



New South Wales

Police Superannuation Regulation 2015

under the

Police Regulation (Superannuation) Act 1906

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Police Regulation (Superannuation) Act 1906*.

GLADYS BEREJIKLIAN, MP
Treasurer

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Police Superannuation Regulation 2010*, which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the application of the *Police Regulation (Superannuation) Act 1906* to certain members of the NSW Police Force employed after the closure of the Police Superannuation Fund,
- (b) the remuneration of members of the NSW Police Force that is, or is not, to be counted as part of their salary of office,
- (c) leave without pay in relation to superannuation contributions,
- (d) the reduction of benefits in order to offset certain tax liabilities,
- (e) the reduction of benefits payable in respect of contributors to whom benefits have been released on the grounds of severe financial hardship or on compassionate grounds,
- (f) the making of family law superannuation payments in respect of spouses or former spouses of contributors,
- (g) the Police Medical Board and medical examinations relating to fitness for duty,
- (h) information to be provided to the SAS Trustee Corporation by or about beneficiaries,
- (i) superannuation contributions surcharge,
- (j) offences and penalties,
- (k) savings, transitional and formal matters.

This Regulation is made under the *Police Regulation (Superannuation) Act 1906*, including sections 1 (2) (definition of **salary of office**), 1A (1) (c) and (2), 5A (1) (definition of **initial period**), 12H, 14AA, 14P (5) (b), 14Q (4), 14R, 15A (3) and 24 (the general regulation-making power) and clause 1 of Schedule 6.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature, matters that are not likely to impose an appreciable burden,

cost or disadvantage on any sector of the public and matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

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Police Superannuation Regulation 2015

under the

Police Regulation (Superannuation) Act 1906

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Police Superannuation Regulation 2015*.

2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Police Superannuation Regulation 2010* which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

additional surcharge amount means the amount of superannuation contributions surcharge assessed to be payable by a post payment surcharge assessment notice.

Commissioner of Taxation means the person holding office for the time being as Commissioner of Taxation under a law of the Commonwealth.

post payment surcharge assessment notice means a notice of assessment of superannuation contributions surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth in respect of the employer contributions paid to the Fund on behalf of a former contributor, being a notice that is received by the former contributor after a benefit has commenced to be paid or has been paid to the former contributor.

surcharge debt account has the same meaning as in section 14AA of the Act.

surcharge deduction cap means the maximum surcharge deduction amount that may be determined by STC under section 14AA (1C) of the Act in relation to a benefit payable to a former contributor.

the Act means the *Police Regulation (Superannuation) Act 1906*.

total surcharge amount, in respect of a former contributor, means the sum of:

- (a) the total amount of superannuation contributions surcharge that has been assessed to be payable in respect of employer contributions paid to the Fund on the former contributor's behalf up to and including the date on which the former contributor receives a post payment surcharge assessment notice, and
- (b) the amount (if any) of general interest charged in respect of the additional surcharge amount payable under that notice, and
- (c) the amount of interest (if any) payable in respect of the surcharge debt account kept in respect of the former contributor.

Note. Section 1 (2) of the Act defines **STC** as the SAS Trustee Corporation continued under the *Superannuation Administration Act 1996*.

- (2) Notes included in this Regulation do not form part of this Regulation.

4 Additional members of the police force to whom Act applies

- (1) For the purposes of section 1A (1) (c) of the Act, the class of members of the police force consisting of the persons listed below is prescribed as a class to which the Act applies:
- Robert Allan Shankleton—Registered No 24929
 - Shaun Patrick Moloney—Registered No 25077
 - Jennifer Louise Cullane—Registered No 25777.
- (2) For the purposes of section 1A (2) of the Act, the date 23 October 1992 is prescribed.

Part 2 Salary and leave

5 Salary of office

For the purposes of paragraph (a) of the definition of *salary of office*, in relation to a member of the NSW Police Force other than an executive officer, in section 1 (2) of the Act:

- (a) remuneration received by a member of the NSW Police Force to whom the definition relates by way of a bonus for the member attaining any of the following qualifications is to be included as part of that salary of office:
 - (i) Associate Diploma in Justice Administration,
 - (ii) Diploma in Criminology,
 - (iii) the degree of Bachelor of Laws,
 - (iv) any other degree approved by STC for the purposes of this paragraph, and
- (b) remuneration received by such a member of the NSW Police Force by way of any of the following allowances is prescribed as exempt:
 - (i) a soiled clothing allowance,
 - (ii) a shift allowance,
 - (iii) a stocking allowance.

6 Initial period of leave

For the purposes of section 5A of the Act:

- (a) in relation to a period of leave that is less than 3 months, that period of leave is prescribed as the initial period, and
- (b) in relation to a period of leave that is 3 months or more, 3 months is prescribed as the initial period.

Part 3 Benefit reduction provisions

Division 1 Reductions relating to income tax

7 Benefits to which Division applies

- (1) Except as provided by clause 11, this Division applies to:
 - (a) the benefits provided under section 5B, 7, 7AA, 8A, 9B, 10, 13A, 14 or 14J of the Act, and
 - (b) the benefits provided under section 12 of the Act, except:
 - (i) the benefit payable under section 12 (1) if the prescribed rate under section 12 (1AA) in respect of that benefit is the rate set out in section 12 (1AA) (b) (ii), or
 - (ii) the benefit payable as a result of an election under section 12 (1A) to take a gratuity equivalent to the gratuity prescribed by section 13 of the Act.
- (2) For the purposes of section 14AA (2) (a) of the Act, the kinds of benefits prescribed for the purposes of section 14AA of the Act are the benefits referred to in subclause (1) and clause 11.

8 Formula for calculation of reduction in benefits

- (1) For the purposes of section 14AA (2) (b) of the Act, the following formula is prescribed as the method of calculating a reduction for the purposes of section 14AA whenever a benefit to which this Division applies becomes payable:

$$R = M \times \frac{A}{B} \times Q$$

where:

R represents the amount of the reduction.

M represents the amount of the benefit being reduced.

A is calculated in accordance with clause 9 and represents the portion of the benefit attributable to employer contributions.

B represents the value of the benefit, which is calculated as:

- (a) in a case in which a gratuity benefit or preserved benefit or a lump sum benefit for which an election has been made or is deemed to have been made under section 14J of the Act is to be paid to or in respect of the member or former member of the police force—the amount of that benefit, or
- (b) in a case in which an allowance is to be paid to or in respect of the member or former member of the police force—the amount calculated by STC as the capitalised value of the benefits payable to or in respect of the member or former member.

Q represents the sum of such number of terms as is determined in accordance with the formula prescribed by clause 10 to reflect the number of times the rate of tax (being the tax referred to in section 14AA (1) of the Act) has changed.

- (2) No benefit reduction applies in any case where the value of **A** in the formula in this clause is equal to or less than 0.

9 Calculation of portion attributable to employer contributions

- (1) In the formula in clause 8, the amount represented by *A* is calculated by subtracting the sum of the following amounts from the amount represented by *B* in that formula:
- (a) the total of all amounts deducted under the Act from the member or former member of the police force's salary of office from the date when the member or former member last became a member of the police force to the date of cessation or death,
 - (b) the amount, if any, repaid by the member or former member of the police force to the Fund under section 17 (3) of the Act,
 - (c) interest:
 - (i) compounded on 30 June in each year in respect of the period beginning on 23 November 1984 or on the day on which the member or former member of the police force last became liable to make contributions under the Act (whichever is the later), and
 - (ii) compounded on the date on which the member or former member of the police force ceased to be a member of the police force or died, and
 - (iii) calculated at the prescribed rate provided for by subclause (2) on the amount ascertained by adding the amounts referred to in paragraphs (a) and (b).
- (2) For the purposes of subclause (1) (c) (iii), the prescribed rate is:
- (a) in respect of any relevant period beginning on 23 November 1984 and ending on 30 June 1990—4.5% per year, or
 - (b) in respect of any relevant period beginning on or after 1 July 1990—the rate fixed from time to time under section 16 of the *State Authorities Superannuation Act 1987*.
- (3) Despite subclauses (1) and (2), for the purposes of the formula in clause 8, $\frac{A}{B}$ is taken to be 1, if the benefit to be reduced is an increase in any allowance under section 10 or 12 of the Act.

10 Calculation of aggregate rate of tax

For the purposes of the definition of *Q* in clause 8, the formula prescribed by this clause is:

$$\frac{C}{D} \times L$$

where:

C represents the number of days of continuous service that the person to or in respect of whom the benefit is payable has had as a member of the police force in each period during which the rate of tax payable on employer contributions (as referred to in section 14AA of the Act) is *L*.

D represents the number of days of continuous service that the person to or in respect of whom the benefit is payable has had as a member of the police force during the period beginning with the date when the person last became liable to make contributions under the Act and ending:

- (a) in the case of benefits arising under section 10 or 12 of the Act—with the later of the date the person ceased to be a member of the Fund and the date on which the person would have been eligible to retire under section 7 of the Act if the

person's employment as a member of the police force had continued to that date, or

(b) in all other cases—when the person ceased to be a member of the Fund.

L represents the rate of tax payable on employer contributions set out in the relevant Commonwealth taxation law or such lesser rate as may be determined by STC having regard to the most recent actuarial valuation of the scheme.

Note. The benefit that emerges on the death of a former member of the police force under section 11 or 12 (1AA) (b) (ii) of the Act is not to be reduced because it is calculated as a proportion of the benefit payable to the former member and that benefit will already have been reduced in accordance with section 14AA of the Act.

11 Calculation of reduction in benefits relating to past benefits

- (1) This clause applies to a benefit payable on or after 1 July 2000 that is:
 - (a) a superannuation allowance under a provision referred to in clause 7 that was first payable on or after 1 July 1988 and before 1 July 1997, or
 - (b) a superannuation allowance granted under section 11, 11AA, 11A, 11C or 12 (1AA) (b) (ii) of the Act to the spouse of a former member of the police force who first received a superannuation allowance on or after 1 July 1988 and before 1 July 1997.
- (2) In addition to other reductions calculated under this Division, benefits to which this clause applies are, for the purposes of section 14AA of the Act, to be reduced in accordance with this clause.
- (3) A benefit referred to in subclause (1) (a) is to be reduced by an amount calculated by applying the provisions of clauses 8, 9 and 10 in respect of the amount of the superannuation allowance when it was first payable.
- (4) A benefit referred to in subclause (1) (b) is to be reduced by an amount equal to 62.5% of the amount calculated by applying the provisions of clauses 8, 9 and 10 in respect of the superannuation allowance paid to the former member whose spouse is receiving the allowance, as at the date that allowance was first paid to the former member.
- (5) In addition to any reduction calculated under subclause (3) or (4), a benefit to which this clause applies:
 - (a) that is a superannuation allowance payable under section 10 or 12 of the Act, and
 - (b) that has been increased since the first date on which it was payable, is to be further reduced by amounts calculated by applying the provisions of clauses 8, 9 and 10 to the amount of each increase, as at the date on which the increase was effected.
- (6) If a benefit has been reduced as a result of one or more commutations, the amount of any reduction calculated under subclause (3), (4) or (5) is to be diminished by multiplying it by a fraction equal to the proportion that the benefit payable on 1 July 2000 bears to the benefit that would have been payable on that date if no commutation had occurred.
- (7) In the case of a superannuation allowance liable to adjustment under Division 2 of Part 4 of the Act, the amount of a reduction calculated under subclause (3), (4) or (5) is to be adjusted, in relation to each year during which the allowance has been paid, ending on 1 July 2000, by the adjustment percentage for that year applied to the superannuation allowance under Division 2 of Part 4 of the Act.

Division 2 **Reductions relating to superannuation contributions surcharge**

12 **Prescription of benefits**

For the purposes of section 14AA (3) of the Act, the kinds of benefits prescribed for the purposes of section 14AA of the Act are:

- (a) the benefits provided under section 5B, 7, 7AA, 8A, 9B, 10, 13, 13A, 14 or 14J of the Act, and
- (b) the benefits provided under section 12 of the Act, except the benefit payable under section 12 (1) if the prescribed rate under section 12 (1AA) in respect of that benefit is the rate set out in section 12 (1AA) (b) (ii).

13 **Reduction for superannuation contributions surcharge**

- (1) STC may, at the request of a former contributor:
 - (a) adjust the amount of a benefit payable to the former contributor by reducing the benefit by an amount (the **reduction amount**) that is equivalent to the lesser of:
 - (i) the additional surcharge amount, and
 - (ii) the amount (not being less than nil) that is equal to the amount of the surcharge deduction cap less any previously met surcharge liability, and
 - (b) pay an amount that is equal to the reduction amount to the former contributor or to the Commissioner of Taxation.
- (2) In subclause (1), **previously met surcharge liability** means the sum of:
 - (a) all amounts paid by the former contributor to STC or the Commissioner of Taxation in relation to the total surcharge amount of the former contributor, and
 - (b) all amounts in respect of which adjustments relating to the benefit of the former contributor have previously been made under this clause or the Act in relation to the superannuation contributions surcharge.
- (3) For the purposes of determining an adjustment under this clause, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.
- (4) This clause does not authorise STC to pay any amount that would result in payments made to or on behalf of the former contributor exceeding the total benefits to which the former contributor is entitled.
- (5) This clause does not authorise STC to pay any amount of general interest charged in respect of an additional surcharge amount payable under a post payment surcharge assessment notice unless the request for the payment is made within such period after the notice is received as STC considers reasonable.

14 **Surcharge deduction amount**

For the purposes of section 14AA (1C) of the Act, the surcharge deduction amount determined by STC must not exceed the sum of:

- (a) an amount that is 15% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued after 20 August 1996 and before 1 July 2003, and
- (b) an amount that is 14.5% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued on or after 1 July 2003 and before 30 June 2004, and

- (c) an amount that is 12.5% of the employer-financed portion of that part of the benefit payable to the contributor or former contributor that accrued on or after 1 July 2004 and before 30 June 2005.

Division 3 Reductions relating to no-TFN tax

15 Reductions relating to no-TFN tax

- (1) For the purposes of section 14AD (1) (d) of the Act, the kinds of benefits prescribed for the purposes of section 14AD of the Act are the benefits provided under section 5B, 7, 7AA, 8A, 9B, 10, 12, 13, 13A, 14, or 14J of the Act.
- (2) STC must create a debt account in the Fund in respect of each contributor or former contributor in respect of whom a benefit is liable to be reduced under section 14AD of the Act.
- (3) STC must have regard to the debt account when determining the amount of the reduced benefit.

Note. Under section 14AD (3) of the Act, the amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.

16 Provision of information

STC must at least once a year:

- (a) provide each contributor and former contributor with a statement as to the balance of the debt account created by STC in respect of that contributor or former contributor, and
- (b) request that a contributor or former contributor provide his or her tax file number to STC, if the number has not previously been provided.

Division 4 Reductions relating to early release of benefits

17 Application of Division

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

- (a) the benefits provided under section 5B, 7, 7AA, 8A, 9B, 9C, 10, 13, 13A, 14 or 14J of the Act,
- (b) the benefits provided under section 12 of the Act, except the benefit payable under section 12 (1) if the prescribed rate under section 12 (1AA) in respect of that benefit is the rate set out in section 12 (1AA) (b) (ii).

18 Reduction of benefits

- (1) This clause applies to the reduction of benefits payable to or in respect of a contributor or former contributor (other than a benefit payable under section 12F or 12G of the Act) to whom a benefit has been released on the ground of the contributor's or former contributor's severe financial hardship or on compassionate grounds.
- (2) If a benefit is released to a former contributor who has provided for a benefit under section 9B of the Act, or has had a benefit preserved under section 9C of the Act, STC must, on and from the date of release, calculate the amount of any benefit provided for or preserved and reduce that amount by the amount of benefit released. The amount of benefit payable when the benefit provided for or 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 contributor or former contributor 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 provided for or preserved under section 9B or 9C of the Act after the release of a benefit to the contributor concerned and before a benefit is otherwise payable, STC must, on and from the date the benefit is provided for or preserved, calculate the amount of benefit provided for or preserved and reduce that amount by the amount debited to the debt account at the time the benefit is provided for or preserved. The amount of benefit payable when the benefit provided for or preserved is payable is to be reduced accordingly.
- (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.

19 Consent to benefit reduction

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

20 Commutation of superannuation allowances

- (1) If a benefit that may be taken in the form of a superannuation allowance is to be reduced under this Division, STC may, at its discretion and with the consent of the person to whom the allowance is payable, commute part of the unreduced allowance to a lump sum for the purposes of the payment to STC of the amount of the reduction.
- (2) Commutation of part of the superannuation allowance:
 - (a) does not affect any other right that the person has to commute the allowance under the Act, and
 - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
 - (c) is to be done on a basis determined by STC.
- (3) STC may obtain actuarial advice for the purpose of determining the basis on which part of a superannuation allowance is to be commuted under this section.

Part 4 Family law provisions

21 Definitions

(1) In this Part:

approved valuation method means:

- (a) in relation to benefits under the Police Superannuation Scheme—Part 5 of Schedule 2 to the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003* made under the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, or
- (b) in relation to benefits under the superannuation scheme established by the *Police Association Employees (Superannuation) Act 1969*—Part 6 of that Schedule.

contributor includes a former contributor.

deferred benefit means a benefit deferred under section 9B of the Act (including that section as applied by section 3 of the *Police Association Employees (Superannuation) Act 1969*).

Police Superannuation Scheme means the superannuation scheme established by the Act.

(2) Words and expressions used in this Part have the same meanings as they have in Part 4A of the Act.

22 Valuation of superannuation interests

For the purposes of Part 4A of the Act and the family law superannuation legislation:

- (a) the value of a superannuation interest of a contributor (other than of a deferred benefit) is to be determined in accordance with the approved valuation method, and
- (b) the value of a superannuation interest relating to a deferred benefit is to be determined in accordance with Part 5 of Schedule 2 to the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

23 Notice when entitlement becomes payable

- (1) If a superannuation interest of a contributor becomes subject to a payment split, STC must notify the contributor and the non-contributor spouse in relation to the interest, in writing, that the interest is subject to a payment split.
- (2) The notice must be given:
 - (a) in the case of a payment split under a superannuation agreement or flag lifting agreement—within 28 days after the operative time for the payment split, or
 - (b) in the case of a payment split under a splitting order—within 28 days after the operative time for the payment split or after STC receives a copy of the order (whichever is the later).
- (3) The notice given to the contributor must:
 - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
 - (b) specify the period within which payment of that entitlement is to be made, and
 - (c) specify the estimated effect of the payment on the entitlement of the contributor under the Police Superannuation Scheme.

- (4) The notice given to the non-contributor spouse must:
 - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
 - (b) specify the circumstances in which the amount may be paid or released to the non-contributor spouse or must be transferred or rolled over to a complying superannuation fund or an RSA, and
 - (c) require the non-contributor spouse to nominate, within 28 days, whether the non-contributor spouse meets a circumstance for payment or release or, if not, to nominate a complying superannuation fund or an RSA to which the amount is to be paid, and
 - (d) specify that the amount will be credited to the First State Superannuation Fund if the nomination is not made within that period.
- (5) For the purposes of section 14P (5) (b) of the Act, the prescribed period within which a nomination must be made by a non-contributor spouse is 28 days after the giving of the notice under this clause.
- (6) STC is not required to give the notice if the superannuation interest ceases to be subject to a payment split within the notice period.

24 Payment of family law superannuation entitlements

- (1) If the amount of a family law superannuation entitlement is to be paid or released to a non-contributor spouse, the amount must be paid or released by STC when, or as soon as practicable after, a nomination is received under clause 23 (4).
- (2) If the amount of a family law superannuation entitlement is to be transferred or rolled over, the amount must be transferred or rolled over:
 - (a) to a complying superannuation fund or RSA nominated under this Part within 90 days after the making of the nomination, or
 - (b) if no nomination is made within the period prescribed by this Part, to the First State Superannuation Fund within 90 days after the end of the period.
- (3) Nothing in subclause (2) (b) prevents STC from transferring or rolling over the amount of a family law superannuation entitlement to a complying superannuation fund or RSA if a nomination is made by a non-contributor spouse after the end of the period referred to in clause 23 (5).
- (4) STC must give to the contributor, within 28 days after an amount of family law superannuation entitlement is paid or released or transferred or rolled over, a notice in writing stating:
 - (a) that the amount has been paid, released, transferred or rolled over, and
 - (b) the amount paid, released, transferred or rolled over and how it was calculated, and
 - (c) the estimated amount of adjustment made to the benefit of the contributor.
- (5) STC must give to the non-contributor spouse, within 28 days after an amount of family law superannuation entitlement is paid or released or transferred or rolled over, a notice in writing stating:
 - (a) that the amount has been paid, released, transferred or rolled over, and
 - (b) the amount paid, released, transferred or rolled over and how it was calculated, and

- (c) the name and contact details of the superannuation fund or RSA, if any, to which the amount was transferred or rolled over.

Note. Under regulation 59 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, STC may charge reasonable fees in respect of payment splits, payment flags, flag lifting and other related matters. Such fees are payable in equal parts by the contributor and the non-contributor spouse.

25 Reduction of benefits of contributors

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-contributor spouse is paid, released, transferred or rolled over under Part 4A of the Act (a *family law superannuation payment* is made).
- (2) A benefit payable to the contributor (including a benefit transferred under the Act), other than a deferred benefit, is to be reduced in accordance with this clause when it is paid to the contributor or transferred.
- (3) A deferred benefit of the contributor is to be reduced in accordance with this clause:
- (a) if the election to make provision for the benefit was made before the superannuation entitlement of the non-contributor spouse was paid, released, transferred or rolled over—when the entitlement is paid, released, transferred or rolled over, or
- (b) in any other case—when the election to make provision for the benefit takes effect.
- (4) The amount of the reduced benefit is to be calculated as follows:

$$R = V \times (1 - A \times C)$$

where:

R is the amount of the reduced benefit.

V is the amount of the benefit that would have been payable to the contributor if the family law superannuation payment had not been made.

A is the ratio of the amount paid in respect of the non-contributor spouse to the value of the benefit of the contributor when the payment split occurred.

C is the ratio of the benefit accrual when the payment split occurred to the benefit accrual when the benefit is payable or deferred or transferred (as the case requires).

- (5) If family law superannuation payments are made in respect of more than one spouse of the contributor, the amount of the reduced benefit (other than a deferred benefit) is to be calculated by applying to the amount of the benefit payable (as referred to in subclause (4)) the reduction factor for each family law superannuation payment. Each reduction factor is to be calculated as follows:

$$F = 1 - A \times C$$

where:

F is the reduction factor.

A and **C** have the same meanings as in subclause (4).

- (6) In this clause:
- benefit accrual** at any point in time means the benefit accrual as at that time as determined by STC on actuarial advice.
- value of a benefit** means the value of the benefit as determined by STC on actuarial advice.

26 Effect of benefit reductions on other benefits

- (1) STC may commute part of a superannuation allowance payable to a contributor for the purposes of payment of the family law superannuation entitlement of a non-contributor spouse and the amount of the superannuation allowance is to be reduced in accordance with clause 25.
- (2) Any benefit payable under the Act to a person on the death of a contributor whose benefit has been, or is to be, reduced as a result of a family law superannuation payment is to be based on the amount of the benefit as so reduced.
- (3) Nothing in this Part affects any other right of a contributor or other person to commute a superannuation allowance or part of a superannuation allowance under the Act.

27 Transitional—existing family law superannuation entitlements

- (1) This clause applies to a family law superannuation entitlement that arose under a superannuation agreement, flag lifting agreement or splitting order in force before 19 December 2008 (an *existing entitlement*).
- (2) If an existing entitlement consists of an interest that is not able to be calculated until a benefit becomes payable to a contributor or other person, the entitlement is taken to be operative for the purposes of section 14P of the Act when the benefit becomes so payable.
- (3) For the purposes of the application of clause 23 to an existing entitlement, a nomination under clause 23 (4) (c) must be given by a non-contributor spouse within 3 months after the non-contributor spouse is given notice under clause 23 (1).

Part 5 Police Medical Board and medical examinations

28 Definitions

In this Part:

former member of the police force means a person whose service as a member of the police force did not extend beyond 31 March 1988.

medically unfit for duty means incapable, from a specified infirmity of body or mind, of discharging the duties of office.

Police Medical Officer means a person appointed to the position of Medical Officer in the Employee Assistance Branch of the NSW Police Force.

29 Application of Part

This Part applies only in respect of former members of the police force.

30 Member of Board not to act in certain circumstances

A member of the Police Medical Board is not to act as a member of that Board when it is considering a possible infirmity of mind or body of a former member of the police force whom the member of the Police Medical Board has treated or seen professionally in connection with the infirmity.

31 Board to consider fitness only

The Police Medical Board is to deal only with the medical condition and medical fitness for duty of the former member of the police force being examined.

32 Medical examination procedure

- (1) The examination of a former member of the police force by the Police Medical Board is to be carried out by any 2 members of that Board in consultation.
- (2) A Police Medical Officer is to be present at the consultation if the members carrying out the examination so desire.

33 Application for examination by Board

- (1) A former member of the police force who has resigned or retired may apply to STC for the grant of an annual superannuation allowance under section 10 of the Act.
- (2) Such a former member must furnish the following to STC:
 - (a) particulars of the infirmity that rendered the former member medically unfit for duty and of the injury received while the former member was a member of the police force that caused that infirmity,
 - (b) a list of the names of the medical practitioners the former member has consulted, or by whom he or she has been treated, in connection with the infirmity,
 - (c) any relevant medical certificates or reports,
 - (d) particulars of any illness or injury that the former member has suffered since leaving the police force,
 - (e) particulars of any employment (whether paid or unpaid) in which the former member has been engaged since leaving the police force.
- (3) The former member must submit to a medical examination by a Police Medical Officer, the Police Medical Board, or any one or more medical practitioners, as required by STC or the person appointed as the Commissioner of Police under the *Police Act 1990*.

Part 6 Miscellaneous

34 Information about beneficiaries

- (1) In this clause, *beneficiary* means a person who is entitled to receive a superannuation allowance or gratuity from the Fund.
- (2) STC, when considering any case involving payment to a beneficiary, may require the production of such certificates and other documentary evidence as it considers necessary.
- (3) A beneficiary must promptly notify STC, in writing, of any change of address.

35 Payment of amounts in excess of surcharge deduction cap

- (1) If the total surcharge amount in respect of a former contributor who has paid an additional surcharge amount to the Commissioner of Taxation exceeds the surcharge deduction cap, STC may reimburse the former contributor by paying to the former contributor an amount equal to the amount by which the total surcharge amount exceeds the surcharge deduction cap.
- (2) If a former contributor receives a post payment surcharge assessment notice with respect to an additional surcharge amount that would, if paid, result in, or that has resulted in, the total surcharge amount exceeding the surcharge deduction cap, STC may (at the request of the former contributor) pay to the Commissioner of Taxation on behalf of the former contributor an amount equal to the amount by which the total surcharge amount exceeds the surcharge deduction cap.
- (3) An amount payable by STC under subclause (1) or (2) is to be reduced by any amount previously reimbursed to or paid in respect of the former contributor by STC under the Act (including under this clause) for the purposes of superannuation contributions surcharge.
- (4) This clause does not authorise STC to pay any amount of general interest charged in respect of an additional surcharge amount payable under a post payment surcharge assessment notice unless the request for the payment is made within such period after the notice is received as STC considers reasonable.

Note. Clause 13 provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

36 Offences and penalties

A person must not, in purported compliance with a requirement of clause 33 (2) or a requirement made under clause 34 (2):

- (a) supply information that the person knows to be false or misleading in a material particular, or
- (b) fail to disclose relevant information.

Maximum penalty: 5 penalty units.

37 Transitional—hurt on duty benefits

For the purposes of clause 1 of Schedule 6 to the Act, STC may, in determining whether to grant a gratuity under section 12D of the Act, rely on a decision of the Commissioner of Police made under that section before 8 July 2005 whether or not the Commissioner made the relevant decision at the request of STC.

38 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Police Superannuation Regulation 2010* had effect under that Regulation continues to have effect under this Regulation.