the employee concerned the money referred to in subsection (3) (d).

Regulations

7. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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PROVIDENT FUND (SPECIAL PROVISIONS) BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Superannuation Administration Bill 1987.

The objects of this Bill are—

- (a) to facilitate the transfer to the Public Authorities Superannuation Fund of contributions made by the Hunter District Water Board to the Hunter District Water Board Employees' Provident Fund;
- (b) to validate the transfer to the New South Wales Retirement Fund (which has since been superseded by the Public Authorities Superannuation Fund) of contributions to the Provident Fund made by certain employees of the Board;
- (c) to make it clear that all rights and benefits of those employees as members of the Provident Fund are terminated;
- (d) to provide that the trustees of the Provident Fund are not to be liable for certain breaches of trust;
- (e) to facilitate the transfer to the Public Authorities Superannuation Fund, or a prescribed superannuation or retirement fund, of contributions made to the Provident Fund by employees of the Board who are currently members of the Provident Fund and by the Board in respect of those members; and
- (f) to provide for other matters of an ancillary nature.

Clause 1 specifies the short title of the proposed Act.

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Clause 2 defines certain expressions for the purposes of the proposed Act. The expressions defined are "Provident Fund" (the Hunter District Water Board Employees' Provident Fund), "relevant day" (the day on which a transferred contributor purported to elect to become a contributor to the Retirement Fund), "Retirement Fund" (the New South Wales Retirement Fund), "Superannuation Board" (the Public Authorities Superannuation Board), "Superannuation Fund" (the Public Authorities Superannuation Fund), "transferred contributor" (a member of the Provident Fund who, on or after 1 February 1982, purported to elect to become a member of the Retirement Fund) and "Water Board" (the Hunter District Water Board).

Clause 3 requires the trustees of the Provident Fund, within 12 months after the commencement of the proposed Act, to pay to the Superannuation Board the contributions made by the Water Board in respect of those employees of the Water Board who, on 1 February 1982 or a later date, purported to elect to become contributors to the Retirement Fund. On being paid to the Superannuation Fund, this money is to be credited to the reserve account established in respect of the Board under section 9 of the Public Authorities Superannuation Act 1985.

Clause 4 validates the transfer to the Retirement Fund of contributions made to the Provident Fund by a "transferred contributor". The clause makes it clear that on the relevant day (1 February 1982 or a later date) a "transferred contributor" is to be taken to have withdrawn from membership of the Provident Fund and to have surrendered all rights and benefits in respect of that Fund.

Clause 5 protects the trustees of the Provident Fund from liability for certain breaches of trust that may have been committed in relation to the contributions to the Provident Fund made by a "transferred contributor" or by the Water Board in respect of such a contributor. The clause also protects the Water Board and its employees from liability for certain acts or omissions relating to the handling of part of those contributions.

Clause 6 is designed to facilitate the transfer to the Superannuation Fund, or to a superannuation or retirement fund prescribed by regulation made under clause 7, of contributions made to the Provident Fund by employees of the Water Board who are members of that Fund at the commencement of the proposed Act and by the Board on behalf of those employees.

Clause 7 empowers the Governor-in-Council to make regulations for the purposes of the proposed Act.

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 7. Regulations
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**HUNTER DISTRICT WATER BOARD EMPLOYEES'
PROVIDENT FUND (SPECIAL PROVISIONS) BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to facilitate the transfer to the Public Authorities Superannuation Fund of contributions made by the Hunter District Water Board to the Hunter District Water Board Employees' Provident Fund, to validate the transfer to the New South Wales Retirement Fund of contributions made by employees of that Board to the Hunter District Water Board Employees' Provident Fund, and to provide for related matters.

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WHEREAS on 1 February 1982, 504 employees of the Hunter District Water Board who were members of the Hunter District Water Board Employees' Provident Fund purported to elect to become contributors to the New South Wales Retirement Fund established under the New South Wales Retirement Benefits Act 1972 and subsequently a further 13 such employees purported to elect to become contributors to that Retirement Fund:

AND WHEREAS contributions and other money which those employees would have been entitled to receive from the Provident Fund were subsequently transferred to the New South Wales Retirement Fund, but the transfer was not effected according to law and doubts have arisen as to whether or not those employees have effectively terminated their membership of the Provident Fund:

AND WHEREAS those employees have, by virtue of the enactment of the Public Authorities Superannuation Act 1985, since become contributors to the Public Authorities Superannuation Fund:

AND WHEREAS, before those employees became contributors to the New South Wales Retirement Fund, the Hunter District Water Board made contributions to the Provident Fund in respect of those employees and has, for some time, wished to have those contributions transferred to the Public Authorities Superannuation Fund in order to offset its liability in respect of benefits payable in respect of those employees under the Public Authorities Superannuation Act 1985, but the trustees of the Provident Fund have not been able to make that transfer without being in breach of trust:

AND WHEREAS it is desirable that the position of those employees with respect to the Provident Fund be clarified and that the contributions made to the Provident Fund by the Hunter District Water Board in respect of those employees be transferred to the Public Authorities Superannuation Fund for the benefit of those employees:

AND WHEREAS it is also desirable that the Hunter District Water Board's contributions to the Provident Fund made in respect of other employees of that Board who may subsequently become contributors to the Public Authorities Superannuation Fund or to some other superannuation or retirement fund established by the New South Wales Government should be transferred to that Superannuation Fund or to that other fund without the trustees of the Provident Fund being in breach of trust:

The Legislature of New South Wales therefore enacts as follows:

Short title

1. This Act may be cited as the Hunter District Water Board Employees' Provident Fund (Special Provisions) Act 1987.

Hunter District Water Board Employees' Provident Fund (Special Provisions)
1987

Definitions

2. In this Act—

“Provident Fund” means the Hunter District Water Board Employees’ Provident Fund established under a trust deed which took effect on 1 February 1971;

“relevant day”, in relation to a transferred contributor, means—

(a) if the contributor purported to elect to become a contributor to the Retirement Fund on 1 February 1982—that day; or

(b) if the contributor purported to elect to become a contributor to the Retirement Fund on a later day—that later day;

“Retirement Fund” means the New South Wales Retirement Fund established by the New South Wales Retirement Benefits Act 1972;

“Superannuation Board” means the Public Authorities Superannuation Board continued by the Public Authorities Superannuation Act 1985;

“Superannuation Fund” means the Public Authorities Superannuation Fund established by the Public Authorities Superannuation Act 1985;

“transferred contributor” means a person who, immediately before 28 October 1981, was a member of the Provident Fund and who, on or after 1 February 1982, purported to elect to become a contributor to the Retirement Fund;

“Water Board” means the Hunter District Water Board constituted under the Water Supply Authorities Act 1987.

Contributions to the Provident Fund made by the Water Board

3. (1) The trustees of the Provident Fund must, within 12 months after the commencement of this Act, pay to the Superannuation Board such part of the money credited to the Past Service Credit Account and the Board’s Contributions Reserve Account of the Provident Fund as relates to each of the transferred contributors, including interest in that part at the rate determined in accordance with Subclause A8.2 (h) of the Provident Fund trust deed, credited up to and including the date on which the money is paid.

(2) On receipt of the money payable under subsection (1), the Superannuation Board must credit the amount of the money to the reserve established under section 9 (3) of the Public Authorities Superannuation Act 1985 in respect of the Water Board.

(3) The money payable under subsection (1) becomes, at the end of the period referred to in that subsection, a debt due to the Superannuation Board and is recoverable accordingly.

(4) The Superannuation Board must apply the money paid or recovered under this section—

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- (a) for the purpose of discharging the liability of the Water Board in relation to employer-financed benefits payable from the Superannuation Fund in respect of transferred contributors or their dependants; or
 - 5 (b) to the extent that the money so paid or recovered exceeds that liability—for the purpose of discharging the Water Board's liability in relation to employer-financed benefits payable from the Superannuation Fund in respect of other persons employed or formerly employed by the Water Board or their dependants.
- 10 **Transfer from the Provident Fund to the Retirement Fund of transferred contributors' contributions**
 - 4. (1) The transfer to the Retirement Fund on or after the relevant day of contributions made to the Provident Fund by a transferred contributor shall be taken to have been done lawfully and not in breach of trust.
 - 15 (2) On the relevant day, each transferred contributor shall be taken to have—
 - (a) elected to have become a contributor to the Retirement Fund;
 - (b) withdrawn from membership of the Provident Fund;
 - 20 (c) directed that the whole of any benefit payable to the contributor from the Sub-accounts 1 and 2 of the contributor's member's account in the Provident Fund be paid to the Retirement Fund; and
 - (d) on payment from the Provident Fund of the benefit referred to in paragraph (c)—surrendered all rights of membership and all benefits in respect of the Provident Fund.
- 25 **Protection of certain persons from liability for breaches of trust etc.**
 - 5. (1) Where, but for this subsection, the trustees of the Provident Fund are or could be liable for a breach of trust arising from—
 - (a) the payment from the Provident Fund in good faith of contributions made to that Fund by the Water Board in respect of transferred contributors; or
 - 30 (b) the payment to the Retirement Fund of contributions made to the Provident Fund by transferred contributors and the termination of rights of those transferred contributors in respect of their membership of the Provident Fund,
 - 35 those trustees are, despite any enactment or rule of law to the contrary, absolved from that liability.
 - (2) Subsection (1) applies in respect of a breach committed either before the commencement of this Act or, for the purpose only of giving effect to this Act, after that commencement.

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- (3) Where, but for this subsection, the Water Board or any employee of the Water Board is or could be liable for any act or thing done or omitted to be done in good faith before the passing of this Act in relation to the contributions made to the Provident Fund by the Water Board in respect of transferred contributors, the Water Board and any such employee are, despite any enactment or rule of law to the contrary, absolved from that liability.

Existing contributors to the Provident Fund

6. (1) In this section, a reference to a prescribed fund is a reference to—
- (a) the Superannuation Fund; or
 - (b) such other retirement or superannuation fund as may be specified in the regulations for the purposes of this section.

(2) This section applies to an employee of the Water Board who, at the commencement of this Act, is a member of the Provident Fund.

- (3) If, in accordance with a right conferred by or under an Act, an employee of the Water Board to whom this section applies elects—
- (a) to withdraw from membership of the Provident Fund; and
 - (b) to become a contributor to a prescribed fund,

the trustees of the Provident Fund are authorised to transfer to the body responsible for the administration of that fund—

- (c) such part of the money credited to the Past Service Credit Account and the Board's Contributions Reserve Account of the Provident Fund as relates to that employee, including interest on that part at the rate determined in accordance with Subclause A8.2 (h) of the Provident Fund trust deed, credited up to and including the date on which the money is paid; and
- (d) such money as the employee would have been entitled to receive as benefits from Sub-accounts 1 and 2 of the employee's member's account in the Provident Fund if the employee had resigned from his or her employment with the Water Board.

(4) Whenever money is transferred to the body responsible for administering a prescribed fund in accordance with subsection (3), that body must—

- (a) pay into that fund to the credit of the reserve or other account established in respect of the Water Board the part of the money referred to in subsection (3) (c) and apply that money—
 - (i) for the purpose of discharging the Water Board's liability in relation to employer-financed benefits payable from that fund in respect of the employee concerned or that employee's dependants; or

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- 5 (ii) if that part exceeds that liability—for the purpose of discharging the Water Board's liability in relation to employer-financed benefits payable from that fund in respect of other persons employed or formerly employed by the Water Board or their dependants; and
- (b) pay into that fund to the credit of the employee concerned the money referred to in subsection (3) (d).

Regulations

- 10 7. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

