

**STATE AUTHORITIES NON-CONTRIBUTORY
SUPERANNUATION 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 object of this Bill is to establish a non-contributory superannuation scheme for certain employees in the public sector, so as to provide a 3 per cent productivity benefit.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 April 1988.

Clause 3 defines "employee", "employer" and other terms commonly used in the Bill. The "Board" is defined as the State Authorities Superannuation Board constituted by the proposed Superannuation Administration Act 1987.

Clause 4 sets out the amounts, allowances etc. included in "salary" for the purposes of the proposed Act.

Clause 5 enables the regulations to prescribe a person or organisation who is to be regarded, for superannuation purposes, as the employer of persons employed by the Crown, the Government or a Minister of the Crown.

Clause 6 designates the employers, for the purposes of the proposed Act, of members of the police force and persons appointed as Local Coal Authorities.

Clause 7 creates, as distinct from full-time and part-time employees, a third category of "irregular" employees. These are persons who are not likely to remain in one of the two more usual categories for a year or longer or who have very short working hours.

Clause 8 gives effect to Schedule 2 which excludes certain persons from the operation of the proposed Act in so far as it applies to employees.

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PART 2—FUNDS

Clause 9 enables the Board to establish funds, accounts and reserves for the purposes of the proposed Act.

Clause 10 provides for the establishment within any fund of a separate employer reserve in relation to individual employers or groups of employers.

Clause 11 provides for accounts and reserves to be periodically adjusted having regard to the income of the funds and other matters.

Clause 12 provides for the appropriate crediting and debiting of any funds, accounts and reserves established under the proposed Act.

Clause 13 provides for periodic actuarial investigation of funds established under the proposed Act.

PART 3—CONTRIBUTIONS BY EMPLOYERS

Clause 14 provides for the contributions payable by employers named in Part 1 of Schedule 1 (The Crown and other employers not mentioned in clauses 15 and 16).

Clause 15 provides for the contributions payable by employers named in Part 2 of Schedule 1 (Local government and other employers).

Clause 16 provides for the contributions payable by employers named in Part 3 of Schedule 1 (Hospitals and other bodies).

Clause 17 enables regulations to be made in relation to the contributions payable in respect of irregular employees referred to in clause 7.

Clause 18 provides for the calculation of contributions on the basis of contribution periods.

Clause 19 provides for a transfer of amounts between employers in respect of contributors who transfer from the service of one employer to another.

Clause 20 provides for the payment of contributions under the proposed Act into such funds, accounts or reserves as the Board determines.

PART 4—BENEFITS

Clause 21 defines certain terms relating to benefits.

Clause 22 specifies the basic benefit provided by the proposed Act for employees other than irregular employees and enables regulations to be made in relation to irregular employees' basic benefits.

Clause 23 prescribes the circumstances in which the basic benefit is payable immediately. These are exit after the age of 55 or on earlier death or total disability.

Clause 24 provides for preservation and payment of the basic benefit in circumstances other than those mentioned in clause 23.

Clause 25 makes machinery provisions respecting preserved benefits.

Clause 26 allows the Board to pay interest, at its discretion, on benefits paid under the proposed Act.

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PART 5—MISCELLANEOUS

Clause 27 enables the Governor-in-Council, by order published in the Gazette, to amend Schedule 1 (the schedule of employers) or Schedule 2 (the schedule of persons excluded as employees).

Clause 28 requires employers to submit to the Board information concerning employees.

Clause 29 enables the Board to require employees or claimants to provide specified information or access to information and, in appropriate cases, to undergo a medical examination.

Clause 30 renders void any purported assignment of, or charge over, a benefit payable under the proposed Act, but enables payments to be made by the Board in accordance with a request made by a beneficiary.

Clause 31 provides for payment, in the event of death, of a benefit without a grant of probate or letters of administration, or in anticipation of a claim under the Family Provision Act 1982.

Clause 32 enables recovery by the Board of money due under the proposed Act and any interest payable in respect of unpaid money.

Clause 33 provides for payment of a benefit where the beneficiary is incapable of administering his or her own affairs.

Clause 34 enables the Governor-in-Council to make regulations in aid of the proposed Act.

Schedule 1 specifies the authorities which are employers for the purposes of the proposed Act.

Schedule 2 specifies persons who are not to be regarded as employees for the purposes of the proposed Act.

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**STATE AUTHORITIES NON-CONTRIBUTORY
SUPERANNUATION BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to establish a non-contributory superannuation scheme for certain employees in the public sector; and for other purposes.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the State Authorities Non-contributory
5 Superannuation Act 1987.

Commencement

2. This Act shall commence on 1 April 1988.

Definitions

3. (1) In this Act—

10 “appointed day” means 1 April 1988;

“attributed salary”, in relation to an employee at any time, means—

(a) where the employee is a full-time employee at that time—the
salary of the employee at that time; or

15 (b) where the employee is a part-time employee at that time—the
salary that would be payable to the employee at that time if
employed as a full-time employee;

“basic benefit” means the basic benefit referred to in section 22;

“benefit” means a benefit payable under this Act;

20 “Board” means the State Authorities Superannuation Board constituted
by the Superannuation Administration Act 1987;

“contribution period” means a named month or such other period as may
be prescribed in relation to any class of persons or circumstances;

“employee” means a person who is employed by an employer, but does
not include an excluded person referred to in Schedule 2;

25 “employer” means—

(a) the Crown, the Government or a Minister of the Crown; or

(b) an authority specified in Schedule 1,

and a reference to employment with an employer includes a reference
to employment with successive employers;

30 “exit date”, in relation to an employee, means the day on which the
employee ceases employment with an employer, that cessation of
employment being—

(a) the only such cessation; or

35 (b) where there has been more than one such cessation of employment
of the employee—the later or latest of those cessations of
employment;

“full-time employee” means an employee whose salary ratio is 1;

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- “irregular employee” is an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 to be an irregular employee;
- 5 “part-time employee” means an employee whose salary ratio is less than 1 but at least 0.1;
- “resign”, in relation to an employee, means cease to be employed by an employer before reaching the age of 55 years, otherwise than on account of—
- (a) death; or
- 10 (b) invalidity, where the Board is satisfied—
- (i) that the ceasing to be employed was due, directly or indirectly to the permanent physical or mental incapacity of the employee (not caused by any act or default of the employee intended to produce that incapacity); and
- 15 (ii) that the employee is permanently unable, by reason of that incapacity, to be engaged in, or to be employed in, any remunerative occupation in which, in the opinion of the Board, it would otherwise be reasonable to expect the contributor to engage;
- 20 “retire” means cease (otherwise than by reason of death) in any manner to be employed by an employer on or after reaching the age of 55 years;
- “salary”, in relation to an employee, means salary of the employee, determined in accordance with section 4 and expressed as an annual rate;
- 25 “salary ratio”, in relation to an employee at any time during a contribution period, means the number ascertained by dividing the salary of the employee at the commencement of that contribution period by the attributed salary of the employee at that commencement;
- “spouse”, in relation to a deceased employee, means—
- 30 (a) if the deceased employee was survived by a widow or widower—the widow or widower, as the case may be, of the employee; or
- (b) if the deceased employee was not survived by a widow or widower—
- (i) where the employee was a man and, at the time of his death, 35 he was living with a woman as her husband on a bona fide domestic basis—the woman with whom he was so living; or
- (ii) where the employee was a woman and, at the time of her death, she was living with a man as his wife on a bona fide domestic basis—the man with whom she was so living;
- 40 “superannuation scheme” means a scheme, fund or arrangement (whether or not established by an Act) under which any superannuation or retirement benefits are provided by an employer.

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(2) A reference in this Act to an authority where used in or in connection with the definition of "employer" is a reference to an authority, organisation, corporation, person or other entity.

(3) If the inclusion of an employer in Schedule 1 is expressed to be limited in any respect, this Act has effect in relation to the employer subject to the limitation.

Salary

4. (1) For the purposes of this Act, "salary", in relation to an employee, means the remuneration, salary or wages payable in money to the employee in the employee's capacity as an employee, as reported to the Board from time to time by the employee's employer, including—

- (a) a loading in respect of any shift allowance, as determined in accordance with the regulations; and
- (b) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment,

but does not include the excluded amounts or allowances referred to in subsection (2).

(2) The excluded amounts or allowances are:

- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime;
- (b) except to the extent determined in accordance with the regulations, as referred to in subsection (1) (a)—an amount paid as shift allowance;
- (c) except to the extent that this section otherwise provides—a relieving allowance;
- (d) an expense allowance or an allowance for travelling, subsistence or other expenses;
- (e) an equipment allowance; and
- (f) an amount paid for rent or as a residence, housing or quarters allowance.

(3) If an employee's employer, or a person authorised to do so on behalf of the employer, certifies in writing to the Board that a relieving allowance to be, or being, paid to the employee in the employee's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from—

- (a) the date on which the certificate is lodged with the Board; or
- (b) the date from which the allowance becomes payable,

whichever is the later, salary for the purposes of this Act.

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(4) If a relieving allowance has been paid to an employee in the employee's capacity as an employee for a continuous period of 1 year that ends after the appointed day and, during that period, the allowance has not been treated as part of the employee's salary in accordance with subsection 5 (3), the allowance shall, as from the expiration of that period of 1 year, be treated as part of the employee's salary while its payment to the employee continues.

(5) If an employee is on secondment to another employer, the salary of the employee for the purposes of this Act is the salary paid or payable to 10 the employee by the other employer.

(6) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (7) applies—

- (a) to an employee specified in the order who is on secondment but not to another employer; and
- 15 (b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.

(7) During the period in which this subsection is declared pursuant to subsection (6) to apply to an employee on secondment, the employee's salary 20 shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.

(8) In this section, "shift allowance" means an allowance paid to an employee in respect of shift work performed by the employee, and includes amounts paid as penalty rates.

25 Employees of the Crown etc.

5. An employee of the Crown, the Government or a Minister of the Crown shall, for the purposes of this Act, be deemed to be employed by such person or organisation as may be prescribed.

Provisions respecting certain employees

30 **6. (1)** Members of the Police Force shall, for the purposes of this Act, be deemed to be employed by the Commissioner of Police.

(2) A person appointed by the Coal Industry Tribunal to be a Local Coal Authority in the State shall, for the purposes of this Act, be deemed to be, while holding office as such an Authority, a person employed by the Joint 35 Coal Board.

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Irregular employees

7. If an employer certifies in writing that the employer has reason to believe that an employee of the employer will not continue to be a full-time employee or part-time employee for at least 1 year from the date of the certificate, the employee shall, for the purposes of this Act, be deemed to be neither a full-time employee nor a part-time employee and to be an irregular employee.

Persons not subject to Act

8. Schedule 2 has effect.

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PART 2—FUNDS

Funds etc.

9. (1) The Board may establish and maintain such funds, accounts and reserves as, in the opinion of the Board, are necessary or convenient for the administration of this Act.
- 15 (2) The Board shall cause to be paid to any such fund—
- (a) contributions made by employers;
 - (b) income derived from investment of the fund, and any profit made from realisation of any investment of the fund; and
 - (c) money borrowed for the purposes of the fund.
- 20 (3) The Board shall cause to be paid from any such fund—
- (a) by transfer from the fund to the State Authorities Superannuation Management Account established under the Superannuation Administration Act 1987 management costs calculated in accordance with that Act;
 - 25 (b) any loss made from realisation of any investment of the fund; and
 - (c) the benefits payable under this Act.

Reserves for employers

10. (1) The Board shall, in relation to each employer specified in Part 1 of Schedule 1, establish and maintain within a fund managed by the Board a separate employer reserve for the purposes of this Act.
- 30 (2) The Board shall, in relation to each of Parts 2 and 3 of Schedule 1, establish and maintain within a fund managed by the Board a separate employer reserve for the purposes of this Act.
- (3) There shall be credited to such an employer reserve the contributions made by the employer or employers to whom the reserve relates.
- 35 (4) There shall be debited to such an employer reserve—

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- (a) the amount of any benefit paid to, or in relation to, an employee who, immediately before the benefit became payable, was an employee of the employer or an employer to whom the reserve relates; and
- 5 (b) management costs calculated in accordance with the Superannuation Administration Act 1987 in relation to the employer or an employer to whom the reserve relates.

(5) If the amount standing to the credit of the employer reserve established for Part 3 of Schedule 1 is insufficient to meet the amounts payable from the reserve, the deficiency shall be recouped from the Consolidated Fund which is, to the necessary extent, appropriated accordingly.

Adjustment of accounts and reserves for interest etc.

11. The Board shall, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by the Board, having regard to the income of the funds of which they form part and such other matters as the Board considers relevant.

Funds, accounts and reserves generally

12. (1) There may be credited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be credited to it.

(2) There may be debited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be debited to it.

25 **Actuarial investigation**

13. (1) An investigation as to the state and sufficiency of any of the funds established under this Act shall, as at 31 March 1991 and at the end of each succeeding period of 3 years, be made by an actuary or actuaries appointed by the Board.

30 (2) Actuaries appointed under this section shall complete their investigation, and shall report the result to the Board, not later than 13 months after the date as at which the investigation is made.

(3) The Board shall, not later than 2 months after it receives a report under this section, forward the report to the Minister with such comments as it thinks fit.

(4) The Minister may, in relation to a particular investigation, extend or further extend a period referred to in subsection (2) or (3) if the Minister considers that special circumstances exist to justify such an extension or further extension.

PART 3—CONTRIBUTIONS BY EMPLOYERS**Contributions by employer under Part 1 of Schedule 1 (The Crown and other employers)**

14. Where an employee is employed by an employer specified in Part 1 of Schedule 1, the employer shall pay to the Board an amount equal to a percentage of the salary of the employee, being a percentage determined by the Board, in relation to the employer, with the concurrence of the Treasurer.

Contributions by employer under Part 2 of Schedule 1 (Local government and other authorities)

15. Where an employee is employed by an employer specified in Part 2 of Schedule 1, the employer shall pay to the Board an amount equal to 2.5 per cent (or such other percentage as may be prescribed following an actuarial investigation under this Act) of the salary of the employee.

Contributions by employer under Part 3 of Schedule 1 (Hospitals and other bodies)

16. Where an employee is employed by an employer specified in Part 3 of Schedule 1, the employer shall pay to the Board an amount equal to a percentage of the salary of the employee, being a percentage determined by the Board, in relation to the employer, with the concurrence of the Treasurer.

Contributions for irregular employees

17. (1) The regulations may make provision for or with respect to the contributions to be paid to the Board in respect of irregular employees.

(2) Any such regulations may have effect despite anything in section 14, 15 or 16.

Basis and making of contributions

18. (1) Contributions under this Part shall be calculated on the basis of contribution periods, and the contributions payable in respect of a contribution period shall be paid to the Board within 7 days after the last day of the contribution period to which they relate.

(2) The regulations may make provision for or with respect to the determination of salary for the purposes of this Part, where part-time work, irregular employment, leave without pay, secondment or a break in employment is involved.

Transfer of employees

19. (1) This section applies where—

(a) an employee ceases to be employed by an employer;

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- (b) the employee commences to be employed by another employer within 2 months; and
- (c) the Board determines that, because of the nature and circumstances of the employment involved (for example, employment in different Departments in the Public Service), it would not be appropriate to regard the employee as having resigned or retired.
- 5
- (2) The Board shall determine the value of the basic benefit at the date of cessation of employment with the former employer and shall—
- (a) debit the employer reserve of the former employer with that value; and
- 10
- (b) credit the employer reserve of the new employer with that value.

Application of payments

20. Contributions and other amounts payable to the Board under this Act shall be paid into such funds, accounts or reserves as the Board determines, whether established under this Act or for the purposes of any other superannuation scheme managed by the Board.
- 15

PART 4—BENEFITS**Definitions**

21. (1) In this Part—
- 20 “final average salary”, in relation to an employee, means the average of the attributed salaries paid or payable to the employee at the rates applicable—
- (a) on the employee’s exit date;
- (b) on 31 December (or such other date as the Board may determine) last preceding the employee’s exit date; and
- 25
- (c) on 31 December (or such other date as the Board may determine) last preceding the date referred to in paragraph (b);
- “final salary”, in relation to an employee, means the rate of attributed salary paid or payable to the employee on the employee’s exit date.
- 30 (2) Different dates may be determined by the Board for the purposes of the definition of “final average salary” in subsection (1), so as to apply differently according to different classes of employees.

Basic benefit

22. (1) The basic benefit provided by this Act for an employee is an amount equal to the amount calculated in accordance with the formula—
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$$B = 0.03 \times F \times Y$$

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where—

B represents the amount to be ascertained;

F represents—

5 (a) in the case of the employee's resignation or retirement or the employee's death on or after reaching the age of 55 years—the employee's final average salary; or

(b) in any other case—the employee's final salary; and

Y represents the years of eligible service on a daily basis, commencing on or after the appointed day.

10 (2) The regulations may make provision for or with respect to the determination of the basic benefit for irregular employees.

(3) The regulations may make provision for or with respect to the determination of eligible service for the purposes of this Act, including the manner of determining the length of eligible service where part-time work,
15 irregular employment, leave without pay, secondment or a break in employment is involved.

Benefit immediately payable

23. (1) The basic benefit is payable by the Board on—

(a) the retirement of an employee from employment with an employer;

20 (b) the death of an employee during employment with an employer;

(c) the retirement of an employee from employment with an employer before reaching the age of 55 years, where the Board is satisfied—

25 (i) that the retirement was due, directly or indirectly, to the permanent physical or mental incapacity of the employee (not caused by any act or default of the employee intended to produce that incapacity); and

30 (ii) that the employee is permanently unable, by reason of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which, in the opinion of the Board, it would otherwise be reasonable to expect the employee to engage; or

(d) the cessation of an employee's employment with an employer in other prescribed circumstances.

(2) The basic benefit provided by this section is payable—

35 (a) where the benefit becomes payable on the retirement of the employee—to the employee;

(b) where the benefit becomes payable on the death of the employee and the employee is survived by a spouse—to the employee's spouse; or

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- (c) where the benefit becomes payable on the death of the employee and the employee is not survived by a spouse—to the personal representatives of the employee or, if appropriate, in accordance with section 31 (Payment without grant of probate etc.).

5 Benefit to be preserved

- 24. (1)** The basic benefit shall be preserved by the Board when an employee ceases to be an employee of an employer, otherwise than in the circumstances mentioned in section 23 (1).
- (2) The basic benefit provided by this section shall be—
- 10 (a) preserved in accordance with the regulations; and
- (b) subsequently paid out in such circumstances and in such manner as are determined in accordance with the regulations.
- (3) If the basic benefit provided by this section is to be paid out by the Board, it is payable—
- 15 (a) where the benefit becomes payable otherwise than on the death of the employee—to the employee;
- (b) where the benefit becomes payable on the death of the employee and the employee is survived by a spouse—to the employee's spouse;
- 20 (c) where the benefit becomes payable on the death of the employee and the employee is not survived by a spouse—to the personal representatives of the employee or, if appropriate, in accordance with section 31 (Payment without grant of probate etc.); or
- (d) where the Board is satisfied that such payment will comply with relevant rules or guidelines as to the preservation of superannuation
- 25 benefits—to a fund managed by the Board or a deposit fund.

Preservation of benefit

- 25. (1)** Any amounts preserved by the Board under this Act shall be preserved in such funds, accounts or reserves as the Board determines, whether established under this Act or the Superannuation Administration
- 30 Act 1987 or for the purposes of any other superannuation scheme managed by the Board.

(2) Any such preserved amounts payable by the Board under this Act shall be paid from the appropriate fund, account or reserve referred to in this section.

35 Interest

26. The Board may, when paying a benefit under this Act, pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.

PART 5—MISCELLANEOUS**Employers and employees**

27. (1) The Governor may, by order published in the Gazette, amend Schedule 1 or 2.

- 5 (2) An order under subsection (1), and any other order revoking or varying such an order, may be made—
- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order; and
- 10 (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing employee.

Employer to provide information

28. (1) An employer shall submit to the Board such information or
15 evidence relating to employees of the employer as the Board requires.

(2) Where an employer fails to comply with subsection (1) in relation to an employee, the Board may defer payment of a benefit to, or in relation to, an employee where the information sought is relevant to the right to receive the benefit.

20 Employee or claimant to provide information

29. (1) The Board may require an employee or a claimant for payment of a benefit under this Act—

- (a) to provide the Board with specified information or evidence referred to in subsection (2);
- 25 (b) to provide the Board with an authority to obtain from a third person any such information or evidence; or
- (c) in the case of a claimant for a benefit arising in relation to permanent physical or mental incapacity—to undergo a medical examination.

30 (2) A requirement under subsection (1) may be made only in relation to information, evidence or a medical examination that is relevant to the assessment of an application made by the claimant for payment of the benefit.

(3) Where—

- 35 (a) the employee or claimant to whom a requirement under subsection (1) relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement; or

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- (b) a person referred to in subsection (1) (b) fails to provide information or evidence that the Board has been authorised to obtain from the person or, in purported compliance with the request by the Board for the information or evidence, makes or provides an untrue statement,

the Board may take such action in relation to the benefit concerned as, in the opinion of the Board, would place the claimant as nearly as possible in the same position as the claimant would be if the information or evidence had been provided or the medical examination made or if the statement had not been untrue.

(4) For the purposes of this section, “untrue”, in relation to a statement, includes—

- (a) misleading in the form and context in which the statement appears; and
 (b) misleading by reason of the omission from the statement of matter that is material.

Assignment etc. of benefit

30. (1) A purported assignment of, or purported charge over, a benefit is void.

(2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.

(3) A benefit payable on the death of an employee is not an asset in the employee’s estate that is applicable in payment of the debts and liabilities of the deceased.

(4) Nothing in this section prevents the Board from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.

(5) Any payment made under subsection (4) shall be deemed to have been made to the person entitled to the benefit.

Payment without grant of probate etc.

31. (1) Where an employee or former employee dies and—

- (a) a benefit is or becomes payable under this Act in relation to the deceased;
 (b) production to the Board of probate of the will, or letters of administration of the estate, of the deceased has not been arranged; and

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(c) the Board has not, within the period of 3 months that next succeeds the death of the deceased, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

5 the Board may, if it so decides, make a payment of the whole or any part of the benefit in accordance with subsection (2), being a payment that does not exceed \$50,000 or, where some other amount is prescribed for the purposes of this section, that other amount.

10 (2) Where the Board makes a decision under subsection (1), the Board may—

(a) pay the whole or any part of the amount of the benefit to an eligible person within the meaning of the Family Provision Act 1982;

15 (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses—pay the whole or any part of the balance to any person referred to in paragraph (a); or

(c) in special circumstances, pay the whole or any part of the amount of the benefit, or the balance referred to in paragraph (b), to some other person.

20 (3) Where an employee or former employee dies and the Board is of the opinion that proceedings might be instituted under the Family Provision Act 1982 in relation to the estate, or notional estate, of the deceased, the Board may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

25 Recovery of money owing to Board

32. (1) The Board may recover any money owing to the Board under this Act by an employee, employer or other person, together with interest thereon as provided by subsection (3)—

30 (a) except in the case of unpaid contributions—as a debt in a court of competent jurisdiction;

(b) where any amount is, or becomes, payable under this Act to the employee, employer or other person—by deduction from that amount; or

35 (c) in the case of an employee—by deduction from the employee's salary in accordance with subsection (2) by such instalments and at such times as the Board determines.

40 (2) An employer shall, at the written request of the Board, make deductions from an employee's salary as referred to in subsection (1) (c) and pay the amount thereof to the Board, and an amount so deducted and paid shall be deemed to have been paid to the Board by the employee from whose salary the deduction was made.

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(3) Interest at a rate from time to time determined by the Board is payable on any amount owing to the Board calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

5 Payment where beneficiary incapable

33. (1) Where a person to whom a benefit under this Act is payable is, in the opinion of the Board, incapable of administering his or her own affairs by reason of illness, imprisonment or any other cause, the Board may pay the benefit to some other person to be applied wholly for the care, maintenance, benefit and support of the person to whom, but for this section, the benefit would be payable, or of any person dependent on him or her.

(2) Any payment made under this section shall be deemed to have been made to the person entitled to the benefit.

15 Regulations

34. (1) 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.

(2) Regulations may not be made unless the recommendation to the Governor for their making includes a certificate by a Minister to the effect that, in the formulation of the regulations, regard has been had to any relevant rules or guidelines for the time being in force in relation to superannuation benefits of the kind provided by this Act.

25

SCHEDULE 1—EMPLOYERS

(Secs. 3, 27)

Part 1—The Crown and other employers

A Government Department or Administrative Office

The Commissioner of Police

30

Health Administration Corporation

The Maritime Services Board of New South Wales

Water Administration Ministerial Corporation

Water Board

The Hunter District Water Board

35

Board of Fire Commissioners of New South Wales

Western Lands Commissioner

Australian Museum Trust

The Commissioner for Main Roads

*State Authorities Non-contributory Superannuation 1987*SCHEDULE 1—EMPLOYERS—*continued*

- The Electricity Commission of New South Wales
 Grain Handling Authority of New South Wales
 State Authorities Superannuation Board
 New South Wales Investment Corporation
 5 Judicial Commission of New South Wales
 Bathurst-Orange Development Corporation
 The Broken Hill Water Board
 Building Services Corporation
 Clann Limited
 10 The Commissioner for Motor Transport
 Fish Marketing Authority
 Greyhound Racing Control Board
 Harness Racing Authority of New South Wales
 Homebush Abattoir Corporation
 15 Hunter Valley Conservation Trust
 Justice and Police Museum Limited
 Metropolitan Waste Disposal Authority
 New South Wales Film Corporation
 New South Wales Meat Industry Authority
 20 State Rail Authority of New South Wales
 Sydney Cove Redevelopment Authority
 Sydney Market Authority
 Traffic Authority of New South Wales
 The Trustees of the Anzac Memorial Building
 25 Urban Transit Authority of New South Wales
 The University of Sydney
 The University of New England
 The University of New South Wales
 The Macquarie University
 30 The University of Newcastle
 The University of Wollongong
 Mitchell College of Advanced Education
 The New South Wales Institute of Technology
 Northern Rivers College of Advanced Education
 35 Newcastle College of Advanced Education
 Cumberland College of Health Sciences
 Kuring-gai College of Advanced Education
 Nepean College of Advanced Education
 Riverina-Murray Institute of Higher Education

*State Authorities Non-contributory Superannuation 1987*SCHEDULE 1—EMPLOYERS—*continued*

- Macarthur Institute of Higher Education
 Sydney College of the Arts
 Armidale College of Advanced Education
 Sydney College of Advanced Education
 5 New South Wales Institute of the Arts
 Children's Medical Research Foundation (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)
 Garvan Institute of Medical Research
 10 St. Luke's Hospital (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)
 Hawkesbury Agricultural College
 Orange Agricultural College
 15 The New South Wales Teachers' Federation
 Public Service Association of New South Wales
 Joint Coal Board
 The River Murray Commission (limited to—
 20 (a) persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985; and
 (b) persons who were contributing to the State Authorities Superannuation Fund immediately before becoming officers of the River Murray Commission and in respect of whom provision is made by the River
 25 Murray Commission for superannuation in accordance with this Act)
 Australian Transport Officers Federation (New South Wales Division)
 The Water and Sewerage Employees Union (Salaried Division and Wages Division)
 Australian Railways Union
 The Australian Tramway and Motor Omnibus Employees' Association
 30 Australian Federated Union of Locomotive Enginemmen
 The Operative Plasterers' and Plaster Workers' Federation of Australia (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)
 The Police Association of New South Wales
 35 Forestry Commission of New South Wales
 Government Printing Office
 Public Trust Office
 State Compensation Board
 State Lotteries Office
 40 Trustees of state recreation areas
 The Sydney Opera House Trust

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SCHEDULE 1—EMPLOYERS—*continued*

Department of Co-operative Societies

Part 2—Local government and other authorities

- A body corporate constituted under the Local Government Act 1919 as a council or a county council
- 5 A committee constituted under the Local Government Act 1919 as an urban committee or a joint committee of 2 or more councils
- A pastures protection board constituted under the Pastures Protection Act 1934
- 10 The employer of a servant, or class of servants, specified in a proclamation published under section 2 (4) of the Local Government and Other Authorities (Superannuation) Act 1927
- A body or association of persons specified in a proclamation published under section 2 (5) of the Local Government and Other Authorities (Superannuation) Act 1927

Part 3—Hospitals and other bodies

- 15 An incorporated hospital specified in the Second Schedule to the Public Hospitals Act 1929
- A separate institution specified in the Third Schedule to the Public Hospitals Act 1929
- An associated organisation specified in the Fourth Schedule to the Public Hospitals Act 1929
- 20 An area health service constituted under the Area Health Services Act 1986

SCHEDULE 2—EXCLUDED PERSONS

(Secs. 3, 8, 27)

For the purposes of the definition of "employee" in section 3 (1), a person is an excluded person if he or she—

- 25 (a) is a full-time employee and is eligible for a superannuation benefit of the kind provided by this Act under another superannuation scheme; or
- (b) is a Judge within the meaning of the Judges' Pensions Act 1953, a master within the meaning of the Supreme Court Act 1970, the Solicitor General or the Director of Public Prosecutions.

**STATE AUTHORITIES NON-CONTRIBUTORY
SUPERANNUATION ACT 1987 No. 212**

NEW SOUTH WALES



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SCHEDULE 1—EMPLOYERS

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**STATE AUTHORITIES NON-CONTRIBUTORY SUPERANNUATION
ACT 1987 No. 212**

NEW SOUTH WALES



Act No. 212, 1987

An Act to establish a non-contributory superannuation scheme for certain employees in the public sector; and for other purposes. [Assented to 9 December 1987]

State Authorities Non-contributory Superannuation 1987

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the State Authorities Non-contributory Superannuation Act 1987.

Commencement

2. This Act shall commence on 1 April 1988.

Definitions

3. (1) In this Act—

“appointed day” means 1 April 1988;

“attributed salary”, in relation to an employee at any time, means—

(a) where the employee is a full-time employee at that time—the salary of the employee at that time; or

(b) where the employee is a part-time employee at that time—the salary that would be payable to the employee at that time if employed as a full-time employee;

“basic benefit” means the basic benefit referred to in section 22;

“benefit” means a benefit payable under this Act;

“Board” means the State Authorities Superannuation Board constituted by the Superannuation Administration Act 1987;

“contribution period” means a named month or such other period as may be prescribed in relation to any class of persons or circumstances;

“employee” means a person who is employed by an employer, but does not include an excluded person referred to in Schedule 2;

“employer” means—

(a) the Crown, the Government or a Minister of the Crown; or

(b) an authority specified in Schedule 1,

and a reference to employment with an employer includes a reference to employment with successive employers;

“exit date”, in relation to an employee, means the day on which the employee ceases employment with an employer, that cessation of employment being—

(a) the only such cessation; or

(b) where there has been more than one such cessation of employment of the employee—the later or latest of those cessations of employment;

“full-time employee” means an employee whose salary ratio is 1;

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“irregular employee” is an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 to be an irregular employee;

“part-time employee” means an employee whose salary ratio is less than 1 but at least 0.1;

“resign”, in relation to an employee, means cease to be employed by an employer before reaching the age of 55 years, otherwise than on account of—

(a) death; or

(b) invalidity, where the Board is satisfied—

(i) that the ceasing to be employed was due, directly or indirectly to the permanent physical or mental incapacity of the employee (not caused by any act or default of the employee intended to produce that incapacity); and

(ii) that the employee is permanently unable, by reason of that incapacity, to be engaged in, or to be employed in, any remunerative occupation in which, in the opinion of the Board, it would otherwise be reasonable to expect the contributor to engage;

“retire” means cease (otherwise than by reason of death) in any manner to be employed by an employer on or after reaching the age of 55 years;

“salary”, in relation to an employee, means salary of the employee, determined in accordance with section 4 and expressed as an annual rate;

“salary ratio”, in relation to an employee at any time during a contribution period, means the number ascertained by dividing the salary of the employee at the commencement of that contribution period by the attributed salary of the employee at that commencement;

“spouse”, in relation to a deceased employee, means—

(a) if the deceased employee was survived by a widow or widower—the widow or widower, as the case may be, of the employee; or

(b) if the deceased employee was not survived by a widow or widower—

(i) where the employee was a man and, at the time of his death, he was living with a woman as her husband on a bona fide domestic basis—the woman with whom he was so living; or

(ii) where the employee was a woman and, at the time of her death, she was living with a man as his wife on a bona fide domestic basis—the man with whom she was so living;

“superannuation scheme” means a scheme, fund or arrangement (whether or not established by an Act) under which any superannuation or retirement benefits are provided by an employer.

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(2) A reference in this Act to an authority where used in or in connection with the definition of "employer" is a reference to an authority, organisation, corporation, person or other entity.

(3) If the inclusion of an employer in Schedule 1 is expressed to be limited in any respect, this Act has effect in relation to the employer subject to the limitation.

Salary

4. (1) For the purposes of this Act, "salary", in relation to an employee, means the remuneration, salary or wages payable in money to the employee in the employee's capacity as an employee, as reported to the Board from time to time by the employee's employer, including—

- (a) a loading in respect of any shift allowance, as determined in accordance with the regulations; and
- (b) other allowances payable in money that are of a kind included within the value of leave paid on termination of employment,

but does not include the excluded amounts or allowances referred to in subsection (2).

(2) The excluded amounts or allowances are:

- (a) an amount paid for overtime or as a bonus, or an allowance instead of overtime;
- (b) except to the extent determined in accordance with the regulations, as referred to in subsection (1) (a)—an amount paid as shift allowance;
- (c) except to the extent that this section otherwise provides—a relieving allowance;
- (d) an expense allowance or an allowance for travelling, subsistence or other expenses;
- (e) an equipment allowance; and
- (f) an amount paid for rent or as a residence, housing or quarters allowance.

(3) If an employee's employer, or a person authorised to do so on behalf of the employer, certifies in writing to the Board that a relieving allowance to be, or being, paid to the employee in the employee's capacity as an employee is likely to be paid for a continuous period of 1 year (whether or not the period is partly before the date of the certificate), the allowance is, as from—

- (a) the date on which the certificate is lodged with the Board; or
- (b) the date from which the allowance becomes payable,

whichever is the later, salary for the purposes of this Act.

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(4) If a relieving allowance has been paid to an employee in the employee's capacity as an employee for a continuous period of 1 year that ends after the appointed day and, during that period, the allowance has not been treated as part of the employee's salary in accordance with subsection (3), the allowance shall, as from the expiration of that period of 1 year, be treated as part of the employee's salary while its payment to the employee continues.

(5) If an employee is on secondment to another employer, the salary of the employee for the purposes of this Act is the salary paid or payable to the employee by the other employer.

(6) The Governor may, by order in writing, declare unconditionally, or subject to conditions, that subsection (7) applies—

- (a) to an employee specified in the order who is on secondment but not to another employer; and
- (b) generally during the period of that secondment, or during such period as is specified in the order, being, in either case, a period commencing before, on or after the date of the order.

(7) During the period in which this subsection is declared pursuant to subsection (6) to apply to an employee on secondment, the employee's salary shall, for the purposes of this Act, be that paid or payable in respect of the employment to which he or she is seconded.

(8) In this section, "shift allowance" means an allowance paid to an employee in respect of shift work performed by the employee, and includes amounts paid as penalty rates.

Employees of the Crown etc.

5. An employee of the Crown, the Government or a Minister of the Crown shall, for the purposes of this Act, be deemed to be employed by such person or organisation as may be prescribed.

Provisions respecting certain employees

6. (1) Members of the Police Force shall, for the purposes of this Act, be deemed to be employed by the Commissioner of Police.

(2) A person appointed by the Coal Industry Tribunal to be a Local Coal Authority in the State shall, for the purposes of this Act, be deemed to be, while holding office as such an Authority, a person employed by the Joint Coal Board.

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Irregular employees

7. If an employer certifies in writing that the employer has reason to believe that an employee of the employer will not continue to be a full-time employee or part-time employee for at least 1 year from the date of the certificate, the employee shall, for the purposes of this Act, be deemed to be neither a full-time employee nor a part-time employee and to be an irregular employee.

Persons not subject to Act

8. Schedule 2 has effect.

PART 2—FUNDS

Funds etc.

9. (1) The Board may establish and maintain such funds, accounts and reserves as, in the opinion of the Board, are necessary or convenient for the administration of this Act.

(2) The Board shall cause to be paid to any such fund—

- (a) contributions made by employers;
- (b) income derived from investment of the fund, and any profit made from realisation of any investment of the fund; and
- (c) money borrowed for the purposes of the fund.

(3) The Board shall cause to be paid from any such fund—

- (a) by transfer from the fund to the State Authorities Superannuation Management Account established under the Superannuation Administration Act 1987 management costs calculated in accordance with that Act;
- (b) any loss made from realisation of any investment of the fund; and
- (c) the benefits payable under this Act.

Reserves for employers

10. (1) The Board shall, in relation to each employer specified in Part 1 of Schedule 1, establish and maintain within a fund managed by the Board a separate employer reserve for the purposes of this Act.

(2) The Board shall, in relation to each of Parts 2 and 3 of Schedule 1, establish and maintain within a fund managed by the Board a separate employer reserve for the purposes of this Act.

(3) There shall be credited to such an employer reserve the contributions made by the employer or employers to whom the reserve relates.

(4) There shall be debited to such an employer reserve—

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- (a) the amount of any benefit paid to, or in relation to, an employee who, immediately before the benefit became payable, was an employee of the employer or an employer to whom the reserve relates; and
- (b) management costs calculated in accordance with the Superannuation Administration Act 1987 in relation to the employer or an employer to whom the reserve relates.

(5) If the amount standing to the credit of the employer reserve established for Part 3 of Schedule 1 is insufficient to meet the amounts payable from the reserve, the deficiency shall be recouped from the Consolidated Fund which is, to the necessary extent, appropriated accordingly.

Adjustment of accounts and reserves for interest etc.

11. The Board shall, from time to time, adjust each of the accounts and reserves established under this Part at a rate fixed by the Board, having regard to the income of the funds of which they form part and such other matters as the Board considers relevant.

Funds, accounts and reserves generally

12. (1) There may be credited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be credited to it.

(2) There may be debited to any fund, account or reserve established by or under this Act any amount that is required or permitted by or under this or any other Act to be debited to it.

Actuarial investigation

13. (1) An investigation as to the state and sufficiency of any of the funds established under this Act shall, as at 31 March 1991 and at the end of each succeeding period of 3 years, be made by an actuary or actuaries appointed by the Board.

(2) Actuaries appointed under this section shall complete their investigation, and shall report the result to the Board, not later than 13 months after the date as at which the investigation is made.

(3) The Board shall, not later than 2 months after it receives a report under this section, forward the report to the Minister with such comments as it thinks fit.

(4) The Minister may, in relation to a particular investigation, extend or further extend a period referred to in subsection (2) or (3) if the Minister considers that special circumstances exist to justify such an extension or further extension.

PART 3—CONTRIBUTIONS BY EMPLOYERS**Contributions by employer under Part 1 of Schedule 1 (The Crown and other employers)**

14. Where an employee is employed by an employer specified in Part 1 of Schedule 1, the employer shall pay to the Board an amount equal to a percentage of the salary of the employee, being a percentage determined by the Board, in relation to the employer, with the concurrence of the Treasurer.

Contributions by employer under Part 2 of Schedule 1 (Local government and other authorities)

15. Where an employee is employed by an employer specified in Part 2 of Schedule 1, the employer shall pay to the Board an amount equal to 2.5 per cent (or such other percentage as may be prescribed following an actuarial investigation under this Act) of the salary of the employee.

Contributions by employer under Part 3 of Schedule 1 (Hospitals and other bodies)

16. Where an employee is employed by an employer specified in Part 3 of Schedule 1, the employer shall pay to the Board an amount equal to a percentage of the salary of the employee, being a percentage determined by the Board, in relation to the employer, with the concurrence of the Treasurer.

Contributions for irregular employees

17. (1) The regulations may make provision for or with respect to the contributions to be paid to the Board in respect of irregular employees.

(2) Any such regulations may have effect despite anything in section 14, 15 or 16.

Basis and making of contributions

18. (1) Contributions under this Part shall be calculated on the basis of contribution periods, and the contributions payable in respect of a contribution period shall be paid to the Board within 7 days after the last day of the contribution period to which they relate.

(2) The regulations may make provision for or with respect to the determination of salary for the purposes of this Part, where part-time work, irregular employment, leave without pay, secondment or a break in employment is involved.

Transfer of employees

19. (1) This section applies where—

(a) an employee ceases to be employed by an employer;

State Authorities Non-contributory Superannuation 1987

- (b) the employee commences to be employed by another employer within 2 months; and
 - (c) the Board determines that, because of the nature and circumstances of the employment involved (for example, employment in different Departments in the Public Service), it would not be appropriate to regard the employee as having resigned or retired.
- (2) The Board shall determine the value of the basic benefit at the date of cessation of employment with the former employer and shall—
- (a) debit the employer reserve of the former employer with that value; and
 - (b) credit the employer reserve of the new employer with that value.

Application of payments

20. Contributions and other amounts payable to the Board under this Act shall be paid into such funds, accounts or reserves as the Board determines, whether established under this Act or for the purposes of any other superannuation scheme managed by the Board.

PART 4—BENEFITS

Definitions

21. (1) In this Part—

“final average salary”, in relation to an employee, means the average of the attributed salaries paid or payable to the employee at the rates applicable—

- (a) on the employee’s exit date;
- (b) on 31 December (or such other date as the Board may determine) last preceding the employee’s exit date; and
- (c) on 31 December (or such other date as the Board may determine) last preceding the date referred to in paragraph (b);

“final salary”, in relation to an employee, means the rate of attributed salary paid or payable to the employee on the employee’s exit date.

(2) Different dates may be determined by the Board for the purposes of the definition of “final average salary” in subsection (1), so as to apply differently according to different classes of employees.

Basic benefit

22. (1) The basic benefit provided by this Act for an employee is an amount equal to the amount calculated in accordance with the formula—

$$B = 0.03 \times F \times Y$$

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where—

B represents the amount to be ascertained;

F represents—

(a) in the case of the employee's resignation or retirement or the employee's death on or after reaching the age of 55 years—the employee's final average salary; or

(b) in any other case—the employee's final salary; and

Y represents the years of eligible service on a daily basis, commencing on or after the appointed day.

(2) The regulations may make provision for or with respect to the determination of the basic benefit for irregular employees.

(3) The regulations may make provision for or with respect to the determination of eligible service for the purposes of this Act, including the manner of determining the length of eligible service where part-time work, irregular employment, leave without pay, secondment or a break in employment is involved.

Benefit immediately payable

23. (1) The basic benefit is payable by the Board on—

(a) the retirement of an employee from employment with an employer;

(b) the death of an employee during employment with an employer;

(c) the retirement of an employee from employment with an employer before reaching the age of 55 years, where the Board is satisfied—

(i) that the retirement was due, directly or indirectly, to the permanent physical or mental incapacity of the employee (not caused by any act or default of the employee intended to produce that incapacity); and

(ii) that the employee is permanently unable, by reason of that incapacity, to be engaged, or to be employed, in any remunerative occupation in which, in the opinion of the Board, it would otherwise be reasonable to expect the employee to engage; or

(d) the cessation of an employee's employment with an employer in other prescribed circumstances.

(2) The basic benefit provided by this section is payable—

(a) where the benefit becomes payable on the retirement of the employee—to the employee;

(b) where the benefit becomes payable on the death of the employee and the employee is survived by a spouse—to the employee's spouse; or

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- (c) where the benefit becomes payable on the death of the employee and the employee is not survived by a spouse—to the personal representatives of the employee or, if appropriate, in accordance with section 31 (Payment without grant of probate etc.).

Benefit to be preserved

24. (1) The basic benefit shall be preserved by the Board when an employee ceases to be an employee of an employer, otherwise than in the circumstances mentioned in section 23 (1).

(2) The basic benefit provided by this section shall be—

- (a) preserved in accordance with the regulations; and
- (b) subsequently paid out in such circumstances and in such manner as are determined in accordance with the regulations.

(3) If the basic benefit provided by this section is to be paid out by the Board, it is payable—

- (a) where the benefit becomes payable otherwise than on the death of the employee—to the employee;
- (b) where the benefit becomes payable on the death of the employee and the employee is survived by a spouse—to the employee's spouse;
- (c) where the benefit becomes payable on the death of the employee and the employee is not survived by a spouse—to the personal representatives of the employee or, if appropriate, in accordance with section 31 (Payment without grant of probate etc.); or
- (d) where the Board is satisfied that such payment will comply with relevant rules or guidelines as to the preservation of superannuation benefits—to a fund managed by the Board or a deposit fund.

Preservation of benefit

25. (1) Any amounts preserved by the Board under this Act shall be preserved in such funds, accounts or reserves as the Board determines, whether established under this Act or the Superannuation Administration Act 1987 or for the purposes of any other superannuation scheme managed by the Board.

(2) Any such preserved amounts payable by the Board under this Act shall be paid from the appropriate fund, account or reserve referred to in this section.

Interest

26. The Board may, when paying a benefit under this Act, pay interest at such rates, for such periods and in such circumstances as in its absolute discretion it thinks appropriate.

PART 5—MISCELLANEOUS**Employers and employees**

27. (1) The Governor may, by order published in the Gazette, amend Schedule 1 or 2.

(2) An order under subsection (1), and any other order revoking or varying such an order, may be made—

- (a) to take effect on and from a day specified in the order, whether or not the day specified is earlier than the day of publication of the order; and
- (b) to effect the amendment to which it relates with such limitations as are specified in the amendment, being limitations that do not operate to the prejudice of an existing employee.

Employer to provide information

28. (1) An employer shall submit to the Board such information or evidence relating to employees of the employer as the Board requires.

(2) Where an employer fails to comply with subsection (1) in relation to an employee, the Board may defer payment of a benefit to, or in relation to, an employee where the information sought is relevant to the right to receive the benefit.

Employee or claimant to provide information

29. (1) The Board may require an employee or a claimant for payment of a benefit under this Act—

- (a) to provide the Board with specified information or evidence referred to in subsection (2);
- (b) to provide the Board with an authority to obtain from a third person any such information or evidence; or
- (c) in the case of a claimant for a benefit arising in relation to permanent physical or mental incapacity—to undergo a medical examination.

(2) A requirement under subsection (1) may be made only in relation to information, evidence or a medical examination that is relevant to the assessment of an application made by the claimant for payment of the benefit.

(3) Where—

- (a) the employee or claimant to whom a requirement under subsection (1) relates fails to comply with the requirement or, in purported compliance with the requirement, makes or provides an untrue statement; or

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- (b) a person referred to in subsection (1) (b) fails to provide information or evidence that the Board has been authorised to obtain from the person or, in purported compliance with the request by the Board for the information or evidence, makes or provides an untrue statement,

the Board may take such action in relation to the benefit concerned as, in the opinion of the Board, would place the claimant as nearly as possible in the same position as the claimant would be if the information or evidence had been provided or the medical examination made or if the statement had not been untrue.

(4) For the purposes of this section, "untrue", in relation to a statement, includes—

- (a) misleading in the form and context in which the statement appears; and
 (b) misleading by reason of the omission from the statement of matter that is material.

Assignment etc. of benefit

30. (1) A purported assignment of, or purported charge over, a benefit is void.

(2) Where, but for this subsection, a benefit would pass by operation of law to a person other than a person to whom the benefit is payable under this Act, the benefit does not so pass.

(3) A benefit payable on the death of an employee is not an asset in the employee's estate that is applicable in payment of the debts and liabilities of the deceased.

(4) Nothing in this section prevents the Board from making, at the request of a person to whom an amount by way of a benefit is payable, a payment of the whole or a part of the amount on behalf of the person.

(5) Any payment made under subsection (4) shall be deemed to have been made to the person entitled to the benefit.

Payment without grant of probate etc.

31. (1) Where an employee or former employee dies and—

- (a) a benefit is or becomes payable under this Act in relation to the deceased;
 (b) production to the Board of probate of the will, or letters of administration of the estate, of the deceased has not been arranged; and

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- (c) the Board has not, within the period of 3 months that next succeeds the death of the deceased, received a notice of intention to apply for a grant of probate of the will, or letters of administration of the estate, of the deceased,

the Board may, if it so decides, make a payment of the whole or any part of the benefit in accordance with subsection (2), being a payment that does not exceed \$50,000 or, where some other amount is prescribed for the purposes of this section, that other amount.

(2) Where the Board makes a decision under subsection (1), the Board may—

- (a) pay the whole or any part of the amount of the benefit to an eligible person within the meaning of the Family Provision Act 1982;
- (b) after paying the funeral expenses of the deceased or reimbursing a person who has paid those expenses—pay the whole or any part of the balance to any person referred to in paragraph (a); or
- (c) in special circumstances, pay the whole or any part of the amount of the benefit, or the balance referred to in paragraph (b), to some other person.

(3) Where an employee or former employee dies and the Board is of the opinion that proceedings might be instituted under the Family Provision Act 1982 in relation to the estate, or notional estate, of the deceased, the Board may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this subsection, would have been paid to some other person.

Recovery of money owing to Board

32. (1) The Board may recover any money owing to the Board under this Act by an employee, employer or other person, together with interest thereon as provided by subsection (3)—

- (a) except in the case of unpaid contributions—as a debt in a court of competent jurisdiction;
- (b) where any amount is, or becomes, payable under this Act to the employee, employer or other person—by deduction from that amount; or
- (c) in the case of an employee—by deduction from the employee's salary in accordance with subsection (2) by such instalments and at such times as the Board determines.

(2) An employer shall, at the written request of the Board, make deductions from an employee's salary as referred to in subsection (1) (c) and pay the amount thereof to the Board, and an amount so deducted and paid shall be deemed to have been paid to the Board by the employee from whose salary the deduction was made.

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(3) Interest at a rate from time to time determined by the Board is payable on any amount owing to the Board calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

Payment where beneficiary incapable

33. (1) Where a person to whom a benefit under this Act is payable is, in the opinion of the Board, incapable of administering his or her own affairs by reason of illness, imprisonment or any other cause, the Board may pay the benefit to some other person to be applied wholly for the care, maintenance, benefit and support of the person to whom, but for this section, the benefit would be payable, or of any person dependent on him or her.

(2) Any payment made under this section shall be deemed to have been made to the person entitled to the benefit.

Regulations

34. (1) 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.

(2) Regulations may not be made unless the recommendation to the Governor for their making includes a certificate by a Minister to the effect that, in the formulation of the regulations, regard has been had to any relevant rules or guidelines for the time being in force in relation to superannuation benefits of the kind provided by this Act.

SCHEDULE 1—EMPLOYERS

(Secs. 3, 27)

Part 1—The Crown and other employers

A Government Department or Administrative Office

The Commissioner of Police

Health Administration Corporation

The Maritime Services Board of New South Wales

Water Administration Ministerial Corporation

Water Board

The Hunter District Water Board

Board of Fire Commissioners of New South Wales

Western Lands Commissioner

Australian Museum Trust

The Commissioner for Main Roads

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SCHEDULE 1—EMPLOYERS—*continued*

- The Electricity Commission of New South Wales
 - Grain Handling Authority of New South Wales
 - State Authorities Superannuation Board
 - New South Wales Investment Corporation
 - Judicial Commission of New South Wales
 - Bathurst-Orange Development Corporation
- The Broken Hill Water Board
 - Building Services Corporation
 - Clann Limited
- The Commissioner for Motor Transport
 - Fish Marketing Authority
 - Greyhound Racing Control Board
 - Harness Racing Authority of New South Wales
 - Homebush Abattoir Corporation
 - Hunter Valley Conservation Trust
 - Justice and Police Museum Limited
 - Metropolitan Waste Disposal Authority
 - New South Wales Film Corporation
 - New South Wales Meat Industry Authority
 - State Rail Authority of New South Wales
 - Sydney Cove Redevelopment Authority
 - Sydney Market Authority
 - Traffic Authority of New South Wales
- The Trustees of the Anzac Memorial Building
 - Urban Transit Authority of New South Wales
- The University of Sydney
- The University of New England
- The University of New South Wales
- The Macquarie University
- The University of Newcastle
- The University of Wollongong
 - Mitchell College of Advanced Education
- The New South Wales Institute of Technology
 - Northern Rivers College of Advanced Education
 - Newcastle College of Advanced Education
 - Cumberland College of Health Sciences
 - Kuring-gai College of Advanced Education
 - Nepean College of Advanced Education
 - Riverina-Murray Institute of Higher Education

*State Authorities Non-contributory Superannuation 1987*SCHEDULE 1—EMPLOYERS—*continued*

- Macarthur Institute of Higher Education
 Sydney College of the Arts
 Armidale College of Advanced Education
 Sydney College of Advanced Education
 New South Wales Institute of the Arts
 Children's Medical Research Foundation (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)
 Garvan Institute of Medical Research
 St. Luke's Hospital (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)
- Hawkesbury Agricultural College
 Orange Agricultural College
- The New South Wales Teachers' Federation
 Public Service Association of New South Wales
 Joint Coal Board
- The River Murray Commission (limited to—
- (a) persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985; and
 - (b) persons who were contributing to the State Authorities Superannuation Fund immediately before becoming officers of the River Murray Commission and in respect of whom provision is made by the River Murray Commission for superannuation in accordance with this Act)
- Australian Transport Officers Federation (New South Wales Division)
- The Water and Sewerage Employees Union (Salaried Division and Wages Division)
 Australian Railways Union
- The Australian Tramway and Motor Omnibus Employees' Association
 Australian Federated Union of Locomotive Enginemn
- The Operative Plasterers' and Plaster Workers' Federation of Australia (limited to persons who were, immediately before the appointed day, contributors within the meaning of the Public Authorities Superannuation Act 1985)
- The Police Association of New South Wales
- Forestry Commission of New South Wales
 Government Printing Office
 Public Trust Office
 State Compensation Board
 State Lotteries Office
 Trustees of state recreation areas
 The Sydney Opera House Trust
 Department of Co-operative Societies

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SCHEDULE 1—EMPLOYERS—*continued*

Part 2—Local government and other authorities

- A body corporate constituted under the Local Government Act 1919 as a council or a county council
- A committee constituted under the Local Government Act 1919 as an urban committee or a joint committee of 2 or more councils
- A pastures protection board constituted under the Pastures Protection Act 1934
- The employer of a servant, or class of servants, specified in a proclamation published under section 2 (4) of the Local Government and Other Authorities (Superannuation) Act 1927
- A body or association of persons specified in a proclamation published under section 2 (5) of the Local Government and Other Authorities (Superannuation) Act 1927

Part 3—Hospitals and other bodies

- An incorporated hospital specified in the Second Schedule to the Public Hospitals Act 1929
- A separate institution specified in the Third Schedule to the Public Hospitals Act 1929
- An associated organisation specified in the Fourth Schedule to the Public Hospitals Act 1929
- An area health service constituted under the Area Health Services Act 1986

SCHEDULE 2—EXCLUDED PERSONS

(Secs. 3, 8, 27)

For the purposes of the definition of "employee" in section 3 (1), a person is an excluded person if he or she—

- (a) is a full-time employee and is eligible for a superannuation benefit of the kind provided by this Act under another superannuation scheme; or
- (b) is a Judge within the meaning of the Judges' Pensions Act 1953, a master within the meaning of the Supreme Court Act 1970, the Solicitor General or the Director of Public Prosecutions.