



New South Wales

State Authorities Non-contributory Superannuation Regulation 2005

under the

State Authorities Non-contributory Superannuation Act 1987

Her 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

The object of this Regulation is to remake the provisions of the *State Authorities Non-contributory Superannuation Regulation 2000*. That Regulation is to be repealed on 1 September 2005 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) providing for loadings in respect of shift allowances to be treated as part of a contributory'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, Division 1),
- (d) providing for the reduction of benefits payable in respect of employees to whom benefits have been released on the grounds of severe financial hardship or on compassionate grounds (Part 3, Division 2),
- (e) providing for death or incapacity benefits for firefighters (clause 13),
- (f) other minor, consequential and ancillary matters (clauses 1–3, 14 and 15).

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

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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State Authorities Non-contributory Superannuation Regulation 2005

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *State Authorities Non-contributory Superannuation Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *State Authorities Non-contributory Superannuation Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 continued under the *Superannuation Administration Act 1996*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

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Clause 4 State Authorities Non-contributory Superannuation Regulation 2005

Part 2 General provisions supplementary to the Act

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
 - (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 subclauses (3) and (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.

H₀ 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 sum of:

- (a) the number of relevant shifts the employee actually worked during the relevant period, and

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Clause 5 State Authorities Non-contributory Superannuation Regulation 2005

Part 2 General provisions supplementary to the Act

- (b) the number of relevant shifts the employee would have actually worked during the relevant period but for the employee being on leave, being leave for which a shift allowance or an equivalent allowance or loading (including that part of annualised salary that replaces shift allowance in respect of the employee) is paid.

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:

- (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

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Clause 5

General provisions supplementary to the Act

Part 2

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- (h) in other circumstances decided by STC for the purposes of this clause.

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Clause 6 State Authorities Non-contributory Superannuation Regulation 2005

Part 3 Benefit reduction provisions

Part 3 Benefit reduction provisions

Division 1 General

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).

- (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.

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Clause 10 State Authorities Non-contributory Superannuation Regulation 2005

Part 3 Benefit reduction provisions

- (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.

Division 2 Benefit reductions relating to early release of benefits on grounds of severe financial hardship or on compassionate grounds

10 Application of Division

The following benefits may be the subject of a reduction under this Division:

- (a) section 22 (Basic benefit),
- (b) section 24 (Benefit to be preserved),
- (c) section 26E (Non-contributing employees to have deferred accrued benefit instead of basic benefit).

11 Reduction of benefits

- (1) This clause applies to the reduction of benefits payable under the Act to or in respect of an employee or former employee to whom a benefit has been previously released on the grounds of the employee's or former employee's severe financial hardship or on compassionate grounds.
- (2) If a benefit is released to a former employee who had preserved the basic benefit, STC must, on and from the date of the release, calculate the amount of the preserved basic benefit and reduce that amount by the amount of benefit released. The amount of benefit payable when the benefit preserved is payable is to be reduced accordingly.
- (3) In any other case, STC must create a debt account in the Fund in respect of the employee or former employee and must when a benefit is payable reduce the benefit that is payable by the amount debited to the debt account at the time the benefit is payable.
- (4) Despite subclause (3), if a benefit is preserved under the Act after the release of a benefit and before a benefit is otherwise payable, STC must, on and from the date the benefit is preserved, calculate the amount of benefit preserved and reduce that amount by the amount debited to the debt account at the time the benefit is preserved. The amount of benefit payable when the benefit provided for or preserved is payable is to be reduced accordingly.

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- (5) The amount debited to the debt account is to be the amount of benefit released together with interest on that amount at a rate determined by STC.
 - (6) STC may obtain actuarial advice for the purpose of determining the amount of a reduced benefit.

12 Consent to benefit reduction

Before releasing a benefit on the grounds of severe financial hardship or on compassionate grounds, STC must obtain the written consent of the employee or former employee to the reduction of benefits as a consequence of the early release.

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Clause 13 State Authorities Non-contributory Superannuation Regulation 2005

Part 4 Miscellaneous

Part 4 Miscellaneous

13 Death or incapacity benefits for firefighters

- (1) In this clause:
2003 firefighters award means the *Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2003*.
- (2) For the purposes of the definition of *firefighters award* in section 27AE of the Act, the 2003 firefighters award is prescribed.
- (3) For the purposes of complying with or giving effect to the 2003 firefighters award, and only with the consent of the relevant employee, STC may provide to New South Wales Fire Brigades or the trustees of the Death and Disability Superannuation Fund under the 2003 firefighters award information obtained about the employee in the administration of the Act.
- (4) STC must, for the purposes of complying with or giving effect to the 2003 firefighters award, transfer to the Death and Disability Superannuation Fund the amount required as an offset under the 2003 firefighters award.
- (5) However, that amount must not be transferred unless the firefighter concerned has consented to the transfer.

14 Savings provision

Any act, matter or thing that, immediately before the repeal of the *State Authorities Non-contributory Superannuation Regulation 2000* had effect under that Regulation continues to have effect under this Regulation.

15 Validation of shift loading determinations

Anything done or omitted to be done, on or after 1 March 1999, that would have been validly done or omitted had clause 4 (6), as amended by Schedule 1 [1] to the *State Authorities Non-contributory Superannuation Amendment (Shift Allowance Loading) Regulation 2005*, been in force (under this Regulation, the *State Authorities Non-contributory Superannuation Regulation 2000* or the *State Authorities Non-contributory Superannuation Regulation 1995*) at the time that the thing was done or omitted, is validated.

BY AUTHORITY