



New South Wales

# State Authorities Non-contributory Superannuation Regulation 2000

under the

State Authorities Non-contributory Superannuation Act 1987

His Excellency the Governor, on a certificate given under section 34 of the *State Authorities Non-contributory Superannuation Act 1987*, with the advice of the Executive Council, has made the following Regulation under the *State Authorities Non-contributory Superannuation Act 1987*.

JOHN DELLA BOSCA, M.L.C.,  
Special Minister of State

## Explanatory note

This Regulation replaces the provisions of the *State Authorities Non-contributory Superannuation Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation, which is in essentially the same terms as the repealed Regulation, deals with the following matters:

- (a) providing for loadings in respect of shift allowances to be treated as part of a contributor's salary for the purposes of the Act (clause 4),
- (b) determining the eligible service of employees (clause 5),
- (c) providing for the reduction of basic benefits and deferred accrued benefits under the Act in order to offset certain tax liabilities of the Fund under the Act (Part 3),
- (d) saving the effect of things done under the repealed Regulation (Part 4).

This Regulation is made under the *State Authorities Non-contributory Superannuation Act 1987*, including section 34 (the general regulation-making power) and section 4.

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Explanatory note

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This Regulation deals with matters of a machinery nature, matters arising under legislation that complements Commonwealth legislation and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1             Preliminary

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# State Authorities Non-contributory Superannuation Regulation 2000

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *State Authorities Non-contributory Superannuation Regulation 2000*.

### 2 Commencement

This Regulation commences on 1 September 2000.

**Note.** This Regulation replaces the *State Authorities Non-contributory Superannuation Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

***deferred accrued benefit*** means a benefit of the kind referred to in section 26E of the Act.

***employee*** does not include an irregular employee.

***the Act*** means the *State Authorities Non-contributory Superannuation Act 1987*.

**Note.** Section 3 (1) of the Act defines “STC” as the SAS Trustee Corporation established under the *Superannuation Administration Act 1996*.

(2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## Part 2 General provisions supplementary to the Act

### 4 Determination of loading in respect of shift allowance

(1) In this clause:

**base salary**, in relation to an employee, means the remuneration, salary or wages payable to the employee under an award of an industrial tribunal or under an industrial or enterprise agreement, but excluding all allowances payable to the employee.

**relevant period**, in relation to an employee, means the period of 12 months ending with 31 December immediately preceding the date on which the salary of the employee is to be calculated for the purposes of the Act.

**relevant shift** means a shift worked by an employee in respect of which a shift allowance is payable by an employer.

**trade union** means:

- (a) an industrial organisation of employees registered or recognised as such under the *Industrial Relations Act 1996*, or
  - (b) an association of employees registered as an organisation under the *Workplace Relations Act 1996* of the Commonwealth.
- (2) For the purposes of section 4 (1) (a) of the Act, the loading (if any) to be treated as part of an employee's salary for the purposes of the Act must be determined by reference to subclause (3), (4) or (5) according to whichever is appropriate to the employee.
- (3) If:
- (a) there is in force an agreement between, or a practice accepted by, a trade union and the employer of an employee which was in force immediately before 18 December 1987, and
  - (b) the effect of the agreement or practice is that amounts that the employer pays to the employee as shift allowances for relevant shifts that the employee works during a relevant period are treated as a loading for superannuation purposes, and

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- (c) the total of those amounts is greater than that which would be determined under subclause (4) for that year in respect of the employee,

then, for the purposes of section 4 (1) (a) of the Act, that total is the employee's loading for those shift allowances.

- (4) Subject to subclause (3) or (5), if an employee is paid shift allowances for shifts worked by the employee during a relevant period, then, for the purposes of section 4 (1) (a) of the Act, the employee's loading for those allowances is to be determined by reference to the number of relevant shifts the employee is taken to have worked (as calculated in accordance with subclause (6)) during the relevant period. The loading is:
  - (a) if during the relevant period the employee is taken to have worked not more than 104 relevant shifts—no amount, or
  - (b) if during the relevant period the employee is taken to have worked more than 104 but not more than 156 relevant shifts—an amount equal to 10 per cent of the employee's base salary for that period, or
  - (c) if during the relevant period the employee is taken to have worked more than 156 but not more than 208 relevant shifts—an amount equal to 15 per cent of the employee's base salary for that period, or
  - (d) if during the relevant period the employee is taken to have worked more than 208 relevant shifts—an amount equal to 20 per cent of the employee's base salary for that period.
- (5) If the amounts actually paid or payable to an employee as shift allowances for shifts that the employee has worked during a relevant period are less than the loading determined for that period in respect of the employee in accordance with subclause (4), then, for the purposes of section 4 (1) (a) of the Act, the total of those amounts is the employee's loading for those allowances.

- (6) For the purposes of subclause (4), the number of relevant shifts an employee is taken to have worked during a relevant period is the number calculated as follows:

$$N = \frac{H}{H_0} \times S$$

where:

- $N$  is the number of relevant shifts the employee is taken to have worked during the relevant period.  
 $H$  is the number of hours per shift regularly required to be worked in relevant shifts during the relevant period.  
 $H_0$  is the smallest number of hours per shift regularly required to be worked (whether by the employee or any comparable worker) in relevant shifts during any calendar year after 1987, including the relevant period.  
 $S$  is the number of relevant shifts the employee actually worked during the relevant period.

## 5 Determination of eligible service

- (1) The eligible service accrued by an employee for any day is such proportion of a day as is equal to the salary ratio of the employee on that day.
- (2) An employee who is on leave without pay that is not prescribed leave has a salary ratio of 0 in respect of that leave.
- (3) A continuous period of leave without pay is not to be regarded as leave without pay for the purposes of this clause if the period is not prescribed leave and the period is 5 days or less.
- (4) For the purposes of subclauses (2) and (3):

***leave without pay***, in relation to an employee, means a period of leave from employment with an employer (otherwise than on secondment as referred to in section 4 of the Act) during which the employee is not entitled to receive payment of salary from the employer.

***prescribed leave***, in relation to an employee, means leave without pay during which the employee on leave is absent from employment with an employer:

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- (a) because of a grant of sick leave, or
- (b) for a period during which the employee receives periodic payments under an Act providing compensation for workers' injuries, or
- (c) because of a grant of maternity leave, or
- (d) under an agreement with the employer for the secondment of the employee to employment that is not employment with a person who is not an employer within the meaning of the Act, or
- (e) for the purpose of enabling the employee to perform trade union duties unless, in a particular case, the employer certifies to STC in writing that this paragraph is not to apply, or
- (f) for the purpose of enabling the employee to perform duties that the employer certifies to STC in writing to be in the interests of the employer or the State, or
- (g) while on service with the naval, military or air forces of the Commonwealth, or
- (h) in other circumstances decided by STC for the purposes of this clause.

## Part 3 Benefit reduction provisions

### 6 Definitions

In this Part:

*final average salary* and *final salary* have the same meaning as they have in Part 4 of the Act.

*taxable date* means the date on which STC first becomes or became liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to the Fund.

**Note.** By way of example only, the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* of the Commonwealth are Commonwealth taxation laws for the purposes of this clause.

### 7 Prescription of benefits

- (1) The kinds of benefits prescribed for the purposes of section 26A of the Act are the benefits provided by sections 22, 24 and 26E of the Act.
- (2) The benefits referred to in subclause (1) do not include a benefit payable as a result of the death of an employee.

**Note.** Section 22 of the Act deals with the basic benefit that is payable to employees.

Section 24 of the Act provides for an employee's basic benefit to be preserved in certain circumstances.

Section 26A of the Act empowers STC to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1) of the Act.

Section 26E of the Act provides for non-contributing employees to have a deferred accrued benefit instead of a basic benefit.

### 8 Reduction of basic benefit

- (1) Whenever the basic benefit:
  - (a) is payable under section 23 of the Act in respect of an employee, or
  - (b) is preserved in respect of an employee in accordance with section 24 of the Act,

the reduction in benefit prescribed for the purposes of section 26A of the Act is the amount calculated in accordance with the formula set out in subclause (2).

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- (2) For the purposes of subclause (1), the formula is:

$$R = 0.03 \times F \times Z \times 0.15$$

where:

R        represents the amount of the reduction.

F        represents:

- (a)      in the case of the employee's resignation or retirement—the employee's final average salary, or
- (b)      in any other case—the employee's final salary.

Z        represents the employee's years of eligible service calculated on a daily basis, commencing on or after the taxable date.

- (3) This clause does not apply if the basic benefit is payable as a result of the death of a person who was, immediately before death, an employee.

**Note.** Section 23 of the Act provides for the immediate payment of a basic benefit on the happening of certain contingencies.

Section 24 of the Act provides for an employee's basic benefit to be preserved in certain circumstances.

Section 26A of the Act empowers STC to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1) of the Act.

### 9 Reduction of deferred accrued benefit

- (1) Whenever a deferred accrued benefit:

- (a)      is payable in respect of an employee, or
- (b)      is preserved in accordance with section 26F of the Act in respect of an employee,

the reduction in benefit prescribed for the purposes of section 26A of the Act is the amount calculated in accordance with the formula set out in subclause (2).

- (2) For the purposes of subclause (1), the formula is:

$$R = 0.03 \times F \times Z \times 0.15$$

where:

R represents the amount of the reduction.

F represents the employee's final average salary.

Z represents the employee's years of eligible service calculated on a daily basis, during the period commencing on the taxable date and ending on 30 June 1992.

- (3) This clause does not apply if the deferred accrued benefit is payable in consequence of the death of a person who was, immediately before death, an employee.

**Note.** Section 26A of the Act empowers STC to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1) of the Act.

Section 26F of the Act provides for the deferred accrued benefit to be preserved when an employee's employment is transferred.

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Clause 10            State Authorities Non-contributory Superannuation Regulation 2000

Part 4                Miscellaneous

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## **Part 4 Miscellaneous**

### **10 Savings provision**

Any act, matter or thing that, immediately before the repeal of the *State Authorities Non-contributory Superannuation Regulation 1995* under section 10 (2) of the *Subordinate Legislation Act 1989*, had effect under that Regulation continues to have effect under this Regulation.

BY AUTHORITY