



New South Wales

State Authorities Superannuation Regulation 2020

under the

State Authorities Superannuation Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *State Authorities Superannuation Act 1987*.

DOMINIC PERROTTET, MP
Treasurer

Explanatory note

The object of this Regulation is to repeal and remake, with minor changes, the *State Authorities Superannuation Regulation 2015*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following—

- (a) the reduction of benefits in order to offset certain tax liabilities,
- (b) 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,
- (c) the making of family law superannuation payments in respect of spouses or former spouses of contributors,
- (d) the benefits payable in respect of firefighters, police officers and ambulance officers,
- (e) the prescribed early retirement age,
- (f) the treatment of shift allowance loading as part of a contributor's salary,
- (g) the minimum amount required for an election to defer a benefit,
- (h) savings, transitional and formal matters.

This Regulation is made under the *State Authorities Superannuation Act 1987*, including sections 3(1) (definition of *early retirement age*), 4(1)(a)(i), 43(1) and (1A), 45A, 45B(1)(d), 45I, 45J(4), 45K, 46AF (definition of *firefighters award*), 46AH, 46AK, 46AL (definition of *ambulance officers award*), 46AN and 55 (the general regulation-making power).

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 arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory 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

1 Name of Regulation

This Regulation is the *State Authorities Superannuation Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *State Authorities Superannuation Regulation 2015*, which would otherwise be repealed on 1 September 2020 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 the 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 deduction cap means the maximum surcharge deduction amount that may be determined by STC under section 45A(1C) of the Act in relation to a benefit payable to a former contributor.

the Act means the *State Authorities Superannuation Act 1987*.

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 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 (within the meaning of section 45A of the Act) kept in respect of the former contributor.

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

Note 2. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

Part 2 Benefit reduction provisions

Division 1 Reductions relating to tax liabilities

4 Definitions

In this Part—

continuous contributory service, in relation to a contributor, means the period beginning with the contributor's entry date and ending with the contributor's exit date.

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.

5 Prescription of benefits

- (1) For the purposes of section 45A(2)(a) of the Act, the kinds of benefits prescribed for the purposes of section 45A of the Act are the benefits provided by section 37, 39, 40, 41, 42 or 43 of the Act.
- (2) Despite subclause (1), a benefit arising as the result of the death of a person may be reduced by STC to offset tax liabilities of the Fund only as provided by clause 10.

6 Reduction for section 37 of Act

- (1) For the purposes of section 45A(2)(b) of the Act, the formula set out in subclause (2) is prescribed as the method of calculating a reduction for the purposes of section 45A of the Act whenever a benefit, other than a benefit arising as the result of the death of a contributor, becomes payable under section 37 of the Act.
- (2) For the purposes of subclause (1), the formula is—

$$R = A \times \frac{B}{C} \times 0.025 \times F \times 0.15$$

where—

R represents the amount of the reduction.

A represents the accrued benefit points for the contributor at the contributor's exit date.

B represents the period in days of continuous contributory service that began on the taxable date.

C represents the period in days of continuous contributory service for the contributor.

F represents the contributor's final average salary.

7 Reduction for sections 39, 40 and 42 of Act

- (1) For the purposes of section 45A(2)(b) of the Act, the formula set out in subclause (2) is prescribed as the method of calculating a reduction for the purposes of section 45A of the Act whenever a benefit becomes payable under section 39, 40 or 42 of the Act.
- (2) For the purposes of subclause (1), the formula is—

$$R = A \times \frac{B}{C} \times 0.025 \times S \times 0.15$$

where—

R represents the amount of the reduction.

A represents the accrued benefit points for the contributor at the contributor's exit date.

B represents the period in days of continuous contributory service that began on the taxable date.

C represents the period in days of continuous contributory service for the contributor.

S represents the contributor's final salary.

8 Reduction for section 41 of Act

- (1) For the purposes of section 45A(2)(b) of the Act, the formula set out in subclause (2) is prescribed as the method of calculating a reduction for the purposes of section 45A of the Act whenever—
 - (a) a benefit becomes payable under section 41 of the Act, and
 - (b) the contributor's period of continuous contributory service is 10 years or more.
- (2) For the purposes of subclause (1), the formula is—

$$R = T \times C \times \frac{A}{Y} \times 0.025 \times 0.15$$

where—

R represents the amount of the reduction.

T represents the period (expressed in years, with any fractional part of a year being calculated on the basis of complete contribution periods) that commenced on the taxable date or the contributor's entry date (whichever last occurred) and ended on the contributor's exit date.

C represents the amount of the contributor-financed benefit payable under section 41(2)(a) of the Act.

A represents the accrued benefit points for the contributor at the contributor's exit date.

Y represents the number ascertained by adding together all of the contributor's contributed points figures calculated in relation to the contributor for the applicable contribution periods for the contributor.

- (3) A benefit payable under section 41 of the Act is not to be reduced if the contributor's period of continuous contributory service is less than 10 years.

9 Reduction for section 43 of Act

- (1) For the purposes of section 45A(2)(b) of the Act, the formula set out in subclause (2) is prescribed as the method of calculating a reduction for the purposes of section 45A of the Act whenever a contributor elects to make provision of a deferred benefit under section 43 of the Act.
- (2) For the purposes of subclause (1), the formula is—

$$R = A \times \frac{B}{C} \times 0.025 \times F \times K^n \times 0.15$$

where—

R represents the amount of the reduction.

A represents the accrued benefit points for the contributor at the contributor's exit date.

B represents the period in days of continuous contributory service that began on the taxable date.

C represents the period in days of continuous contributory service for the contributor.

F represents the contributor's final average salary.

K represents the discount factor determined by STC for the purposes of section 43(6)(b) of the Act.

n represents the period between the contributor's age at the contributor's exit date and the early retirement age, the period being expressed in years with any fractional part of a year being calculated on the basis of complete contribution periods.

10 Transferred contributors—reduction of benefits

- (1) If a transferred contributor referred to in the *State Authorities Superannuation (Transitional Provisions) Regulation 1988*, or any other person, having a right to do so, elects under clause 38 of that Regulation to take a pension benefit, then, subject to subclause (2), the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in section 45A(2) of the Act) is the amount calculated in accordance with the following formula—

$$R = \frac{B}{C} \times 0.15 \times P$$

where—

R represents the amount of the reduction.

B represents the period in days of continuous contributory service that began on the taxable date.

C represents the period in days of continuous contributory service for the transferred contributor concerned.

P represents—

- (a) the proportion of the pension that is attributable to accrued benefit points and that, but for this clause, would be payable under clause 40, 41, 42 or 43 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* to that transferred contributor, or
- (b) if that transferred contributor has died—the proportion of the pension that is attributable to accrued benefit points and that, but for this clause, would be payable under clause 44 of that Regulation to the spouse or de facto partner of that contributor.
- (2) If, in accordance with clause 38 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988*, the transferred contributor or other person referred to in subclause (1) elects to convert to a pension benefit only a portion of the benefit points of the transferred contributor, the benefit to be derived from the benefit points remaining after conversion is subject to reduction in accordance with the relevant provisions of this Part that apply to that benefit.
- (3) If the benefit of a transferred contributor within the meaning of the *State Authorities Superannuation (State Public Service Superannuation Scheme Transfer) (Savings and Transitional) Regulation 1989* is required to be reduced in accordance with a formula set out in clause 6, 7 or 9 of this Regulation, the multiple “0.025” specified in the formula is, in relation to the contributor, to be read as the multiple “0.03”.

11 Reduction for superannuation contributions surcharge

For the purposes of section 45A(3) of the Act, the benefits provided under sections 37, 38, 39, 40, 41, 42 and 43 of the Act are prescribed.

12 Further 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 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 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 the period after the notice is received that STC considers reasonable.

13 Surcharge deduction amount

For the purposes of section 45A(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 2 Reductions relating to no-TFN tax

14 Reductions relating to no-TFN tax

- (1) For the purposes of section 45B(1)(d) of the Act, the benefits provided under sections 37, 38, 39, 40, 41, 42 and 43 of the Act are prescribed.
- (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 45B of the Act.
- (3) STC must have regard to the debt account when determining the amount of the reduced benefit.

Note. Under section 45B(3) of the Act, the amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.

15 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 a tax file number to STC, if the number has not previously been provided.

Division 3 Reductions relating to early release of benefits

16 Application of Division

A deferred benefit or a benefit under section 37, 38, 39, 40, 41, 42 or 42AB of the Act may be the subject of a reduction under this Division.

17 Reduction of benefits

- (1) This clause applies to the reduction of benefits payable under the Act to or in respect of a contributor or former contributor (other than a benefit payable under section 43B or 43C of the Act) to whom a benefit has been previously released on the grounds 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 deferred benefit, STC must, on and from the date of the release, reduce the amount of the deferred benefit by the amount of benefit released. The amount of benefit payable when the deferred benefit 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 contributor provides for a deferred benefit under 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 deferred, calculate the amount of benefit deferred and reduce that amount by the amount debited to the debt account at the time the benefit is deferred. The amount of benefit payable when the deferred benefit 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.

18 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 contributor or former contributor to the reduction of benefits as a consequence of the early release.

Part 3 Family law provisions

19 Definitions

- (1) In this Part—
- approved valuation method** means Part 7 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.
- contributor** includes a former contributor.
- (2) Words and expressions used in this Part have the same meanings as in Part 5AA of the Act.

20 Application to other schemes

Without limiting section 45G of the Act, this Part applies to persons referred to in section 45G(1) of the Act in the same way as it applies to contributors.

21 Valuation of superannuation interests

For the purposes of Part 5AA of the Act and the family law superannuation legislation, the value of a superannuation interest of a contributor is to be determined in accordance with the approved valuation method.

22 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—
- 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
 - 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—
- specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
 - specify the period within which payment of that entitlement is to be made, and
 - specify the estimated effect of the payment on the entitlement of the contributor under the State Authorities Superannuation Scheme.
- (4) The notice given to the non-contributor spouse must—
- specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
 - 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
 - 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 45I(5)(b) of the Act, the prescribed period within which a nomination must be made 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.

23 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 22(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 22(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. The fees are payable in equal parts by the contributor and the non-contributor spouse.

24 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 5AA of the Act (a *family law superannuation payment* is made).
- (2) An employer-financed benefit payable to the contributor (including a benefit deferred or transferred under the Act) is to be reduced in accordance with this clause at the time it is paid to the contributor or transferred.

- (3) A contributor-financed benefit payable to the contributor (including a benefit deferred or transferred under the Act) is to be reduced in accordance with this clause when the superannuation entitlement of the non-contributor spouse is paid, released, transferred or rolled over.
- (4) The amount of the reduced employer-financed 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 employer-financed 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) The amount of the reduced contributor-financed benefit is to be calculated as follows—

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

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.

- (7) 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.

25 Effect of benefit reductions on other benefits

- (1) STC may commute part of a pension payable to a person referred to in section 45G(1) of the Act for the purposes of payment of the family law superannuation entitlement of the person's spouse and the amount of the pension is to be reduced in accordance with clause 24.

- (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 person to commute a pension.

Part 4 Firefighters—death and incapacity

26 Definitions

In this Part—

2020 firefighters award means the *Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2020*.

permanent firefighter, in relation to a person who is, or has been, employed as a firefighter, means a permanent firefighter within the meaning of the 2020 firefighters award or any preceding award relating to death and disability benefits for firefighters that applied to the person at the time of the employment.

27 Prescription of firefighters award

For the purposes of the definition of **firefighters award** in section 46AF of the Act, the 2020 firefighters award is prescribed.

28 Provision of information

For the purposes of complying with or giving effect to the 2020 firefighters award, and only with the consent of the relevant employee, STC may provide to Fire and Rescue NSW or the trustees of the Death and Disability Superannuation Fund under the 2020 firefighters award information about the employee obtained in the administration of the Act.

29 Certain firefighters may not apply for additional benefit

- (1) This clause applies to an employee who was a permanent firefighter on 27 June 2003 and who had not, before that date, had an application for additional benefit cover approved under section 22 of the Act.
- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to be covered for the additional benefit while employed as a permanent firefighter.

30 Firefighters who elect to relinquish cover for additional benefit

- (1) A person who commenced or commences employment as a permanent firefighter after 26 June 2003 may elect to relinquish cover for the additional benefit within the period approved by Fire and Rescue NSW (if any) for the purposes of this clause.
- (2) Despite section 22 of the Act, the following provisions apply in respect of a prescribed firefighter—
 - (a) the firefighter ceases to be liable to pay the additional benefit levy in relation to any subsequent period during which the firefighter is not covered, and
 - (b) STC must effect the cessation of the additional benefit cover of the firefighter on and from—
 - (i) 27 June 2003—in relation to a person who was a permanent firefighter on that date and who elected to relinquish cover for the additional benefit on or before 26 June 2003, or
 - (ii) the date advised to STC by Fire and Rescue NSW—in relation to any other person, and
 - (c) the firefighter is not entitled to be covered for the additional benefit while employed as a permanent firefighter.
- (3) In this clause—

prescribed firefighter means a person who—

 - (a) elects to relinquish cover for the additional benefit in accordance with this clause, or

- (b) elected to relinquish cover for the additional benefit in accordance with—
 - (i) clause 31 of the *State Authorities Superannuation Regulation 2015* (before its repeal), or
 - (ii) clause 33 of the *State Authorities Superannuation Regulation 2010* (before its repeal).

31 Additional benefit cover for new firefighter employees

- (1) This clause applies to an employee who was not a permanent firefighter immediately before 27 June 2003 and who had not had an application for additional benefit cover approved under section 22 of the Act at the time of commencing employment as a permanent firefighter.
- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to elect to be covered for the additional benefit while employed as a permanent firefighter.

32 Transfer of amount to Death and Disability Superannuation Fund

STC must, for the purposes of complying with or giving effect to the 2020 firefighters award, transfer to the Death and Disability Superannuation Fund an amount required as an offset under the 2020 firefighters award, but only with the consent of the firefighter concerned.

Part 5 Police officers—death and disability

33 Definition

In this Part—

approved death and disability insurance policy has the same meaning as in Part 9B of the *Police Act 1990*.

34 Provision of information

For the purposes of complying with or giving effect to Part 9B of the *Police Act 1990* and an approved death and disability insurance policy, and only with the consent of the relevant employee, STC may provide to the NSW Police Force or FTC information about the employee obtained in the administration of the Act.

35 Certain police officers may not apply for additional benefit

- (1) This clause applies to an employee who—
 - (a) was a police officer on 30 January 2006 and who had not, before that date, had an application for additional benefit cover approved under section 22 of the Act, or
 - (b) was not a police officer immediately before 30 January 2006 and who had not had an application for additional benefit cover approved under that section at the time of commencing employment as a police officer.
- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to be covered for the additional benefit while employed as a police officer.

36 Police officers may elect to relinquish cover for additional benefit

- (1) A police officer who was not a police officer immediately before 2 March 2012 may elect to relinquish cover for the additional benefit on or before the day that is 3 months after the day on which the police officer becomes a police officer.
- (2) Despite section 22 of the Act, the following provisions apply in respect of a prescribed police officer—
 - (a) the police officer ceases to be liable to pay the additional benefit levy in relation to any subsequent period during which the police officer is not covered for the additional benefit, and
 - (b) STC must effect the cessation of the additional benefit cover of the police officer on and from the date that the Commissioner of Police advises STC is the first day on which the police officer is covered in respect of death or disability under an approved death and disability insurance policy.
- (3) The Commissioner of Police may, by notice in writing to STC, extend the period within which a police officer may elect to relinquish cover for the additional benefit.
- (4) In this clause—

prescribed police officer means a police officer who—

 - (a) elects to relinquish cover for the additional benefit in accordance with this clause, or
 - (b) elected to relinquish cover for the additional benefit in accordance with—
 - (i) clause 37 of the *State Authorities Superannuation Regulation 2015* (before its repeal), or
 - (ii) clause 39 of the *State Authorities Superannuation Regulation 2010* (before its repeal).

Part 6 Ambulance officers—death and incapacity

37 Definition

In this Part, *2017 ambulance officers award* means the *NSW Ambulance Income Protection and Death Benefits (State) Award 2017*.

38 Prescription of ambulance officers award

For the purposes of the definition of *ambulance officers award* in section 46AL of the Act, the 2017 ambulance officers award is prescribed.

39 Provision of information

For the purposes of complying with or giving effect to the 2017 ambulance officers award, and only with the consent of the relevant employee, STC may provide to the Ambulance Service of NSW or the FTC information about the employee obtained in the administration of the Act.

40 Certain ambulance officers may not apply for additional benefit

Despite section 20 of the Act, an employee is not entitled to elect to be covered for the additional benefit while employed as an ambulance officer if the employee had not had an application for additional benefit cover approved under section 22 of the Act before 12 October 2011.

41 Ambulance officers may elect to relinquish cover for additional benefit

- (1) An ambulance officer who was not an ambulance officer immediately before 12 October 2011 may elect to relinquish cover for the additional benefit on or before the day that is 3 months after the day on which the ambulance officer becomes an ambulance officer.
- (2) Despite section 22 of the Act, the following provisions apply in respect of a prescribed ambulance officer—
 - (a) the ambulance officer ceases to be liable to pay the additional benefit levy in relation to any subsequent period during which the ambulance officer is not covered for the additional benefit,
 - (b) STC must effect the cessation of the additional benefit cover of the ambulance officer on and from the date that is the first day on which the ambulance officer is covered for a death or incapacity benefit payable under the ambulance officers award,
 - (c) the ambulance officer is not entitled to be covered for the additional benefit while employed as an ambulance officer.
- (3) The Secretary of the Ministry of Health may, by notice in writing to STC, extend the period within which an ambulance officer may elect to relinquish cover for the additional benefit.
- (4) In this clause—

prescribed ambulance officer means an ambulance officer who—

 - (a) elects to relinquish cover for the additional benefit in accordance with this clause, or
 - (b) elected to relinquish cover for the additional benefit in accordance with—
 - (i) clause 42 of the *State Authorities Superannuation Regulation 2015* (before its repeal), or
 - (ii) clause 46 of the *State Authorities Superannuation Regulation 2010* (before its repeal).

Part 7 Miscellaneous

42 Early retirement age

For the purposes of the definition of *early retirement age* in section 3(1) of the Act, the prescribed early retirement age is 58 years.

43 Determination of loading in respect of shift allowance

(1) In this clause—

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

relevant period, in relation to a contributor, means the period of 12 months ending on 31 December immediately preceding the date on which the salary of the contributor 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 within the meaning of the *Industrial Relations Act 1996*, or
 - (b) an association of employees registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.
- (2) For the purposes of section 4(1)(a)(i) of the Act, the loading (if any) to be treated as part of a contributor's salary for the purposes of the Act (*the contributor's loading*) must be determined by reference to subclause (3), (4) or (5) according to whichever subclause is appropriate to the contributor.
- (3) Subject to subclauses (4) and (5), if a contributor is paid shift allowances for shifts that the contributor has worked during a relevant period, the contributor's loading for those allowances is to be determined by reference to the number of relevant shifts the contributor is taken to have worked (as calculated in accordance with subclause (6)) during the relevant period. The contributor's loading is—
- (a) if during the relevant period the contributor is taken to have worked not more than 104 relevant shifts—no amount, or
 - (b) if during the relevant period the contributor is taken to have worked more than 104 but not more than 156 relevant shifts—an amount equal to 10% of the contributor's base salary for that period, or
 - (c) if during the relevant period the contributor is taken to have worked more than 156 but not more than 208 relevant shifts—an amount equal to 15% of the contributor's base salary for that period, or
 - (d) if during the relevant period the contributor is taken to have worked more than 208 relevant shifts—an amount equal to 20% of the contributor's base salary for that period.
- (4) If—
- (a) there is in force an agreement between, or a practice accepted by, a trade union and the employer of a contributor 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 contributor as shift allowances for relevant shifts worked by the contributor during a relevant period are treated as a loading for superannuation purposes, and

- (c) the total of those amounts is more than the loading determined for that period in respect of the contributor in accordance with subclause (3), that total is the contributor's loading for those shift allowances.
- (5) If the total of the amounts actually paid or payable to a contributor as shift allowances for shifts that the contributor has worked during a relevant period is less than the loading determined for that period in respect of the contributor in accordance with subclause (3), the total of those amounts is the contributor's loading for those allowances.
- (6) For the purposes of subclause (3), the number of relevant shifts a contributor 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 contributor is taken to have worked during the relevant period.

H is the number of hours per shift regularly required to be worked (whether by the contributor or any comparable worker) 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 contributor 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 contributor actually worked during the relevant period, and
- (b) the number of relevant shifts the contributor would have actually worked during the relevant period but for the contributor 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 contributor) is paid.

44 Minimum amount for election to defer benefit

The amount prescribed for the purposes of section 43(1) and (1A) of the Act is \$500.

Note. Section 43 of the Act provides for a contributor's benefit under the Act to be deferred in certain circumstances pending the happening of certain events.

45 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 a 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 the period after the notice is received that STC considers reasonable.

Note. Clause 12 provides for further reduction of certain benefits resulting from the liability of a former contributor for a superannuation contributions surcharge.

46 Repeal and savings

- (1) The *State Authorities Superannuation Regulation 2015* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *State Authorities Superannuation Regulation 2015*, had effect under that Regulation continues to have effect under this Regulation.