

# State Authorities Superannuation Regulation 2000

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New South Wales

## Status Information

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### Authorisation

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New South Wales

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# State Authorities Superannuation Regulation 2000



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation may be cited as the *State Authorities Superannuation Regulation 2000*.

### 2 Commencement

This Regulation commences on 1 September 2000.

**Note—**

This Regulation replaces the *State Authorities Superannuation Regulation 2000* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**accrued benefit points** has the same meaning as in section 36 of the Act.

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

**Note—**

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

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

## Part 2 General provisions supplementary to Act

### 4 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.

## 5 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 with 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 registered or recognised as such under the *Industrial Relations Act 1996*, or
- (b) an association of employees registered as an organisation under the *Workplace Relations Act 1996* of the Commonwealth.

(2) For the purposes of section 4 (1) (a) of the Act, the loading (if any) to be treated as part of a contributor's salary for the purposes of the Act must be determined by reference to subclause (3), (4) or (5) according to whichever subclause is appropriate to the contributor.

(3) 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 greater than that which would be determined under subclause (4) for that year in respect of the contributor,

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

(4) Except where subclause (3) or (5) applies, if a contributor is paid shift allowances for shifts that the contributor has worked during a relevant period, then, for the purposes of section 4 (1) (a) of the Act, 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 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 per cent 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 per cent 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 per cent of the contributor's base salary for that period.
- (5) If the amounts actually paid or payable to a contributor as shift allowances for shifts that the contributor has worked during a relevant period are less than the loading determined for the period in respect of the contributor in accordance with subclause (4), then, for the purposes of section 4 (1) (a) of the Act, the total of those amounts is the contributor's loading for those allowances.
- (6) For the purposes of subclause (4), 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 in relevant shifts during the relevant period.

**H<sub>0</sub>** 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 number of relevant shifts the contributor actually worked during the relevant period.

## 6 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.

## Part 3 Benefit reduction provisions

### Division 1 Benefit reductions relating to tax liabilities

#### 7 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.

#### 8 Prescription of benefits

- (1) Subject to subclause (2), the kinds of benefits prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) are the benefits provided by section 37, 39, 40, 41, 42 or 43 of the Act.
- (2) 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 14.

### Note—

Section 37 of the Act provides for the payment of a benefit at or after a contributor's early retirement or on the contributor's death at or after reaching the early retirement age.

Section 39 of the Act provides for the payment of a benefit if a contributor becomes a total and permanent invalid before reaching early retirement age.

Section 40 of the Act provides for the payment of a benefit if a contributor becomes a partial and permanent invalid before reaching the early retirement age.

Section 41 of the Act provides for the payment of a benefit when a contributor resigns or is dismissed or discharged before reaching the early retirement age.

Section 42 of the Act provides for the payment of a benefit if a contributor is retrenched before reaching the early retirement age.

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

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

## 9 Reduction for section 37 of Act

- (1) If a benefit, other than a benefit arising as the result of the death of the contributor, becomes payable under section 37 of the Act, the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).
- (2) For the purposes of subclause (1), the formula is:

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

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.

### Note—

Section 37 of the Act provides for the payment of a benefit at or after a contributor's early retirement or on the contributor's death at or after reaching the early retirement age.

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

## 10 Reduction for sections 39 and 40 of Act

- (1) If a benefit becomes payable under section 39 or 40 of the Act, the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).
- (2) For the purposes of subclause (1), the formula is:

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

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.

**Note—**

Section 39 of the Act provides for the payment of a benefit if a contributor becomes a total and permanent invalid before reaching the early retirement age.

Section 40 of the Act provides for the payment of a benefit if a contributor becomes a partial and permanent invalid before reaching the early retirement age.

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

**11 Reduction for section 41 of Act**

(1) If:

(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,

the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).

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

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

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.

**Note—**

Section 41 of the Act provides for the payment of a benefit if a contributor resigns, is dismissed or discharged before reaching the early retirement age.

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

## **12 Reduction for section 42 of Act**

- (1) If a benefit becomes payable under section 42 of the Act, the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).
- (2) For the purposes of subclause (1), the formula is:

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

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.

**Note—**

Section 42 of the Act provides for the payment of a benefit if a contributor is retrenched before reaching the early retirement age.

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

## **13 Reduction for section 43 of Act**

- (1) If a contributor elects to make provision for a deferred benefit under section 43 of the Act, the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).

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

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

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 his or her 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.

**Note—**

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

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

#### **14 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 (3), the reduction in benefit prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).

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

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

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 of that contributor.
- (3) 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.
- (4) 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 9, 10, 12 or 13 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”.

**Note—**

Clause 38 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* deals with elections by transferred contributors (as defined in clause 3 (2) of that Regulation) to take pension benefits.

Clause 40 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* sets out the formula for calculating the pension payable to a transferred contributor (as so defined) who elects to take a pension benefit provided by that clause. (The pension is a normal employer-financed pension without reversion.)

Clause 41 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* sets out the formula for calculating the pension payable to a transferred contributor (as so defined) who elects to take a pension benefit provided by that clause. (The pension is a normal employer-financed pension with reversion.)

Clause 42 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* sets out the formula for calculating the pension payable to a transferred contributor (as so defined) who elects to take a pension benefit provided by that clause. (The pension is an employer-financed pension—invalidity without reversion.)

Clause 43 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* sets out the formula for calculating the pension payable to a transferred contributor (as so defined) who elects to take a pension benefit provided by that clause. (The pension is an employer-financed pension—invalidity with reversion.)

Clause 44 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* provides for the calculation of the employer-financed pension payable to the spouse of a deceased transferred contributor (as so defined) who elects to take a pension benefit provided by that clause.

Section 45A of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

**15 Reduction of certain benefits resulting from liability for superannuation contributions surcharge: section 45A (3)**

For the purposes of section 45A (3) of the Act, the benefits provided under the following provisions of the Act are prescribed:

- (a) section 37 (Benefit at or after early retirement or on death at or after early retirement age),
- (b) section 38 (Benefit on death before early retirement age),
- (c) section 39 (Benefit on total and permanent invalidity before early retirement age),
- (d) section 40 (Benefit on partial and permanent invalidity before early retirement age),
- (e) section 41 (Benefit on resignation, dismissal or discharge before early retirement age),
- (f) section 42 (Benefit on retrenchment before early retirement age),
- (g) section 43 (Deferred benefit).

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

**15A Application of Division**

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

- (a) a benefit under section 37 (Benefit at or after early retirement or on death at or after early retirement age),
- (b) a benefit under section 38 (Benefit on death before early retirement age),
- (c) a benefit under section 39 (Benefit on total and permanent invalidity before early retirement age),
- (d) a benefit under section 40 (Benefit on partial and permanent invalidity before early retirement age),
- (e) a benefit under section 41 (Benefit on resignation, dismissal or discharge before early retirement age),
- (f) a benefit under section 42 (Benefit on retrenchment before early retirement age),

- (g) a benefit under section 42AB (Compulsory preservation of benefits after changeover day),
- (h) a deferred benefit.

### **15B 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 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 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 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.

### **15C 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.

### **15D Release of benefits during transitional period**

- (1) This clause applies to the release of a benefit to a contributor or former contributor on the ground of severe financial hardship or on compassionate grounds during the transitional period if:
  - (a) the release was not inconsistent with section 43B or 43C of the Act, as amended

by the *Superannuation Legislation Amendment Act 2000*, and

(b) STC obtained the written consent of the contributor or former contributor to the reduction of benefits as a consequence of the early release.

(2) Clauses 15A and 15B apply in respect of a release of benefit to which this clause applies in the same way as they apply to a release of benefit after the commencement of those clauses.

(3) In this clause:

**transitional period** means the period commencing on the date of assent to the *Superannuation Legislation Amendment Act 2000* and ending on the commencement of section 43D of the Act, as substituted by that Act.

## Part 3A Firefighters award

### 16 Meaning of “permanent firefighter” and “retained firefighter”

In this Part:

**2003 firefighters award** means the *Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2003*.

**permanent firefighter** has the same meaning as in the 2003 firefighters award.

**retained firefighter** has the same meaning as in the 2003 firefighters award.

### 17 Prescription of firefighters award

For the purposes of the definition of **firefighters award** in section 46AF of the Act, the 2003 firefighters award is prescribed.

### 18 Provision of information

For the purposes of complying with or giving effect to the 2003 firefighters award, and only with the consent of the relevant employee, STC may provide to New South Wales Fire Brigades or the trustees of the Death and Disability Superannuation Fund under the 2003 firefighters award information about the employee obtained in the administration of the Act.

### 19 Existing firefighters may no longer apply for cover 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.

## **20 Existing or new firefighters who elect to relinquish cover for additional benefit**

- (1) This clause applies to a person who:
  - (a) was a permanent firefighter on 27 June 2003 and elected to relinquish cover for the additional benefit on or before 26 June 2003, or
  - (b) commences employment as a permanent firefighter after 26 June 2003 and who elects to relinquish cover for the additional benefit within the period approved by NSW Fire Brigades for the purposes of this clause.
- (2) Despite section 22 of the Act, if this clause applies:
  - (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 person on and from:
    - (i) 27 June 2003—in relation to a person referred to in subclause (1) (a), or
    - (ii) the date advised to STC by NSW Fire Brigades—in relation to a person referred to in subclause (1) (b), and
  - (c) the firefighter is not entitled to be covered for the additional benefit while employed as a permanent firefighter.

## **21 New firefighter employees covered for additional benefit**

- (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.

## **22 Transfer of amount to Death and Disability Superannuation Fund**

STC must, for the purposes of complying with or giving effect to the 2003 firefighters award, transfer to the Death and Disability Superannuation Fund an amount required as an offset under the 2003 firefighters award but only with the consent of the firefighter concerned.



## **Part 4 Miscellaneous**

### **23 Savings provision**

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