

**STATE AUTHORITIES NON-CONTRIBUTORY
SUPERANNUATION ACT 1987 — REGULATION**

(State Authorities Non-contributory Superannuation Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, on the certificate of the Premier given under section 34 (2) of the State Authorities Non-contributory Superannuation Act 1987, has, with the advice of the Executive Council, and in pursuance of that Act, been pleased to make the Regulation set forth hereunder.

BOB CARR,
Premier.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the State Authorities Non-contributory Superannuation Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

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

“**Parent Fund**” means the State Authorities Superannuation Fund established under the State Authorities superannuation Act 1987;

“**Parent Fund average salary**” means, for any relevant period, the average annual attributed salary of all contributors to the Parent Fund as at 31 December preceding the first day of that period;

“periodical entitlement factor” means the amount determined in accordance with subclause (2);

“relevant period” means, except in clause 4:

- (a) the period of 3 months ending on 30 June 1988; or
- (b) the period of 12 months ending on 30 June 1989; or
- (c) the period of 12 months ending on 30 June in each subsequent year;

“the Act” means the State Authorities Non-contributory Superannuation Act 1987.

(2) For the purposes of this Regulation, a periodical entitlement factor is, in respect of any relevant period, the amount determined by the formula:

$$A = \frac{I}{E}$$

where:

A represents the amount to be determined;

I represents the salary actually paid to the person concerned as an irregular employee in respect of that period;

E represents the Parent Fund average salary in respect of that period.

Note: Section 3 (1) of the Act defines “Board” as the State Authorities Superannuation Board referred to in section 4 of the Superannuation Administration Act 1991.

PART 2—GENERAL PROVISIONS SUPPLEMENTARY TO THE ACT

Determination of loading in respect of shift allowance

4. (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 for which payment is made by an employer;

“trade union” means:

- (a) an industrial organisation of employees registered or recognised as such under the Industrial Relations Act 1991; or
- (b) an association of employees registered as an organisation under the Industrial Relations Act 1988 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 superannation 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 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:

- (a) if during the relevant period the employee has worked not more than 104 relevant shifts—no amount; or
- (b) if during the relevant period the employee has 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 has 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 has 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.

Irregular employees—calculation of basic benefit

5. The basic benefit for a person who was an irregular employee is required to be calculated in accordance with the following formula:

$$B = 0.03 \times F \times S$$

where:

- B represents the value of the benefit to be determined;
- F represents the Parent Fund average salary in respect of the relevant period in which employment ceased or is taken to have ceased;
- S represents the sum of the periodical entitlement factors in respect of each relevant period which has elapsed while the person was an irregular employee.

Note: An irregular employee is defined by the Act as an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 of the Act to be an irregular employee.

Irregular employees—employer contributions

6. (1) An employer listed in Part 1 of Schedule 1 to the Act must pay to the Board in respect of each irregular employee employed by the employer during a relevant period an amount equal to a percentage of the salary payable to that employee by the employer in respect of that period. The Board must determine the percentage applicable to the employer after obtaining the concurrence of the Treasurer.

(2) An employer listed in Part 2 of Schedule 1 to the Act must pay to the Board in respect of each irregular employee employed by the employer during a relevant period an amount equal to 2.5 per cent of the salary payable to that employee by the employer for that period.

(3) An employer listed in Part 3 of Schedule 1 to the Act must pay to the Board for each irregular employee employed by the employer during a relevant period an amount equal to a percentage of the salary payable to that employee by the employer for that period. The Board may determine the percentage applicable to the employer only after obtaining the concurrence of the Treasurer.

(4) An amount payable under this clause is required to be paid in such manner as the Board determines.

Note: An irregular employee is defined by the Act as an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 of the Act to be an irregular employee.

Irregular employees—emergence of benefit

7. (1) An irregular employee who has reached 55 years of age and who does not receive a salary for 2 consecutive relevant periods is, for the purposes of the Act, taken to have retired from his or her employment with effect from the last day of the second of those periods.

(2) An irregular employee who has not reached 55 years of age and who does not receive a salary for 2 consecutive relevant periods is, for the purposes of the Act, taken to have resigned from his or her employment with effect from the last day of the second of those periods.

Note: An irregular employee is defined by the Act as an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 of the Act to be an irregular employee.

Determination of eligible service

8. (1) This clause applies only to employees who are not irregular employees.

(2) 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.

(3) An employee who is on leave without pay that is not prescribed leave has a salary ratio of 0 in respect of that leave.

(4) 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.

(5) For the purposes of subclauses (3) and (4):

“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 parental 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 the Board 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 the Board 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 the Board for the purposes of this clause.

PART 3—BENEFIT REDUCTION PROVISIONS

Definition of “taxable date”

9. In this Part, “taxable date” means the date on which the Board 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 of the Commonwealth is a Commonwealth taxation law for the purposes of this clause.

Prescription of benefits

10. (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.

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

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

Reduction of basic benefit—ordinary cases

11. (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:

- (a) to an irregular employee; or
- (b) if the basic benefit is payable as a result of the death of a person who was, immediately before death, an employee.

Notes: 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 the Board to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1) of the Act.

Reduction of basic benefit—irregular employees

12. (1) Whenever the basic benefit:

- (a) is payable under section 23 of the Act in respect of a person who is an irregular employee; or

- (b) is preserved in respect of such a person 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:

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

where:

R represents the amount of the reduction;

F represents the Parent Fund average salary in respect of the relevant period in which the person's employment as an irregular employee ceased;

T represents the sum of the periodical entitlement factors in respect of each relevant period that elapsed while the person was an irregular employee during any period 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 irregular employee.

Notes: Section 23 of the Act provides for the immediate payment of a basis 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 the Board to reduce benefits to offset certain tax liabilities of a fund maintained under section 9 (1) of the Act.

Reduction of deferred accrued benefit—ordinary cases

- 13. (1)** Whenever a deferred accrued benefit:

- (a) is payable in respect of an employee who is not an irregular employee; or
- (b) is preserved in accordance with section 26F of the Act in respect of an employee who is not an irregular 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.

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

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

Reduction of deferred accrued benefit—irregular employees

14. (1) Whenever a deferred accrued benefit:

(a) is payable in respect of an irregular employee; or

(b) is preserved in respect of an irregular employee in accordance with section 26F 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:

$$R = 0.03 \times P \times V \times 0.15$$

where:

R represents the amount of the reduction;

P represents the Parent Fund average salary in respect of the period of 12 months ending on 30 June 1993;

V represents the sum of the periodical entitlement factors in respect of each relevant period that elapsed while the person concerned was an irregular employee during any period commencing on or after the taxable date and ending on or before 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 irregular employee.

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

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

PART 4—MISCELLANEOUS

Notes in text

15. Notes in the text of this Regulation are explanatory notes only and do not form part of this Regulation.

Repeal and saving

16. (1) The State Authorities Non-contributory Superannuation Regulation 1988 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the State Authorities Non-contributory Superannuation Regulation 1988, had effect under that Regulation continues to have effect under this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with no changes in substance, the provisions of the State Authorities Non-contributory Superannuation Regulation 1988. The new 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) providing for the calculation of basic benefits for irregular employees (clause 5);
- (c) providing for the payment of employer contributions in respect of irregular employees (clause 6);
- (d) providing for the emergence of benefits payable to irregular employees (clause 7);
- (e) determining the eligible service of employees who are not irregular employees (clause 8);
- (f) providing for the reduction of basic benefits and deferred accrued benefits under the Act in order to offset certain tax liabilities of the Fund (Part 3);
- (g) other matters of a machinery nature (Part 4).

(An irregular employee is defined by the Act as an employee who is neither a full-time employee nor a part-time employee, and includes an employee who is deemed by section 7 of the Act to be an irregular employee.)

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.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.