

Police Superannuation Regulation 2005

[2005-494]



New South Wales

Status Information

Currency of version

Historical version for 26 August 2005 to 8 December 2005 (accessed 26 November 2024 at 16:45)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 September 2005

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Police Superannuation Regulation 2005



New South Wales

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

JOHN DELLA BOSCA, M.L.C., Special Minister of State

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Police Superannuation Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note—

This Regulation replaces the *Police Superannuation Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

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 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 the notice, and
- (c) the amount of interest (if any) payable in respect of the surcharge debt account kept in respect of the contributor.

Note—

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

4 Notes

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

5 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

6 Salary of office

- (1) For the purposes of paragraph (a) of the definition of **salary of office** of a member of the police service other than an executive officer in section 1 (2) of the Act, remuneration received by a member of the police service to whom the definition relates by way of any of the following allowances is prescribed as exempt:

- (a) a soiled clothing allowance,
 - (b) a shift allowance,
 - (c) a stocking allowance.
- (2) The definition of **salary of office** of a member of the police service other than an executive officer in section 1 (2) of the Act includes any remuneration received by the member of the police service concerned by way of a bonus for the member's having attained any of the following qualifications:
- (a) Associate Diploma in Justice Administration,
 - (b) Diploma in Criminology,
 - (c) the degree of Bachelor of Laws,
 - (d) any other degree approved by STC for the purposes of this paragraph.

7 Initial period of leave

For the purposes of section 5A of the Act, 3 months is prescribed as the "initial period". However, if the period of leave in relation to which the expression "initial period" is used is less than 3 months, that period of leave is prescribed.

Part 3 Benefit reduction provisions

Division 1 Benefit reductions relating to Commonwealth income tax

8 Benefits to which this Division applies

Except as provided by clause 12, this Division applies to the benefits provided under the following provisions of the Act:

- (a) section 5B (Contributor who is executive officer),
- (b) section 7 (Superannuation allowance except where member hurt on duty),
- (c) section 7AA (Superannuation allowance on early retirement),
- (d) section 8A (Disengagement benefit for members aged between 45-55),
- (e) section 9B (Preserved benefit),
- (f) section 10 (Superannuation allowance where member hurt on duty),
- (g) section 12 (Superannuation allowance where a member or former member dies as a result of being hurt on duty), except the benefit payable as a result of an election under subsection (1A) (to take a gratuity prescribed by section 13), or the benefit payable under section 12 (1AA) (b) (ii),

- (h) section 13A (Gratuity where deceased member hurt on duty but left no dependants etc),
- (i) section 14 (Gratuity for discharged members not hurt on duty),
- (j) section 14J (Commutation on normal or early retirement of member).

9 Formula for calculation of reduction in benefits

- (1) For the purposes of section 14AA of the Act (but limited to the matters referred to in subsection (2) of that section), the reduction in a benefit to which this Division applies is the amount calculated in accordance with the following formula:

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

where:

R represents the amount of the reduction.

M represents the amount of the benefit being reduced.

A is calculated in accordance with clause 10 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—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—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 11 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.

Note—

Section 14AA of the Act empowers STC to reduce benefits to offset certain tax liabilities of the Fund.

10 Calculation of portion of benefit attributable to employer contributions

- (1) In the formula in clause 9, the amount represented by the symbol **A** is calculated by

subtracting the sum of the following amounts from the amount represented by the symbol **B** in that formula:

- (a) the total of all amounts deducted under the Act from the member's or former member's salary of office from the date when the member or former member last became a member to the date of cessation or death,
- (b) the amount, if any, repaid by the member or former member 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 with the later of the day on which the member or former member last became liable to make contributions under the Act and 23 November 1984 and also compounded on the date on which the member or former member ceased to be a member or died, and
 - (ii) 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) (ii), the prescribed rate is:

- (a) in respect of any relevant period beginning with 23 November 1984 and ending with 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 9,

$\frac{A}{B}$

is taken to be unity, if the benefit to be reduced is an increase in any allowance under section 10 or 12 of the Act.

11 Calculation of aggregate rate of tax

For the purposes of the symbol **Q** in clause 9, 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:

- (a) in the case of benefits arising under section 10 or 12 of the Act—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 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—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 on which the person last became liable to make contributions under the Act and ending 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.

12 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 referred to in clause 8 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 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 9, 10 and 11 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 9, 10 and 11 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 9, 10 and 11 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 Benefit reductions relating to Commonwealth superannuation contributions surcharge

13 Reduction of certain benefits: section 14AA (3)

For the purposes of section 14AA of the Act (but limited to the matters referred to in subsection (3) of that section), benefits provided under the following provisions of the Act are prescribed:

- (a) section 5B (Contributor who is executive officer),
- (b) section 7 (Superannuation allowance except where member hurt on duty),
- (c) section 7AA (Superannuation allowance on early retirement),
- (d) section 8A (Disengagement benefit for members aged between 45-55),
- (e) section 9B (Preserved benefit),
- (f) section 10 (Superannuation allowance where member hurt on duty),
- (g) section 12 (Superannuation allowance where a member or former member dies as a

result of being hurt on duty) but limited to benefits payable under section 12 (1AA) (a) and (b) (i), or where as a result of an election under subsection (1A) (to take a gratuity prescribed by section 13) a benefit is payable under that section,

- (h) section 13 (Gratuity where deceased member not hurt on duty),
- (i) section 13A (Gratuity where deceased member hurt on duty but left no dependants etc),
- (j) section 14 (Gratuity for discharged members not hurt on duty),
- (k) section 14J (Commutation on normal or early retirement of member).

14 Further reduction of certain benefits resulting from liability for superannuation contributions surcharge: section 14AA (5)

- (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 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.

Division 3 Benefit reductions relating to early release of benefits on

ground of severe financial hardship or on compassionate grounds

15 Application of Division

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

- (a) section 5B (Contributor who is executive officer),
- (b) section 7 (Superannuation allowance except where member hurt on duty),
- (c) section 7AA (Superannuation allowance on early retirement),
- (d) section 8A (Disengagement benefit for members aged between 45-55),
- (e) section 9B (Preserved benefit),
- (f) section 9C (Preservation of minimum benefits under superannuation guarantee legislation),
- (g) section 10 (Superannuation allowance where member hurt on duty),
- (h) section 12 (Superannuation allowance where a member or former member dies as a result of being hurt on duty), but limited to benefits payable under section 12 (1AA) (a) and (b) (i), or where as a result of an election under subsection (1A) to take a gratuity prescribed by section 13, a benefit is payable under that section,
- (i) section 13 (Gratuity where deceased member not hurt on duty),
- (j) section 13A (Gratuity where deceased member hurt on duty but left no dependants etc),
- (k) section 14 (Gratuity for discharged members not hurt on duty),
- (l) section 14J (Commutation on normal or early retirement of member).

16 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 provided for a benefit under section 9B of the Act, or 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 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 to the contributor concerned of a benefit 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.

17 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.

18 Commutation of superannuation allowances for reduction of benefits

- (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.

19 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 12F or 12G of the Act, as inserted 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 15, 16 and 18 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 sections 12F and 12G of the Act, as inserted by that Act.

Part 4 Police Medical Board and medical examinations

20 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 NSW Police.

21 Application of Part

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

22 Member of Police Medical 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.

23 Police Medical 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.

24 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.

25 Application for examination by Police Medical 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 5 Information about beneficiaries

26 Definition

In this Part, **beneficiary** means a person who is entitled to receive a superannuation allowance or gratuity from the Fund.

27 STC may require evidence

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.

28 Beneficiaries to provide information

A beneficiary must promptly notify STC, in writing, of any change of address.

Part 6 Miscellaneous

29 Payment by STC in relation to post payment surcharge assessment notice received by former contributor

- (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, less any amount previously reimbursed to or paid in respect of the former contributor by STC under this clause or the Act for the purposes of superannuation contributions surcharge.
- (2) STC may, at the request of a former contributor who has received 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, 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, less any amount previously reimbursed to or paid in respect of the former contributor by STC under this clause or the Act for the purposes of superannuation contributions surcharge.

Note—

Clause 14 provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

30 Limitation on payment of penalty interest

Clauses 14 and 29 do 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.

31 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, and

- (d) an amount that is 10% 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 2005.

32 Offences and penalties

A person must not, in purported compliance with a requirement of clause 25 (2) or a requirement made under clause 27:

- (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.

33 Savings provision

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

34 Hurt on duty benefits—transitional provision

- (1) This clause is made for the purposes of clause 1 of Schedule 6 to the Act consequent on the enactment of the *Superannuation Legislation Amendment Act 2005 (the amending Act)*.
- (2) 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 its amendment by the amending Act.
- (3) Subclause (2) applies whether or not the Commissioner made the relevant decision at the request of STC.