

# State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003

[2003-339]



New South Wales

## Status Information

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### Provisions in force

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

### Authorisation

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# State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *State Authorities Superannuation (Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund Transfer) Regulation 2003*.

### 2 Commencement

This Regulation is taken to have commenced on 1 June 2003.

### 3 Definitions

In this Regulation—

**former governing rules** means the rules contained in the trust deed applying to the former scheme, as in force immediately before 1 June 2003.

**former member** means a person who was a member of the former scheme at any time before 1 June 2003.

**former scheme** means the superannuation scheme established under regulations published in Government Gazette No 144 of 15 November 1957 at page 311, and by trust deed dated 10 November 1999, known as the Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund and in relation to which Pacific Power was a trustee immediately before 1 June 2003.

**spouse** of a transferred pensioner or former member means the surviving spouse (including widow or widower) of the transferred pensioner or former member.

**State Authorities Superannuation Scheme** means the superannuation scheme constituted by the Act.

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

**transferred pensioner** means a person who was, immediately before 1 June 2003, entitled to receive a pension under the former scheme and who is transferred to the State Authorities Superannuation Scheme by the operation of clause 4.

## **Part 2 Transfer of pensioners to State Authorities Superannuation Scheme**

### **4 Transfer of Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund pensioners to State Authorities Superannuation Scheme**

A person who was, immediately before 1 June 2003, entitled to receive a pension under the former scheme is, on and from that date, transferred to the State Authorities Superannuation Scheme and entitled to receive from STC a pension in accordance with this Regulation.

## **Part 3 Transfer of assets, rights and liabilities of Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund**

### **5 Definitions**

In this Part—

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents.

**liabilities** means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

**rights** means any rights, powers, privileges or immunities (whether present or future and whether present or contingent).

### **6 Transfer of assets, rights and liabilities of Ex-Snowy Mountains Hydro-Electric Authority Superannuation Fund**

(1) On and from 1 June 2003—

- (a) a transferred pensioner and any spouse or de facto partner of a transferred pensioner cease to have any entitlements, rights or obligations under the former scheme, and
- (b) the former governing rules cease to have effect, and
- (c) any assets, rights or liabilities of Pacific Power as trustee of the former scheme are transferred to STC.

#### **Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

- (2) On the transfer of assets, rights or liabilities referred to in subclause (1) (c), the following provisions have effect—
- (a) the assets vest in STC by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities become by virtue of this clause the rights or liabilities of STC,
  - (c) the assets, and assets derived from the investment of those assets, may be applied to meet any of the liabilities,
  - (d) all proceedings relating to the assets, rights or liabilities commenced by or against Pacific Power before 1 June 2003 and pending immediately before that date are taken to be proceedings pending by or against STC,
  - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before 1 June 2003 by, to or in respect of Pacific Power is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of STC,
  - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to Pacific Power or the Electricity Commission of New South Wales, in the capacity of trustee of the former scheme or to the extent to which the reference relates to the assets, rights or liabilities, is taken to be, or include, a reference to STC.
- (3) The operation of this clause is not to be regarded—
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.

## **7 Existing disputes other than where legal proceedings pending**

- (1) If Pacific Power is a party to a dispute relating to the assets, rights or liabilities of Pacific Power as trustee of the former scheme, and that dispute is referred to, but not finally determined by means of, arbitration before 1 June 2003, the following provisions apply—
- (a) STC (rather than Pacific Power) is taken to be a party to the dispute,

- (b) the dispute may continue to be determined by means of arbitration,
- (c) any costs incurred by STC relating to the dispute may be paid out of the accounts or reserves of the Fund referred to in clause 8 (1) (a).

- (2) Any dispute relating to the former scheme (other than a dispute referred to in subclause (1) or clause 6 (2) (d)) is to be determined by STC as if it is a dispute to which section 67 of the *Superannuation Administration Act 1996* applies.

## **8 Transfer of money from former scheme to State Authorities Superannuation Fund**

- (1) The amount standing to the credit of any account established in respect of the former scheme is to be—
  - (a) credited to such accounts or reserves of the Fund as STC considers appropriate, and
  - (b) applied in paying pensions and other amounts which are payable, in accordance with this Regulation or the Act, to or in respect of transferred pensioners and their spouses or de facto partners.
- (2) Any amount credited to accounts or reserves under subclause (1) (a) that is not required to meet the purposes referred to in subclause (1) (b) may be applied for any other purposes for which those accounts or reserves may be debited under the Act.

## **Part 4 Benefits payable in respect of transferred pensioners and their spouses or de facto partners**

### **9 Benefit payable to transferred pensioner**

During his or her lifetime a transferred pensioner is entitled to receive the same pension as he or she was entitled to receive under the former scheme immediately before 1 June 2003, subject to any adjustment under Part 5.

### **10 Entitlement to spouse pension on death of transferred pensioner**

- (1) If a transferred pensioner dies on or after 1 June 2003 and is survived by a spouse or de facto partner, the spouse or de facto partner is entitled, during his or her lifetime, to a benefit comprising 67 per cent of the benefit that would have been payable to the transferred pensioner under this Regulation had the person not died.
- (2) This clause does not apply to the spouse or de facto partner of a transferred pensioner if the transferred pensioner was entitled to receive a pension under the former scheme only because the transferred pensioner was the spouse or de facto partner of a former member.

## **11 Pension to be calculated with effect from 1 June 2003**

A pension payable under this Regulation is to be calculated with effect from and including 1 June 2003.

## **Part 5 Automatic adjustment of pensions**

### **12 Definitions**

(1) In this Part—

**adjustment date**, in relation to a year, means the first day of the pension pay period that ends on the first pension pay day in the October that next follows that year.

**adjustment percentage** in relation to a year, means, subject to clause 13 (2), the percentage for that year calculated in accordance with clause 13.

**Index number**, in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

**June quarter**, in relation to a year, means the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

**quarter**, in relation to a year, means—

- (a) the period commencing on and including 1 July in that year and ending on and including 30 September in that year, or
- (b) the period commencing on and including 1 October in that year and ending on and including 31 December in that year, or
- (c) the period commencing on and including 1 January in that year and ending on and including 31 March in that year, or
- (d) the period commencing on and including 1 April in that year and ending on and including 30 June in that year.

**year** means the period of 12 months beginning on 1 July.

- (2) If a pension is to be adjusted under this Part by reference to the adjustment percentage for a year, a reference (however expressed) in this Part to adjusting the pension is a reference—
  - (a) if the adjustment percentage is calculated in accordance with the formula specified in clause 13 (1) (a)—to increasing the pension, or
  - (b) if the adjustment percentage is calculated in accordance with the formula specified in clause 13 (1) (b)—to reducing the pension.



### 13 Calculation of adjustment percentage

- (1) For the purposes of the definition of **adjustment percentage** in clause 12 (1), the percentage for a year is to be calculated—

- (a) if the Index number for the June quarter in that year is greater than the Index number for the immediately preceding June quarter—in accordance with the following formula—

$$P = \frac{100 (C - L)}{L}$$

- (b) if the Index number for the June quarter in that year is less than the Index number for the immediately preceding June quarter—in accordance with the following formula—

$$P = \frac{100 (C - L)}{L}$$

where, in the case of either formula—

**P** is the percentage to be calculated, and

**C** is the Index number for the June quarter in that year, and

**L** is the Index number for the immediately preceding June quarter.

- (2) If—

- (a) the percentage calculated for a year in accordance with subclause (1) (b) is less than 1.1%, or
- (b) the Index number for the June quarter in that year is the same as the Index number for the immediately preceding June quarter,

there is taken to be no adjustment percentage for that year.

- (3) If there is taken to be no adjustment percentage for a year (the **first-mentioned year**), then, for the purposes of calculating the percentage for the next year—

- (a) the Index number for the June quarter in the first-mentioned year is taken not to have been published, and
- (b) the Index number for that quarter is taken to be the same as the Index number for the June quarter in the last year for which there was an adjustment percentage.

- (4) If at any time, whether before, on or after 1 June 2003, the Australian Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published in respect of that quarter, then, for the purposes of

this Part—

- (a) except as provided by paragraph (b)—the publication of the later Index number is to be disregarded, or
  - (b) if the Minister so directs—regard is, after the direction is given, to be had only to the later and not to the earlier Index number.
- (5) Despite subclause (4), if at any time on or after 1 June 2003, the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, then, for the purposes of the application of this Part after the change takes place, regard is to be had only to Index numbers published in terms of the new reference base.

#### 14 Adjustment of pension

- (1) Subject to this Part, the following provisions apply if there is an adjustment percentage for a year—
- (a) the amount of the pension payable to a person after 1 July of that year (other than to a person who became a spouse pensioner after that date) is, on and from the adjustment date, adjusted by virtue of this clause by the adjustment percentage for that year,
  - (b) the amount of the pension payable to a person who became a spouse pensioner after 1 July and on or before 1 April of that year is, on and from the adjustment date, adjusted by virtue of this clause by the percentage calculated in accordance with the formula set out in subclause (2).

- (2) The formula referred to in subclause (1) (b) is—

$$P = \frac{100 (C - L)}{L}$$

where—

**A** is the percentage by which the pension is to be adjusted, and

**P** is the adjustment percentage for the year, and

**Q** is the number of whole quarters of the year, being the whole quarters after, and (if applicable) the whole quarter on the first day of which the person became a pensioner.

- (3) In this clause—

**spouse pensioner** means a person who is entitled to a pension under this Regulation by virtue of clause 10.

## **15 Minimum amount to which pension may be reduced**

Despite anything in this Part, a pension payable under this Regulation must not be reduced below the amount that would have been payable but for this Part.

## **16 Calculation of percentages**

If a percentage that is calculated under this Part is or includes a fraction of one-tenth of 1 per cent, then—

- (a) if the fraction is less than one-half of one-tenth—the fraction is to be disregarded, and
- (b) if the fraction is not less than one-half of one-tenth—the fraction is to be treated as one-tenth.

## **17 Transitional arrangement**

- (1) Clauses 12 to 16 do not apply before the first day of the pension pay period that ends on the first pension pay day in October 2004.
- (2) Before that date, pensions payable under this Regulation are to be adjusted in accordance with such method as STC considers appropriate. However, any such pension must not be reduced below the amount that would have been payable under the former scheme had it remained in force and had this Regulation not been made.