

**MISCELLANEOUS ACTS (PUBLIC SECTOR EXECUTIVES
SUPERANNUATION) FURTHER AMENDMENT
ACT 1989 No. 229**

NEW SOUTH WALES



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**MISCELLANEOUS ACTS (PUBLIC SECTOR EXECUTIVES
SUPERANNUATION) FURTHER AMENDMENT
ACT 1989 No. 229**

NEW SOUTH WALES



Act No. 229, 1989

An Act to amend the Local Government and Other Authorities (Superannuation) Act 1927, the State Authorities Non-contributory Superannuation Act 1987, the State Authorities Superannuation Act 1987 and the Superannuation Act 1916 in consequence of the enactment of the Public Sector Executives Superannuation (Amendment) Act 1989 and for other purposes. [Assented to 21 December 1989]

*Miscellaneous Acts (Public Sector Executives Superannuation)
Further Amendment 1989*

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Miscellaneous Acts (Public Sector Executives Superannuation) Further Amendment Act 1989.

Commencement

2. This Act is to be taken to have commenced on 1 October 1989.

Amendments

3. Each Act specified in Schedule 1 is amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

**Local Government and Other Authorities (Superannuation) Act 1927
No. 35**

- (1) Section 3 (**Definitions**):
 - (a) After the definition of "Board", insert:
"**Chief executive officer**" has the same meaning as in the Public Sector Management Act 1988.
 - (b) After the definition of "Permanent servant", insert:
"**Prescribed employment benefit**" means an employment benefit of a kind referred to in paragraph (b), (c) or (e) of the definition of "employment benefit" in section 42K (1) of the Public Sector Management Act 1988.
 - (c) After the definition of "Salary", insert:
"**Senior executive officer**" has the same meaning as in the Public Sector Management Act 1988.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Section 3B:

Omit the section, insert instead:

Salary of executive officers

3B. (1) For the purposes of this Act, "salary":

(a) in the case of a permanent servant who is a chief executive officer or senior executive officer and who is a member, or is eligible to become a member, of the Public Sector Executives Superannuation Scheme, means the aggregate of:

- (i) the monetary remuneration payable to the servant in accordance with a contract of employment under the Public Sector Management Act 1988 or, if there is no such contract, the monetary remuneration payable to the servant in accordance with subsection (8) of section 42L of that Act after making appropriate adjustments as provided for by that subsection; and
- (ii) the cost of providing prescribed employment benefits under any such contract or, if the servant has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost,

expressed as an annual rate, but does not include any performance-related incentive payment made to that servant; or

(b) in the case of a permanent servant who is an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, means the aggregate of:

- (i) the remuneration payable to the servant as reduced under that section by the cost of employment benefits provided to the servant; and

SCHEDULE 1 - AMENDMENTS - *continued*

(ii) the cost of providing prescribed employment benefits to the servant under that section or, if the servant has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost, expressed as an annual rate; or

(c) in the case of any other kind of permanent servant, means the amount determined in accordance with the regulations.

(2) For the purposes of paragraphs (a) and (b) of the definition of "salary" in subsection (1), a permanent servant referred to in either of those paragraphs may elect to have treated as salary for the purposes of this Act:

(a) none of the cost to the employer of the servant of providing him or her with prescribed employment benefits; or

(b) only a specified proportion of that cost.

(3) If a permanent servant is appointed to a position as a chief executive officer or senior executive officer, or is nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, the servant may, from time to time, elect:

(a) to reduce the proportion of the cost of providing the servant's prescribed employment benefits that is treated as salary for the purposes of this Act; or

(b) to increase that proportion or, if none of the cost of providing the servant with prescribed employment benefits is currently treated as part of the servant's salary for the purposes of this Act, to nominate a proportion of that cost, but so that the percentage increase in the servant's salary for the purposes of this Act is not greater than the percentage of any increase in the remuneration package of the servant since the last occasion on which the servant had an

*Miscellaneous Acts (Public Sector Executives Superannuation)
Further Amendment 1989*

SCHEDULE 1 - AMENDMENTS - *continued*

opportunity to make an election under this paragraph.

(4) The qualification in subsection (3) (b) does not apply when the permanent servant is appointed to another position as a chief executive officer or senior executive officer or becomes the holder of another office nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975.

(3) Section 15A:

After section 15, insert:

Power of the board to purchase annuity etc. out of a gratuity payable from the Provident Fund

15A. Whenever an amount is payable under section 15 to a permanent servant or to the servant's personal representatives, the board must, if directed to do so by the servant or those personal representatives, apply the amount, or such part of it as is specified by the servant or those personal representatives, in purchasing for the servant or, as the case may be, for the beneficiaries of the servant's estate a right to an annuity or other form of pension from a person nominated by the servant or those personal representatives.

(4) Section 15ZA:

After section 15Z, insert:

Power of the board to purchase annuity etc. out of money payable under section 15V, 15W, 15X or 15Y

15ZA. Whenever an amount becomes payable under section 15V, 15W, 15X or 15Y to a former contributor or to the personal representatives of a former contributor, the board must, if requested to do so by the former contributor or by those personal representatives, apply the amount, or such part of it as is specified by the former contributor or those personal representatives, in purchasing for the former contributor, or the beneficiaries of the former contributor's estate a right to an annuity or other form of

SCHEDULE 1 - AMENDMENTS - *continued*

pension from a person nominated by the former contributor or those personal representatives.

- (5) Section 15CP (**Person eligible for membership or a member of the Public Sector Executives Superannuation Scheme**):
- (a) From section 15CP (1) (b) and (5) (b), omit "(as determined in accordance with the regulations)", wherever occurring.
- (b) Omit section 15CP (6), insert instead:
- (6) For the purposes of subsection (5) (b), the amount to which a person is entitled at the time of making an election under subsection (1) (b) or (4) is:
- (a) if the person is insured under Part 2 - the surrender value of the insurance policy held in the person's name; or
- (b) if the person is a contributor to the Provident Fund or the Benefits Fund - the balance standing to that person's credit in that Fund.

State Authorities Non-contributory Superannuation Act 1987 No. 212

- (1) Section 3 (**Definitions**):
- (a) After the definition of "Board" in section 3 (1), insert:
- "**chief executive officer**" has the same meaning as in the Public Sector Management Act 1988;
- (b) After the definition of "part-time employee" in section 3 (1), insert:
- "**prescribed employment benefit**" means an employment benefit of a kind referred to in paragraph (b), (c) or (e) of the definition of "employment benefit" in section 42K (1) of the Public Sector Management Act 1988;
- (c) After the definition of "salary ratio" in section 3 (1), insert:
- "**senior executive officer**" has the same meaning as in the Public Sector Management Act 1988;

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Section 4A:

Omit the section, insert instead:

Salary of executive officers

4A (1) For the purposes of this Act, "salary":

(a) in the case of an employee who is a chief executive officer or senior executive officer and who is a member, or is eligible to become a member, of the Public Sector Executives Superannuation Scheme, means the aggregate of:

(i) the monetary remuneration payable to the employee in accordance with a contract of employment under the Public Sector Management Act 1988 or, if there is no such contract, the monetary remuneration payable to the employee in accordance with subsection (8) of section 42L of that Act after making appropriate adjustments as provided for by that subsection; and

(ii) the cost of providing prescribed employment benefits under any such contract or, if the employee has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost,

expressed as an annual rate, but does not include any performance-related incentive payment made to that employee; or

(b) in the case of an employee who is an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, means the aggregate of:

(i) the remuneration payable to the employee as reduced under that section by the cost of employment benefits provided to the employee; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) the cost of providing prescribed employment benefits to the employee under that section or, if the employee has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost, expressed as an annual rate; or
 - (c) in the case of any other kind of employee, means the amount determined in accordance with the regulations.
- (2) For the purposes of paragraphs (a) and (b) of the definition of "salary" in subsection (1), an employee referred to in either of those paragraphs may elect to have treated as salary for the purposes of this Act:
- (a) none of the cost to the employer of the employee of providing him or her with prescribed employment benefits; or
 - (b) only a specified proportion of that cost.
- (3) If an employee is appointed to a position as a chief executive officer or senior executive officer, or is nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, the employee may, from time to time, elect:
- (a) to reduce the proportion of the cost of providing the employee's prescribed employment benefits that is treated as salary for the purposes of this Act; or
 - (b) to increase that proportion or, if none of the cost of providing the employee with prescribed employment benefits is currently treated as part of the employee's salary for the purposes of this Act, to nominate a proportion of that cost, but so that the percentage increase in the employee's salary for the purposes of this Act is not greater than the percentage of any increase in the remuneration package of the employee since the last occasion on

SCHEDULE 1 - AMENDMENTS - *continued*

which the employee had an opportunity to make an election under this paragraph.

(4) The qualification in subsection (3) (b) does not apply when the employee is appointed to another position as a chief executive officer or senior executive officer or becomes the holder of another office nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975.

(5) Subsections (5), (6) and (7) of section 4 apply to an employee referred to in paragraphs (a) and (c) of the definition of "salary" in subsection (1) of this section and so apply as if:

- (a) a reference in those subsections to an employee were a reference to an employee referred to in those paragraphs; and
- (b) a reference in those subsections to salary were a reference to "salary" as defined in subsection (1) of this section.

(3) Section 24 (**Benefit to be preserved**):

After section 24 (4), insert:

(5) If the basic benefit provided by this section becomes payable as provided by subsection (4) within 12 months after the person in respect of whom it has become payable has been appointed as a chief executive officer or senior executive officer or has been nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, the salary of that person, for the purpose of determining the amount of that basic benefit, is to be taken to be the salary of that person as an employee immediately before that appointment or nomination took effect.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 25A:

After section 25, insert:

Power of the Board to purchase annuities etc. out of benefit payable under this Act

25A. Whenever a benefit becomes payable to or in respect of an employee under this Act, the Board must, if requested to do so:

- (a) by the employee; or
- (b) where the employee has died, by the spouse or personal representatives of the employee, as the case requires,

apply the benefit, or such part of it as is specified by the employee, spouse or personal representatives, in purchasing for the employee or, as the case may be, for the spouse or the beneficiaries of the employee's estate, a right to an annuity or other form of pension from a person nominated by the employee, spouse or personal representatives.

State Authorities Superannuation Act 1987 No. 211

(1) Section 3 (Definitions):

- (a) After the definition of "Board" in section 3 (1), insert:
"chief executive officer" has the same meaning as in the Public Sector Management Act 1988;
- (b) After the definition of "part-time employee" in section 3 (1), insert:
"prescribed employment benefit" means an employment benefit of a kind referred to in paragraph (b), (c) or (e) of the definition of "employment benefit" in section 42K (1) of the Public Sector Management Act 1988;
- (c) After the definition of "salary ratio" in section 3 (1), insert:
"senior executive officer" has the same meaning as in the Public Sector Management Act 1988;

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Section 4A:

Omit the section, insert instead:

Salary of executive officers

4A (1) For the purposes of this Act, "salary":

- (a) in the case of a contributor who is a chief executive officer or senior executive officer and who is a member, or eligible to become a member, of the Public Sector Executives Superannuation Scheme, means the aggregate of:
 - (i) the monetary remuneration payable to the contributor in accordance with a contract of employment under the Public Sector Management Act 1988 or, if there is no such contract, the monetary remuneration payable to the contributor in accordance with subsection (8) of section 42L of that Act after making appropriate adjustments as provided for by that subsection; and
 - (ii) the cost of providing prescribed employment benefits under any such contract or, if the contributor has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost, expressed as an annual rate, but does not include any performance-related incentive payment made to that contributor; or
- (b) in the case of a contributor who is an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, means the aggregate of:
 - (i) the remuneration payable to the contributor as reduced under that section by the cost of employment benefits provided to the contributor; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) the cost of providing prescribed employment benefits to the contributor under that section or, if the contributor has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost,

expressed as an annual rate; or

- (c) in the case of any other kind of contributor, means the amount determined in accordance with the regulations.

(2) For the purposes of paragraphs (a) and (b) of the definition of "salary" in subsection (1), a contributor referred to in either of those paragraphs may elect to have treated as salary for the purposes of this Act:

- (a) none of the cost to the employer of providing the contributor with prescribed employment benefits; or
- (b) only a specified proportion of that cost.

(3) If a contributor is appointed to a position as a chief executive officer or senior executive officer, or is nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, the contributor may, from time to time, elect:

- (a) to reduce the proportion of the cost of providing the contributor's prescribed employment benefits that is treated as salary for the purposes of this Act; or
- (b) to increase that proportion or, if none of the cost of providing the contributor with prescribed employment benefits is currently treated as part of the contributor's salary for the purposes of this Act, to nominate a proportion of that cost, but so that the percentage increase in the contributor's salary for the purposes of this Act is not greater than the percentage of any increase in the remuneration package of the contributor since the last occasion

SCHEDULE 1 - AMENDMENTS - *continued*

on which the contributor had an opportunity to make an election under this paragraph.

(4) The qualification in subsection (3) (b) does not apply when the contributor is appointed to another position as a chief executive officer or senior executive officer or becomes the holder of another office nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975.

(5) Subsections (5), (6) and (7) of section 4 apply to a contributor referred to in paragraphs (a) and (c) of the definition of "salary" in subsection (1) and so apply as if:

- (a) a reference in those subsections to a contributor were a reference to a contributor referred to in those paragraphs; and
- (b) a reference in those subsections to salary were a reference to "salary" as defined in subsection (1) of this section.

(3) **Section 30A (Contributor eligible for membership or a member of the Public Sector Executives Superannuation Scheme):**

After section 30A (6), insert:

(7) If a contributor makes an election under subsection (1) (b) or (4) within 12 months after being:

- (a) appointed as a chief executive officer or senior executive officer; or
- (b) nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975,

the salary of the contributor, for the purpose of determining the amount of the benefit to which the election relates, is to be taken to be his or her salary immediately before that appointment or nomination took effect.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 43A:

After section 43, insert:

Power of the Board to purchase annuities etc. out of benefit payable under this Act

43A. Whenever a benefit becomes payable to or in respect of a contributor under this Act, the Board must, if requested to do so:

- (a) by the contributor, or
- (b) where the contributor has died, by the spouse or personal representatives of the contributor, as the case requires,

apply the benefit, or such part of it as is specified by the contributor, spouse or personal representatives, in purchasing for the contributor or, as the case may be, for the spouse or the beneficiaries of the contributor's estate, a right to an annuity or other form of pension from a person nominated by the contributor, spouse or personal representatives.

Superannuation Act 1916 No. 28

(1) Section 3 (Definitions):

- (a) After the definition of "Board" in section 3 (1), insert:
"Chief executive officer" has the same meaning as in the Public Sector Management Act 1988.
- (b) After the definition of "Prescribed age" in section 3 (1), insert:
"Prescribed employment benefit" means an employment benefit of a kind referred to in paragraph (b), (c) or (e) of the definition of "employment benefit" in section 42K (1) of the Public Sector Management Act 1988.
- (c) After the definition of "Salary" in section 3 (1), insert:
"Senior executive officer" has the same meaning as in the Public Sector Management Act 1988.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Section 3AA:

Omit the section, insert instead:

Salary of executive officers

3AA. (1) For the purposes of this Act, "salary":

- (a) in the case of a contributor who is a chief executive officer or senior executive officer and who is a member, or eligible to become a member, of the Public Sector Executives Superannuation Scheme, means the aggregate of:
 - (i) the monetary remuneration payable to the contributor in accordance with a contract of employment under the Public Sector Management Act 1988 or, if there is no such contract, the monetary remuneration payable to the contributor in accordance with subsection (8) of section 42L of that Act after making appropriate adjustments as provided for by that subsection; and
 - (ii) the cost of providing prescribed employment benefits under any such contract or, if the contributor has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost, expressed as an annual rate, but does not include any performance-related incentive payment made to that contributor; or
- (b) in the case of a contributor who is an office holder nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, means the aggregate of:
 - (i) the remuneration payable to the contributor as reduced under that section by the cost of employment benefits provided to the contributor; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (ii) the cost of providing prescribed employment benefits to the contributor under that section or, if the contributor has, in accordance with subsection (2), elected to have treated as salary for the purposes of this Act none of that cost or only a specified proportion of that cost - none of that cost or, as the case may be, the specified proportion of that cost,
expressed as an annual rate; or

- (c) in the case of any other kind of contributor, means the amount determined in accordance with the regulations.

(2) For the purposes of paragraphs (a) and (b) of the definition of "salary" in subsection (1), a contributor referred to in either of those paragraphs may elect to have treated as salary for the purposes of this Act:

- (a) none of the cost to the employer of providing the contributor with prescribed employment benefits;
or
- (b) only a specified proportion of that cost.

(3) If a contributor is appointed to a position as a chief executive officer or senior executive officer, or is nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975, the contributor may, from time to time, elect:

- (a) to reduce the proportion of the cost of providing the contributor's prescribed employment benefits that is treated as salary for the purposes of this Act; or
- (b) to increase that proportion or, if none of the cost of providing the contributor with prescribed employment benefits is currently treated as part of the contributor's salary for the purposes of this Act, to nominate a proportion of that cost, but so that the percentage increase in the contributor's salary for the purposes of this Act is not greater than the percentage of any increase in the remuneration package of the contributor since the last occasion

SCHEDULE 1 - AMENDMENTS - *continued*

on which the contributor had an opportunity to make an election under this paragraph.

(4) The qualification in subsection (3) (b) does not apply when the contributor is appointed to another position as a chief executive officer or senior executive officer or becomes the holder of another office nominated for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975.

(3) **Section 20AB (Contributor eligible for membership or a member of the Public Sector Executives Superannuation Scheme):**

(a) Section 20AB (6) (a):

Omit "(as determined in accordance with the regulations)".

(b) Section 20AB (6) (a):

After "this subsection", insert "and subsection (7)".

(c) After section 20 (6), insert:

(7) For the purposes of subsection (6) (a), the benefit to which the contributor is entitled is an amount equal to the actuarially calculated lump sum value of the benefit provided by Division 3A of Part 4 on ceasing to be a contributor.

(8) If a contributor makes an election under subsection (1) (b) or (4) within 12 months after being:

(a) appointed as a chief executive officer or senior executive officer; or

(b) nominated as an office holder for the purposes of section 11A of the Statutory and Other Offices Remuneration Act 1975,

the salary of the contributor, for the purpose of determining the amount of the benefit to which the election relates, is to be taken to be his or her salary immediately before that appointment or nomination took effect.

[*Minister's second reading speech made in -
Legislative Assembly on 29 November 1989
Legislative Council on 8 December 1989*]