

FIRST PRINT

## STATE AUTHORITIES NON-CONTRIBUTORY SUPERANNUATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

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

This Bill is cognate with the Superannuation (Amendment) Bill 1988.

The object of this Bill is to amend the State Authorities Non-contributory Superannuation Act 1987 for the purposes of enabling benefits under that Act to be reduced so as—

- (a) to offset certain prospective tax liabilities that the State Authorities Superannuation Board may incur in respect of amounts paid to funds maintained under section 9 of that Act; and
- (b) to comply with certain Commonwealth standards with respect to occupational superannuation schemes.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

### SCHEDULE 1—AMENDMENTS

**Schedule 1 (1)** amends section 3 of the Principal Act (Definitions) by inserting in that section a definition of "Commonwealth taxation law".

**Schedule 1 (2)** amends section 9 of the Principal Act (Funds etc.) by making it clear that the State Authorities Superannuation Board is required to pay from any fund established under that section the amounts necessary to satisfy any liability of the fund with respect to tax payable under a Commonwealth taxation law.

**Schedule 1 (3)** amends section 22 of the Principal Act (Basic benefit) so as to provide for the reduction of a benefit payable under that section where the Board has made a determination in respect of the benefit in accordance with proposed section 26A or 26B of that Act. (See Schedule 1 (4) and (5) below.)

*State Authorities Non-Contributory Superannuation (Amendment) 1988*

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**Schedule 1 (4)** inserts into the Principal Act proposed section 26A. Proposed section 26A will enable the Board to make a determination reducing the amount of a benefit that is payable under the Principal Act to or in respect of an employee (as defined by section 3 of the Principal Act) or a former employee where—

- (a) the Board has paid or is liable to pay a Commonwealth tax in respect of employers' contributions to a fund maintained under section 9 of the Principal Act; and
- (b) a portion of that tax is referable to that benefit.

**Schedule 1 (5)** inserts into the Principal Act proposed section 26B. Proposed section 26B will enable the Board to make a determination reducing the amount of a benefit that is payable under the Principal Act to or in respect of an employee or former employee if that amount (together with any other superannuation or retirement benefits that have been paid or are payable to or in respect of the employee or former employee from any source) would exceed a level fixed by or in accordance with a law of the Commonwealth which fixes standards for occupational superannuation schemes. (Such a level is commonly known as "a reasonable benefit limit" or "RBL".)

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# STATE AUTHORITIES NON-CONTRIBUTORY SUPERANNUATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of State Authorities Non-contributory Superannuation Act 1987 No. 212

SCHEDULE 1—AMENDMENTS

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STATE OF TEXAS,  
COUNTY OF [ ]

[ ]

**STATE AUTHORITIES NON-CONTRIBUTORY  
SUPERANNUATION (AMENDMENT) BILL 1988**

NEW SOUTH WALES



No. , 1988

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**A BILL FOR**

An Act to amend the State Authorities Non-contributory Superannuation Act 1987 for the purpose of enabling benefits under the Act to be reduced in order to offset certain tax liabilities and in order to comply with certain Commonwealth standards with respect to occupational superannuation schemes; and to provide for related matters.

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*State Authorities Non-Contributory Superannuation (Amendment) 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the State Authorities Non-contributory Superannuation (Amendment) Act 1988.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of State Authorities Non-contributory Superannuation Act 1987 No. 212**

10 3. The State Authorities Non-contributory Superannuation Act 1987 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**)—

15 Section 3 (1)—

After the definition of “Board”, insert:

“Commonwealth taxation law” means a law of the Commonwealth that provides for the levying and collection of a tax;

20 (2) Section 9 (**Funds etc.**)—

(a) Section 9 (3) (b)—

Omit the paragraph, insert instead:

(b) such amounts as are necessary to satisfy any liability of the fund with respect to tax payable under any Commonwealth taxation law; and

25 (b) Section 9 (4)—

After section 9 (3), insert:

(4) If a loss is incurred in realising any investment forming part of the assets of a fund maintained under subsection (1), the fund is accordingly reduced by the amount of that loss.

30 (3) Section 22 (**Basic benefit**)—

Section 22 (4)—

After section 22 (3), insert:

SCHEDULE 1—AMENDMENTS—*continued*

(4) If the Board makes a determination under section 26A or 26B in relation to a basic benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

## 5 (4) Section 26A—

After section 26, insert:

**Power of the Board to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1)**

26A. (1) Whenever—

- 10 (a) a right to a benefit accrues to or in respect of an employee or former employee; and
- (b) the Board has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to a fund maintained under section 9 (1);
- 15 and

(c) a portion of that tax is referable to that benefit, the Board must, subject to subsection (2)—

- (d) calculate the amount necessary to offset the Board's liability to pay tax so far as it is referable to that benefit;
- 20 and
- (e) accordingly make a determination reducing the benefit by the amount so calculated.

(2) Subsection (1) does not authorise the reduction of a benefit, unless—

- 25 (a) the benefit is of a kind prescribed by the regulations for the purpose of this section; and
- (b) the method of calculating the reduction is so prescribed; and
- (c) the reduction is calculated according to that method.

## 30 (5) Section 26B—

At the end of Part 4, insert:

**Power of the Board to reduce benefits to comply with certain Commonwealth standards relating to occupational superannuation**

26B. (1) If—

- 35 (a) the payment of a benefit to or in respect of an employee would cause the Board or a fund maintained under section 9 (1) to be in breach of a prescribed Commonwealth occupational superannuation standard because—
- (i) the amount of the benefit; or

SCHEDULE 1—AMENDMENTS—*continued*

(ii) the amount of the benefit, together with the amounts of any other benefits that have already been paid, or that are or may become payable, to or in respect of the employee from that fund or under one or more other superannuation schemes,

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would, if paid, exceed the relevant level specified in that standard; and

(b) such a breach would cause the Board or that fund to be liable to a penalty under a Commonwealth taxation law,

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the Board may make a determination reducing the amount of the benefit by such amount (but no more) as will ensure that neither the Board nor that fund is in breach of that standard.

(2) In subsection (1)—

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(a) a reference to a Commonwealth occupational superannuation standard is a reference to a standard prescribed in respect of occupational superannuation schemes by a law of the Commonwealth; and

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(b) a reference to a benefit is a reference to the benefit after reducing the benefit in accordance with section 26A where appropriate; and

(c) a reference to a penalty under a Commonwealth taxation law includes a reference to (but is not limited to)—

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(i) a penalty rate of taxation under that law; and

(ii) the loss of a concessional rate of taxation under that law; and

(d) a reference to a superannuation scheme is a reference to a scheme, fund or arrangement (whether or not established by an Act) under or from which any superannuation or retirement benefits are provided.



**STATE AUTHORITIES NON-CONTRIBUTORY  
SUPERANNUATION (AMENDMENT) ACT 1988 No. 135**

NEW SOUTH WALES

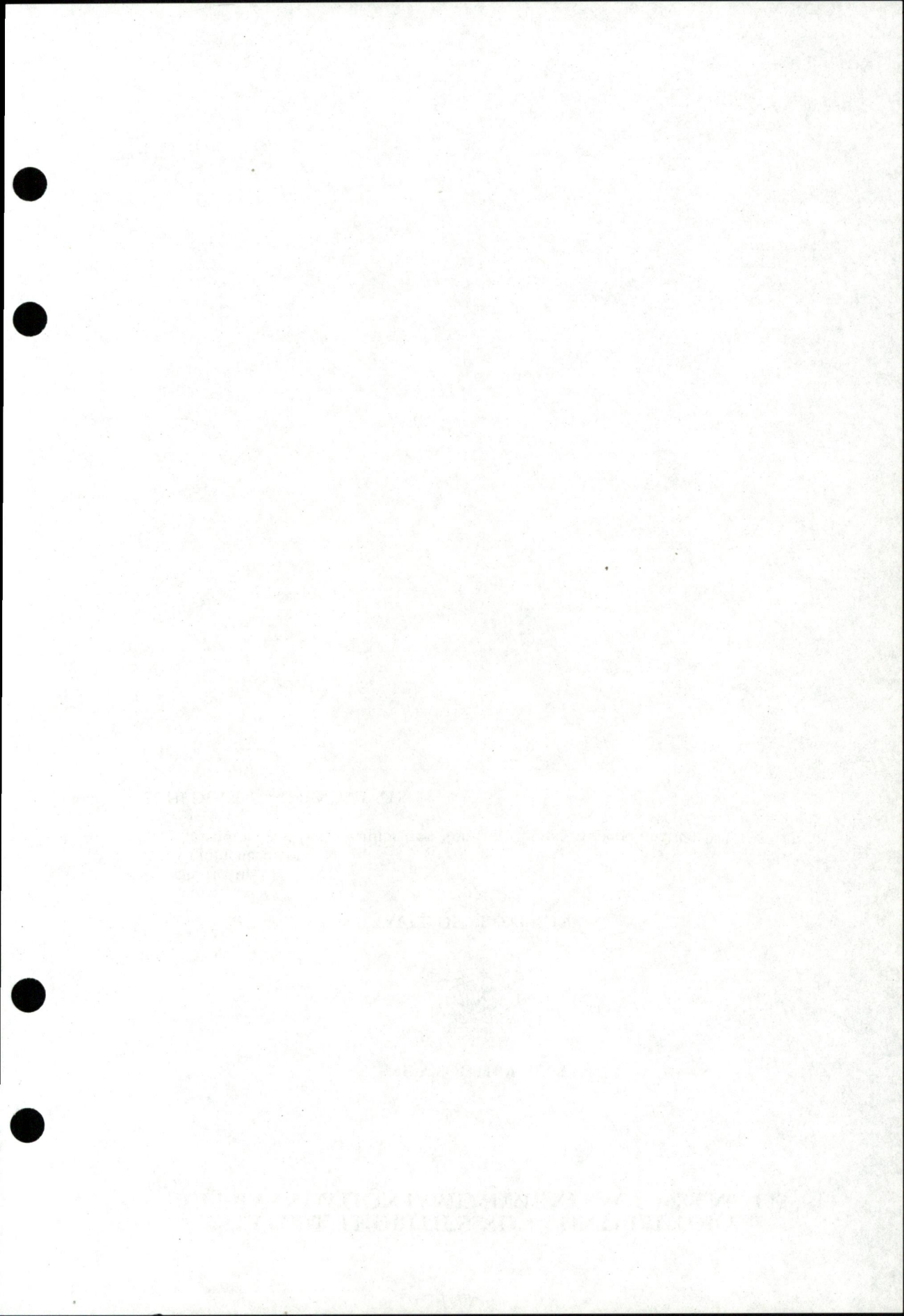


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of State Authorities Non-contributory Superannuation Act 1987 No. 212

SCHEDULE 1—AMENDMENTS

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**STATE AUTHORITIES NON-CONTRIBUTORY SUPERANNUATION  
(AMENDMENT) ACT 1988 No. 135**

NEW SOUTH WALES



**Act No. 135, 1988**

An Act to amend the State Authorities Non-contributory Superannuation Act 1987 for the purpose of enabling benefits under the Act to be reduced in order to offset certain tax liabilities and in order to comply with certain Commonwealth standards with respect to occupational superannuation schemes; and to provide for related matters. [Assented to 30 December 1988]

*State Authorities Non-contributory Superannuation (Amendment) 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the State Authorities Non-contributory Superannuation (Amendment) Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of State Authorities Non-contributory Superannuation Act 1987 No. 212**

3. The State Authorities Non-contributory Superannuation Act 1987 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**)—

Section 3 (1)—

After the definition of “Board”, insert:

“Commonwealth taxation law” means a law of the Commonwealth that provides for the levying and collection of a tax;

(2) Section 9 (**Funds etc.**)—

(a) Section 9 (3) (b)—

Omit the paragraph, insert instead:

(b) such amounts as are necessary to satisfy any liability of the fund with respect to tax payable under any Commonwealth taxation law; and

(b) Section 9 (4)—

After section 9 (3), insert:

(4) If a loss is incurred in realising any investment forming part of the assets of a fund maintained under subsection (1), the fund is accordingly reduced by the amount of that loss.

(3) Section 22 (**Basic benefit**)—

Section 22 (4)—

After section 22 (3), insert:

*State Authorities Non-contributory Superannuation (Amendment) 1988*

SCHEDULE 1—AMENDMENTS—*continued*

(4) If the Board makes a determination under section 26A or 26B in relation to a basic benefit to be provided by this section, the amount of that benefit is reduced by the amount specified in the Board's determination.

(4) Section 26A—

After section 26, insert:

**Power of the Board to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1)**

26A. (1) Whenever—

- (a) a right to a benefit accrues to or in respect of an employee or former employee; and
- (b) the Board has paid or is liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to a fund maintained under section 9 (1); and
- (c) a portion of that tax is referable to that benefit,

the Board must, subject to subsection (2)—

- (d) calculate the amount necessary to offset the Board's liability to pay tax so far as it is referable to that benefit; and
- (e) accordingly make a determination reducing the benefit by the amount so calculated.

(2) Subsection (1) does not authorise the reduction of a benefit, unless—

- (a) the benefit is of a kind prescribed by the regulations for the purpose of this section; and
- (b) the method of calculating the reduction is so prescribed; and
- (c) the reduction is calculated according to that method.

(5) Section 26B—

At the end of Part 4, insert:

**Power of the Board to reduce benefits to comply with certain Commonwealth standards relating to occupational superannuation**

26B. (1) If—

- (a) the payment of a benefit to or in respect of an employee would cause the Board or a fund maintained under section 9 (1) to be in breach of a prescribed Commonwealth occupational superannuation standard because—
  - (i) the amount of the benefit; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (ii) the amount of the benefit, together with the amounts of any other benefits that have already been paid, or that are or may become payable, to or in respect of the employee from that fund or under one or more other superannuation schemes,
    - would, if paid, exceed the relevant level specified in that standard; and
  - (b) such a breach would cause the Board or that fund to be liable to a penalty under a Commonwealth taxation law, the Board may make a determination reducing the amount of the benefit by such amount (but no more) as will ensure that neither the Board nor that fund is in breach of that standard.
- (2) In subsection (1)—
- (a) a reference to a Commonwealth occupational superannuation standard is a reference to a standard prescribed in respect of occupational superannuation schemes by a law of the Commonwealth; and
  - (b) a reference to a benefit is a reference to the benefit after reducing the benefit in accordance with section 26A where appropriate; and
  - (c) a reference to a penalty under a Commonwealth taxation law includes a reference to (but is not limited to)—
    - (i) a penalty rate of taxation under that law; and
    - (ii) the loss of a concessional rate of taxation under that law; and
  - (d) a reference to a superannuation scheme is a reference to a scheme, fund or arrangement (whether or not established by an Act) under or from which any superannuation or retirement benefits are provided.

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*[Minister's second reading speech made in—  
Legislative Assembly on 29 November 1988  
Legislative Council on 13 December 1988]*

