

**POLICE REGULATION (SUPERANNUATION)
AMENDMENT ACT 1988 No. 134**

NEW SOUTH WALES



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**POLICE REGULATION (SUPERANNUATION) AMENDMENT ACT
1988 No. 134**

NEW SOUTH WALES



Act No. 134, 1988

An Act to amend the Police Regulation (Superannuation) Act 1906 for the purpose of providing the same benefits to the spouses of female members and former members of the police force as those provided to the spouses of male members and former members of the police force; 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 for other purposes. [Assented to 30 December 1988]

Police Regulation (Superannuation) Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Police Regulation (Superannuation) Amendment Act 1988.

Commencement

2. (1) This Act shall be taken to have commenced on 1 April 1988, except as provided by subsections (2) and (3).

(2) Section 3, in its application to a provision of Schedule 1, commences on the day on which the provision commences.

(3) The several provisions of Schedule 1 commence on a day or days to be appointed by proclamation.

Amendment of Police Regulation (Superannuation) Act 1906 No. 28

3. The Police Regulation (Superannuation) Act 1906 is amended as set out in Schedules 1 and 2.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 1 (Short title, commencement and definitions)—

(a) Section 1 (2)—

After the definition of "Board", insert:

"Commonwealth taxation law" means a law of the Commonwealth providing for the levying and collection of a tax;

(b) Section 1 (2)—

After the definition of "salary of office", insert:

"spouse", in relation to a member or former member of the police force who has died, means—

(a) if that member or former member of the police force was a man who was survived by a widow—that widow; or

(b) if that member or former member of the police force was a man who was not survived by a widow but who was survived by a woman with whom he was living as her husband on a bona fide domestic basis at the time of his death—that woman; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) if that member or former member of the police force was a woman who was survived by a widower—that widower; or
 - (d) if that member or former member of the police force was a woman who was not survived by a widower but who was survived by a man with whom she was living as his wife on a bona fide domestic basis at the time of her death—that man.
- (2) Section 3 (**Police Superannuation Fund**)—
- (a) Section 3 (2) (c)—
Omit “Revenue”.
 - (b) Section 3 (2) (d)—
Omit “moneys”, insert instead “money”.
 - (c) Section 3 (3)—
Omit the subsection, insert instead:
 - (3) The Board must pay out of the Fund—
 - (a) the benefits provided by this Act;
 - (b) such amounts as may be necessary to satisfy any liability of the Fund with respect to tax payable under a Commonwealth taxation law;
 - (c) the management costs relating to the Fund referred to in section 22 of the Superannuation Administration Act 1987; and
 - (d) any other money properly payable from the Fund.
- (3) Section 7 (**Superannuation allowance except where member hurt on duty**)—
- (a) Section 7 (1)—
Omit “The annual”, insert instead “Subject to subsection (3), the annual”.
 - (b) Section 7 (3)—
After section 7 (2), insert:
 - (3) If the Board has made a determination under section 14AA or 14AB in relation to an annual superannuation allowance payable under subsection (1), the amount of the allowance is reduced by the amount specified in the Board’s determination.

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SCHEDULE 1—AMENDMENTS—*continued*

- (4) Section 7AA (**Superannuation allowance on early retirement**)—
- (a) Section 7AA (2)—
Omit “The annual”, insert instead “Subject to subsection (2B), the annual”.
- (b) After section 7AA (2A), insert:
(2B) If the Board has made a determination under section 14AA or 14AB in relation to an annual superannuation allowance payable under subsection (2), the amount of the allowance is reduced by the amount specified in the Board’s determination.
- (5) Section 9B (**Preserved benefit**)—
- (a) Section 9B (1A)—
After section 9B (1), insert:
(1A) An election under subsection (1) must be made in such form, and within such period, as may be specified by the Board.
- (b) Section 9B (6)—
Omit “The benefit”, insert instead “Subject to subsection (6A), the benefit”.
- (c) Section 9B (6A)—
After section 9B (6), insert:
(6A) If the Board has made a determination under section 14AA or 14AB in relation to a benefit provided by subsection (6), the amount of the benefit is reduced by the amount specified in the Board’s determination.
- (d) Section 9B (9) (b)—
Omit the paragraph, insert instead:
(b) interest on the amount referred to in paragraph (a), from the date on which the former member ceased to be a member of the police force, at the rates fixed from time to time by the Board under section 16 of the State Authorities Superannuation Act 1987.
- (e) Section 9B (13)—
Omit the subsection.
- (6) Section 10 (**Superannuation allowance where member hurt on duty**)—
Section 10 (1AA)—
After section 10 (1A), insert:
(1AA) If the Board has made a determination under section 14AA or 14AB in relation to an annual superannuation allowance payable under this section, the amount of the allowance is reduced by the amount specified in the Board’s determination.

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SCHEDULE 1—AMENDMENTS—*continued*

(7) Section 11—

After section 10c, insert:

Grant of superannuation allowance to the surviving spouse of a former member of the police force who dies after the commencement of Schedule 1 (7) to the Police Regulation (Superannuation) Amendment Act 1988

11. (1) Subject to this section, if—

- (a) a former member of the police force to whom a superannuation allowance has been granted dies on or after the commencement of Schedule 1 (7) to the Police Regulation (Superannuation) Amendment Act 1988; and
- (b) that former member of the police force is survived by a person who was the spouse of that former member both at the time of the former member's death and at the time of the former member's retirement (whether by disablement or otherwise),

that spouse is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that former member from time to time if that former member had not died.

(2) A superannuation allowance under subsection (1)—

- (a) is not payable to the surviving spouse of a deceased former member of the police force if a superannuation allowance is payable to that spouse under section 12, or a gratuity is payable or has been paid to that spouse under section 12 (1A); and
- (b) is not payable to the surviving spouse of a deceased former member of the police force who has commuted a superannuation allowance under Division 3; and
- (c) is subject to section 23.

(8) Section 11A (**Grant of superannuation allowance to widow where the spouse died before the commencement of Schedule 1 (7) to the Police Regulation (Superannuation) Amendment Act 1988**)—

(a) Section 11A (1), (2)—

Before “member” wherever occurring, insert “former”.

(b) Section 11A (1) (a)—

After “1966”, insert “and before the commencement of Schedule 1 (7) to the Police Regulation (Superannuation) Amendment Act 1988”.

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) Section 11A (1)—
Omit “there shall be paid to his widow such sum by way of superannuation allowance as is equivalent to 62.5 per cent of the superannuation allowance received by, or payable to, such member”, insert instead “that widow is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that member from time to time if he had not died”.
- (d) Section 11A (1A), (1B)—
Omit the subsections.
- (9) Section 11B (**Grant of superannuation allowance to widows of former members dying before 12.4.1966**)—
Before “member” wherever occurring, insert “former”.
- (10) Section 11C (**Grant of superannuation allowance to dependent widower whose spouse died before the commencement of Schedule 1 (7) to the Police Regulation (Superannuation) Amendment Act 1988**)—
 - (a) Section 11C (1)—
Before “member” wherever occurring, insert “former”.
 - (b) Section 11C (1) (a)—
After “1984”, insert “and before the commencement of Schedule 1 (7) to the Police Regulation (Superannuation) Amendment Act 1988”.
 - (c) Section 11C (1)—
Omit “there shall be paid to her widower such sum by way of superannuation allowance as is equivalent to 62.5 per cent of the superannuation allowance received by, or payable to, that member”, insert instead “that widower is entitled to receive a superannuation allowance equivalent to 62.5 per cent of the superannuation allowance that would have been payable to that member from time to time if she had not died”.
 - (d) Section 11C (2)—
Omit the subsection.
- (11) Section 12 (**Superannuation allowance where a member or former member dies as a result of being hurt on duty**)—
 - (a) Section 12 (1) (c)—
Omit the paragraph, insert instead:
 - (c) the spouse, father, mother or children of the member or former member; or
 - (b) Section 12 (3B)—
After section 12 (3A), insert:
 - (3B) If the Board has made a determination under section 14AA or 14AB in relation to an annual superannuation allowance payable under this section, the amount of the allowance is reduced by the amount specified in the Board’s determination.

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) Section 12 (6)—
Omit “widow or widower”, insert instead “spouse”.
- (12) Section 13 (**Gratuity where deceased member not hurt on duty**)—
- (a) Section 13 (1)—
Omit “If”, insert instead “Subject to subsection (2A), if”.
- (b) Section 13 (2A)—
After section 13 (2), insert:
(2A) If the Board has made a determination under section 14AA or 14AB in relation to a gratuity payable under subsection (1), the amount of the gratuity is reduced by the amount specified in the Board’s determination.
- (c) Section 13 (3)—
Omit the subsection.
- (13) Section 14 (**Gratuity for discharged members not hurt on duty**)—
- (a) Section 14 (1)—
After “the Board shall”, insert “, subject to subsection (3)”.
- (b) Section 14 (3)—
After section 14 (2), insert:
(3) If the Board has made a determination under section 14AA or 14AB in relation to a gratuity payable under subsection (1), the amount of the gratuity is reduced by the amount specified in the Board’s determination.
- (14) Part 4, Division 1A—
After Division 1, insert:
Division 1A—Circumstances in which benefits may be reduced
Power of the Board to reduce benefits to offset certain tax liabilities of the Fund
14AA. (1) Whenever—
- (a) a right to a benefit under this Act (section 8A excepted) accrues to or in respect of a member or former member of the police force; and
- (b) the Board is liable to pay income tax under a Commonwealth taxation law in respect of amounts appropriated from the Consolidated Fund under section 4; and

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- (c) a portion of that tax is referable to the part of those amounts used to finance the 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 the part referred to in paragraph (c); and
- (e) accordingly make a determination reducing that part of the benefit by the amount calculated.
- (2) Subsection (1) does not authorise the reduction of a benefit under this Act, 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.

(15) Section 14AB—

At the end of Division 1A of Part 4, insert:

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

14AB. (1) If—

- (a) the payment of a benefit under this Act to or in respect of a contributor would cause the Board or the Fund to be in breach of a prescribed Commonwealth occupational superannuation standard because—
- (i) the amount of the benefit; or
- (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 contributor from the 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 the 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 the Fund is in breach of that standard.

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(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 14AA 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.

(3) This section does not apply to a benefit payable under section 8A.

(16) Section 14J (**Commutation on normal or early retirement of member**)—

Section 14J (5)—

After section 14J (4), insert:

(5) If the Board has made a determination under section 14AA or 14AB in relation to a lump sum resulting from the commutation of a superannuation allowance to which this section applies, the lump sum is reduced by the amount specified in the Board's determination.

(17) Section 14K (**Commutation on discharge of disabled member**)—

Section 14K (5)—

After section 14K (4), insert:

(5) If the Board has made a determination under section 14AA or 14AB in relation to a lump sum resulting from the commutation of a superannuation allowance to which this section applies, the lump sum is reduced by the amount specified in the Board's determination.

(18) Section 17 (**Refund of deductions**)—

Section 17 (1) (a)—

SCHEDULE 1—AMENDMENTS—*continued*

Omit the paragraph, insert instead:

- (a) the total of all amounts deducted under this Act from that member's salary of office, with the addition of interest on those amounts—
 - (i) at the rate of 4.5 per cent per annum, compounded on 30 June in each year of that member's service during the period beginning with 23 November 1984 and ending with 30 June 1990 and also compounded on the date of that member's resignation or discharge if it occurred during that period; and
 - (ii) at the rate from time to time fixed by the Board under section 16 of the State Authorities Superannuation Act 1987, compounded on 30 June in each year of that member's service from and including 1 July 1990 and also compounded on the date of that member's resignation or discharge if it occurs on or after 1 July 1990; and

(19) Section 23—

Omit the section, insert instead:

Spouse entitled to only one pension under this Act

23. (1) If the spouse of a deceased member or deceased former member of the police force would, but for this section, become entitled—

- (a) to more than one superannuation allowance under section 11, 11A, 11B, 11C or 12 or under two or more of those sections; or
- (b) to a superannuation allowance in relation to the death of a person under section 11, 11A, 11B or 11C and a superannuation allowance in relation to the death of some other person under section 12,

that spouse is entitled to only one of those allowances, being, where they are not equal, the greater or greatest of them.

(2) In this section, a reference to a superannuation allowance includes a reference to a gratuity that has been paid to the spouse of a deceased member or deceased former member of the police force instead of that allowance.

(3) Regulations under this Act may be made for the purpose of enabling the Board, in a case where the spouse of a deceased member or deceased former member of the police force is entitled to only one of two or more superannuation allowances by virtue of subsection (1), to determine which of those allowances is the greater or greatest.

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SCHEDULE 1—AMENDMENTS—*continued*

(4) Where the widow or widower of a member or former member of the police force was not eligible to receive a superannuation allowance under section 11A, 11B, 11C or 12 because the allowance was suspended in accordance with subsection (1) of this section (as in force before the commencement of Schedule 1 (19) of the Police Regulation (Superannuation) Amendment Act 1988), that suspension ceases to have effect on and from that commencement, but that widow or widower is not eligible to receive such an allowance in respect of any period before the beginning of the first pension payment period occurring after that commencement.

SCHEDULE 2—FURTHER AMENDMENT

(Sec. 3)

**Schedule 3 (Lump sum benefits for normal or early retirement—
commutation factors (multiples of final salary)—**

At the end of the Schedule, insert:

Entry dates for the purposes of this Schedule—how determined

1. (1) For the purposes of this Schedule, the entry date of a member or former member of the police force to whom this Schedule applies—

(a) is, if the service of that member or former member has been continuous, the actual date on which the member or former member became a member of the police force ; and

(b) is, if—

(i) the service of that member or former member has not been continuous; and

(ii) on the occasion or occasions on which the member or former member was reappointed as a member of the police force the member or former member did not repay any benefit received in respect of previous service,

the date on which the member or former member last became a member of the police force;

(c) shall, if—

(i) the service of that member or former member has not been continuous; and

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SCHEDULE 2—FURTHER AMENDMENT—*continued*

- (ii) on the occasion or the occasions on which the member or former member was reappointed as a member of the police force the member or former member repaid any benefit received in respect of previous service,

be taken to be the date on which the member or former member would have been regarded as having entered the police force if—

- (iii) the various periods of service of the member or former member had been continuous; and
- (iv) that continuous service had ended on the last exit date of that member or former member; and
- (v) no benefit had been paid in respect of that previous service.

(2) For the purposes of subclause (1) (c), any previous period of service in respect of which a member or former member of the police force did not repay any benefit received for that service shall be disregarded.

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