

Public Authorities Superannuation (Transport Retirement Fund Closure) (Savings and Transitional) Regulation 1986

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New South Wales

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- **Previously named**
Public Authorities Superannuation (Transport Retirement Fund Closure) Regulation 1986

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New South Wales

1 Name of Regulation

This regulation may be cited as the *Public Authorities Superannuation (Transport Retirement Fund Closure) (Savings and Transitional) Regulation 1986*.

2 Commencement

This Regulation shall take effect on and from 1 July 1986.

3 Interpretation

(1) In this Regulation:

commencement means 1 July 1986.

service, in relation to a transferred contributor, means:

- (a) the number of whole months before 1 July 1985 that would have been taken into account in calculating a benefit payable to the contributor on that date under the provisions of the *New South Wales Retirement Benefits Act 1972* if the contributor had been a contributor under that Act, and
- (b) the number of whole months from and including 1 July 1985 during which the contributor has been a member of the Transport Retirement Scheme.

the Act means the *Public Authorities Superannuation Act 1985*.

the Board means the Public Authorities Superannuation Board continued by the Act.

the earlier Act means the *Transport Employees Retirement Benefits Act 1967*.

the Fund means the Public Authorities Superannuation Fund established, maintained and managed by the Board in accordance with the Act.

transferred contributor means a person who is deemed to have become a

transferred contributor by virtue of clause 5 (1).

Transport Retirement Scheme means the superannuation scheme established under the earlier Act.

(2) In relation to a transferred contributor:

- (a) the definition of **accrued benefit points** in section 24 of the Act shall be construed as if a reference in that definition to contributed points figures included a reference to the number of transferred benefit points for the contributor calculated in accordance with clause 9,
- (b) the definition of **average contribution rate per cent** in section 24 of the Act shall be construed as if a reference in that definition to the sum of the rates per cent of salary were a reference to the sum of benefit point accrued by the contributor,
- (c) the contributor's average contribution rate per cent referred to in the definition of **prospective benefit points** in section 24 of the Act shall be determined by including any applicable month occurring before the contributor's entry date, being a month of service taken into account in calculating a benefit which would have been payable to the contributor under the [New South Wales Retirement Benefits Act 1972](#) if the benefit had become payable under that Act immediately before 1 July 1985, and
- (d) the contributor's entry date for the purposes of paragraph (c) shall be the date on which the contributor's service is deemed to have commenced for the purposes of the definition of **service** in subclause (1).

4 Operation

The provisions of this Regulation operate in addition to, and have effect notwithstanding, any provision of the Act or the earlier Act.

5 Transfer of contributors under earlier Act

- (1) A person who, immediately before the commencement day, was a contributor to the Transport Retirement Scheme shall be deemed to have become a transferred contributor by virtue of having made an election under section 11 of the Act (election to contribute to the Fund) which took effect on the commencement day and, with respect to such an election, section 11 of the Act shall be construed as if subsection (2) and (3) of that section had not been enacted.
- (2) Where, by virtue of subclause (1), a person becomes a transferred contributor:
 - (a) the person ceases to be a contributor under the Transport Retirement Scheme, and

(b) a benefit under the earlier Act is not payable to or in relation to that person.

- (3) An application under section 12 of the Act (additional benefit) may, subject to that section, be made at any time by a person who, by virtue of subclause (1), is deemed to have become a transferred contributor.

6 Transferred contributors with 30 years' service entitled to death and disability cover

- (1) This clause applies to a transferred contributor in respect of whom the number of years of service before 1 July 1985 was, in total, at least 30 years.
- (2) If a transferred contributor to whom this clause applies makes an application under section 12 of the Act (additional benefit) not later than 31 March 1987, the Board shall approve the application without requiring the contributor to submit to a medical examination.

7 Contribution rates

- (1) A transferred contributor shall, subject to this clause, contribute to the Fund at the rate at which he or she would, but for clause 5 (2) (a), have continued to contribute under the Transport Retirement Scheme and shall so contribute to the Fund notwithstanding that the rate of contribution is not 2, 3, 4, 5, 6, 7, 8 or 9 per cent of the contributor's salary.
- (2) A transferred contributor who does not, before 31 December 1986, or by such later date as the Board may approve, make an election in respect of the period of 12 months commencing on 1 April 1987 under section 15 of the Act (variations of contribution rate) shall be deemed to have made such an election specifying, in accordance with subsection (2) (b) of that section, a percentage rate, being the whole number percentage not less than 2 per cent, that is the nearest to the contribution percentage determined in accordance with clause 9 (3) in respect of the contributor.
- (3) Sections 14, 15 and 16 of the earlier Act shall be deemed not to have applied in relation to any contributions or benefits that, but for clause 5, would have been payable on or after the commencement day.

8 Contributor's account for transferred contributor

- (1) The contributor's account that is established under section 9 (1) of the Act (certain accounts and reserves to be established) in relation to a transferred contributor shall be so established with a credit balance of the sum of:
- (a) an amount calculated for the contributor in accordance with section 25 of the earlier Act (refund of contributions where services terminate) as if the contributor had been entitled to a benefit under that section in respect of the period which ended immediately before the commencement day, and
- (b) a supplementary amount calculated in accordance with section 25A of the earlier

Act (supplementary amounts) in relation to the contributor.

- (2) For the purposes of subclause (1), a reference to a transferred contributor includes a reference to a former employee whose transfer to the Fund is deemed to have taken effect pursuant to clause 14.

9 Benefit points to be credited to transferred contributor

- (1) For the purposes of this clause, the number of transferred benefit points for a transferred contributor is the sum of the numbers calculated in accordance with subclauses (2) and (4).
- (2) For a period during which the contributor was an employee before 1 July 1985, the number of transferred benefit points is the number calculated in accordance with the formula:

P = whichever number resulting from the following calculations is the greater:

(a)

$$\left[\frac{B \times 0.6}{W \times 0.018} \right] - \left[\frac{S \times C}{12} \right]$$

(b)

$$\left[\frac{B \times 0.6}{W \times 0.018} \right] - \left[\frac{S \times C}{12} \right]$$

where:

P represents the number of points to be ascertained,

B represents the lump sum benefit for which the contributor is making contributions under the earlier Act, which includes any initial credit benefit within the meaning of the earlier Act, as at 1 July 1985,

W represents the number of dollars comprising the contributor's annual wages within the meaning of the earlier Act as at 1 July 1985,

S represents the number of complete months of the contributor's service that would occur during the period commencing on 1 July 1985 and ending immediately before the 65th anniversary of the contributor's birth,

A represents the number of completed months of the contributor's service as at 1 July 1985, and

C represents the contribution percentage calculated in accordance with subclause (3).

- (3) For the purposes of subclauses (2), (4) and (5), the contribution percentage is the

number calculated in accordance with formula:

$$\left[\frac{B \times 0.6}{W \times 0.018} \right] - \left[\frac{S \times C}{12} \right]$$

where:

C represents the contribution percentage to be ascertained,

D represents the monthly contributions payable under section 19 of the earlier Act (amount of contributions) as at 1 July 1985, and

W is as defined in subclause (2).

- (4) For a period beginning on and after 1 July 1985 and ending on 30 June 1986 during which the contributor has been an employee, the number of transferred benefit points in relation to the contributor is the number equal to the contribution percentage calculated in accordance with subclause (3).
- (5) For each applicable month in the period that commences on 1 July 1986 and ends on 31 March 1987, the number of benefit points which will accrue to a transferred contributor is one-twelfth of the contribution percentage referred to in subclause (3).

10 Transferred contributors with low contribution percentages

- (1) Subject to section 55 of the Act (making of elections and applications), where the contribution percentage calculated in accordance with clause 9 in relation to a transferred contributor is less than 1.5, the contributor may, before 31 December 1986, elect to cease contributing to the Fund.
- (2) A transferred contributor who makes the election referred to in subclause (1):
 - (a) is required to make provision for a benefit provided by section 32 of the Act (preserved benefit) notwithstanding anything to the contrary in subsection (1) of that section,
 - (b) shall be deemed to have elected under that subsection to make provision for that benefit on the date the Board receives the election referred to in subclause (1), and
 - (c) is not entitled to elect to take the benefit provided by subsection (6) of that section while employed by the same employer.

11 Choice of benefit—transferred contributor

- (1) A transferred contributor who retires and thereby becomes entitled to be paid the benefit provided by section 26 (benefit at age 65 or on early retirement or on death at or after age 60) or 28 (benefit on total and permanent disablement before age 60) may elect, in accordance with the *Public Authorities Superannuation (Transitional*

Provisions) Regulation 1985, to take, instead of the whole or a specified part of that benefit, the benefit provided by subclause (2) or (3).

- (2) The benefit provided by this subclause is a pension for the transferred contributor for life determined as provided by subclause (4).
- (3) The benefit provided by this subclause is:
 - (a) a pension for the transferred contributor for life determined as provided by subclause (4), and
 - (b) where the pensioner dies leaving a spouse—a pension for the spouse for life at an annual rate equal to 62.5 per cent of the annual rate of pension payable to the deceased pensioner immediately before his or her death.
- (4) The benefit payable under subclause (2) or (3) shall be the actuarial equivalent, determined by the Board, of the benefit or part of the benefit that would have been payable if an election under subclause (1) had not been made.
- (5) If a pensioner elected to take the benefit provided by subclause (3), the benefit is taken to extend to the de facto partner of a deceased pensioner who dies on or after the commencement of this subclause.

Note—

“De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

- (6) (Repealed)

12 Periodic adjustment of pensions

The provisions of Part 2 of Schedule 6 to the Act (periodic adjustment of pensions) apply to and in relation to a pension payable under this Regulation in the same way as they apply to and in relation to a pension referred to in clause 14 (2) (a) of that Schedule.

13 Guarantee

- (1) Notwithstanding any other provision of this Regulation, where:
 - (a) a benefit under the Act becomes payable to or in relation to a transferred contributor, and
 - (b) the Board is satisfied that the transferred contributor was disadvantaged by the operation of the provisions of this Regulation,the Board shall pay such additional amount as, in the opinion of the Board, is necessary to remove that disadvantage.
- (2) Whenever the Board pays a benefit pursuant to subclause (1), the Board shall debit to the appropriate reserve established in the Fund under section 9 of the Act (certain

accounts and reserves to be established) the difference between the amount of the benefit so paid and the amount that, but for subclause (1), would have been paid under the Act.

14 Transfer of former contributors under earlier Act

(1) In this clause:

exit date, in relation to a former employee, means the day on which the former employee ceased employment with an employer, that cessation of employment being:

- (a) the only such cessation of employment of the former employee, or
- (b) where there was more than one such cessation of employment of the former employee—the later or latest of those cessations of employment,

or, if the former employee attained the age of 65 years before any such cessation of employment, the day on which the former employee attained that age.

former employee means a person who, immediately before 1 July 1985, was a contributor under the earlier Act but who ceased to be such a contributor before the commencement day.

- (2) A former employee shall be deemed to have made an election under section 11 of the Act (election to contribute to the Fund) which took effect on 1 July 1985 and, with respect to such an election, section 11 of the Act shall be construed as if subsections (2) and (3) of that section had not been enacted.
- (3) Where, by virtue of subclause (2), a former employee is deemed to have become a contributor, the Board shall calculate the benefit that would have been payable to that former employee under the provisions of the Act.
- (4) A former employee is not entitled to apply for or be granted additional benefit cover under section 12 of the Act (additional benefit).
- (5) For the purposes of calculating the benefit referred to in subclause (3) in relation to a former employee:
 - (a) the number of accrued benefit points used in that calculation is the total of:
 - (i) the transferred benefit points, calculated in accordance with clause 9 (2), which would have applied to the former employee if the former employee had been a transferred contributor, and
 - (ii) for each month of service completed during the period that commenced on 1 July 1985 and ended on the former employee's exit date—one twelfth of the contribution percentage that would have applied to the former employee at 1 July 1985 as calculated in accordance with clause 9 (2) if the former employee

had been a transferred contributor, and

- (b) the contributor-financed benefit is the amount that would have been calculated in accordance with subclause (1) of clause 8 if the reference to the commencement day in that subclause were a reference to the former employee's exit date.
- (6) Where the benefit calculated in accordance with subclause (3) exceeds the total amount of benefit that was payable or was paid under the provisions of the earlier Act, the difference shall be paid as a supplementary benefit.
- (7) The supplementary benefit payable under subclause (5) shall be paid as a lump sum:
 - (a) subject to paragraphs (b) and (c)—to the former employee to whom the benefit calculated under the provisions of the earlier Act was paid,
 - (b) where that former employee has since died—in accordance with the provisions of section 58 of the Act (payment without grant of probate, etc), or
 - (c) where that former employee is, in the opinion of the Board, incapable of administering his or her affairs by reason of illness, imprisonment or any other cause—in accordance with the provisions of section 62 of the Act (payment where beneficiary incapable).
- (8) Where the Board pays a supplementary benefit pursuant to subclause (6), the Board shall debit the amount of that benefit to the appropriate reserve established in the Fund under section 9 of the Act (certain accounts and reserves to be established).
- (9) Where the employment of a former employee ended by resignation, that former employee may, subject to section 55 of the Act (making of elections and applications), elect to take advantage of section 32 of the Act (preservation of benefit) provided that the former employee repays to the Board, or makes arrangements satisfactory to the Board for the payment:
 - (a) the amount of any benefit paid under the earlier Act,
 - (b) the amount of the supplementary benefit, if any, paid in accordance with subclause (6), and
 - (c) interest on that amount or amounts at a rate determined by the Board.
- (10) Where a former employee to whom subclause (9) applies elects to take advantage of section 32 of the Act as provided by that subclause, the provisions of that section apply to that former employee in the same way as they apply to a contributor.