

# State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) (Savings and Transitional) Regulation 1990

[1990-319]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Previously named**

State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) Regulation 1990

### Authorisation

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New South Wales

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# State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) (Savings and Transitional) Regulation 1990



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation may be cited as the *State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) (Savings and Transitional) Regulation 1990*.

### 2 Commencement

- (1) This Regulation is to be taken to have commenced on 1 June 1990, except as provided by this clause.
- (2) In respect of—
  - (a) the contributors named in Schedule 1, and
  - (b) any contributor who has died during the period of 2 months beginning on 1 April 1990,

the provisions of this Regulation are to be taken to have commenced on the day before the contributor's exit date.

### 3 Definitions

In this Regulation—

**Commonwealth pension** means—

- (a) a service pension payable under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, or
- (b) an age or invalid pension payable under Part IV of the *Social Security Act 1947* of the Commonwealth, or
- (c) a class "B" widow's pension payable under Schedule 1B to the *Social Security Act*

1947 of the Commonwealth.

**contributor under the earlier Act** means a person who was, immediately before the transfer date, a contributor to the Government Railways Superannuation Account.

**old board** means the board constituted under section 110 of the *Government Railways (Superannuation) Act 1912*.

**pension** includes a spouse pension.

**salary** for the purpose of determining the transfer points of a transferred contributor means the salary reported to the SAS Board for that purpose by the contributor's employer.

**SAS Board** means the SAS Trustee Corporation established under the *Superannuation Administration Act 1996*.

**SAS Fund** means the State Authorities Superannuation Fund established in accordance with the later Act.

**service**, in relation to a transferred contributor, means the period of complete years, not exceeding 40, during which contributions to the Government Railways Superannuation Account were paid by or in respect of the contributor and in respect of which contributions were held immediately before the transfer date.

**spouse pension** means a pension that the spouse or de facto partner of a transferred pensioner or transferred contributor is entitled to receive under clause 17.

**Note—**

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

**the earlier Act** means the *Government Railways (Superannuation) Act 1912*.

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

**transfer date** means—

- (a) 1 June 1990, or
- (b) in the case of a contributor under the earlier Act who is named in Schedule 1 or such a contributor who has died during the period of 2 months beginning on 1 April 1990—the day before the contributor's exit date.

**transferred contributor** means a contributor under the earlier Act who is taken to have elected to become a transferred contributor by virtue of clause 4 (1).

**transferred pensioner** means a person who was, immediately before the transfer date, entitled to receive a superannuation allowance or prescribed pension under the earlier Act and who is transferred to the State Authorities Superannuation Scheme by virtue of clause

5 and, where the payment of a prescribed pension under the earlier Act was suspended at the transfer date, includes the person who would have been entitled to receive the pension but for the suspension.

## **Part 2 Transfer of contributors and pensioners to SAS Fund**

### **4 Transfer of Government Railways Superannuation Account contributors to the SAS Fund**

- (1) A contributor under the earlier Act who was contributing to the Government Railways Superannuation Account immediately before the transfer date is, on that date, to be taken to have elected under section 19 (1) of the later Act (election to contribute to the Fund), effective on that date, to contribute to the SAS Fund.
- (2) For the purposes of subclause (1), section 19 of the later Act is to be read as if subsections (2), (3), (4), (6) and (7) of that section were omitted.
- (3) If a contributor under the earlier Act has become a transferred contributor in accordance with such an election—
  - (a) the contributor ceases to be a contributor to the Government Railways Superannuation Account, and
  - (b) a benefit under the earlier Act is not payable to or in respect of the contributor.
- (4) A transferred contributor may elect to contribute to the Fund at the rate of 1, 2, 3, 4, 5, 6, 7, 8 or 9 per cent of his or her salary.
- (5) A person who has made no election under subclause (4) is taken to have elected to contribute at the rate of 1 per cent of the person's salary.
- (6) A contributor under the earlier Act who has become a transferred contributor in accordance with this clause may, subject to section 20 of the later Act (additional benefit), make an application under that section at any time.

### **5 Transfer of Government Railways Superannuation Account pensioners to the SAS Fund**

A person who was, immediately before the transfer date, entitled to receive a superannuation allowance or prescribed pension under the earlier Act is, on that date, to be taken to have been transferred to the State Authorities Superannuation Scheme and is, on and after that date, entitled to receive from the SAS Board a pension in accordance with this Regulation.

### **6 Transferred accounts and reserves**

- (1) A contributor's account required by section 12 (1) of the later Act (contributors' accounts) in respect of a transferred contributor is taken to have been established in the SAS Fund on the transfer date.

- (2) The SAS Board must ensure that the account is established with a credit balance equal to the amount contributed by the transferred contributor to the Government Railways Superannuation Account immediately before that contributor became a contributor to the SAS Fund.

## 7 Application of certain definitions to transferred contributors

- (1) For the purpose of applying the definition of **accrued benefit points** in section 36 of the later Act (definitions) to a transferred contributor, that definition is to be read as if the reference in it to contributed points figures included a reference to the number of transfer points described in clause 8.
- (2) For the purpose of applying the later Act to a transferred contributor, such a contributor's entry date is to be taken to be a notional date established by subtracting from the transfer date the number of days of service during which contributions to the Government Railways Superannuation Account were paid and in respect of which contributions were held on the day before the transfer date.
- (3) For the purpose of applying the definition of **final average salary** in section 36 of the later Act to a transferred contributor, that definition is to be read as if the transferred contributor had become a new contributor to the SAS Fund on the transfer date.
- (4) For the purpose of applying the definition of **prospective benefit points** in section 36 of the later Act to a transferred contributor, that definition is to be read as if the transferred contributor had become a new contributor to the SAS Fund on the transfer date.

## 8 Transfer points to be credited to a transferred contributor

- (1) A transferred contributor is, in respect of his or her accrued benefit in the Government Railways Superannuation Account, entitled to the number of transfer points calculated in accordance with the following formula—

$$TP = \frac{(1/40 \times K \times S \times 10) - EC}{W \times 0.025}$$

where—

**TP** represents the number of points to be calculated.

**K** represents the amount of \$1,600 adjusted in accordance with the rate applicable on the day immediately preceding the transfer date as provided by subclause (6).

**S** represents the number of complete years of service of the transferred contributor or, if the transferred contributor has more than 40 years' service, represents 40 years' service.

**EC** represents the contributions of the transferred contributor.

**W** represents the salary of the transferred contributor.

- (2) Transfer points are to be rounded up to four decimal places.
- (3) The transfer points calculated under subclause (1) are to be added to the contributed points figures which the transferred contributor accrues during his or her membership of the State Authorities Superannuation Scheme to form the accrued benefit points held at the exit date.
- (4) Accrued benefit points may, subject to section 36 of the later Act (definitions), be accumulated over the entire period of service, including the period of service preceding the transfer date which is to consist of and to be counted as applicable contribution periods.
- (5) For the purpose of subclause (4), the person who was the employer of the transferred contributor at the transfer date must, as soon as practicable after that date, provide the SAS Board with particulars of that contributor's service.
- (6) If there is an adjustment percentage for a year as provided by Part 5, the amount represented by the symbol K (referred to in subclause (1)) is to be adjusted in accordance with that Part, on and from the adjustment date for that year, by that percentage.
- (7) If there have been previous adjustments under subclause (6), or under section 123A (1) of the earlier Act, the amount of \$1,600 referred to in the definition of the symbol K in subclause (1) is to be taken to be a reference to that amount as previously adjusted.
- (8) The operation of subclause (6) does not have the effect of reducing the amount represented by K below \$1,600.

### **Part 3 Termination of the government railways superannuation scheme**

#### **9 Transfer of assets etc of the old board**

On 1 June 1990, the following provisions are to be taken to have had effect—

- (a) all real and personal property (including any estate or interest in, or right to control or manage, real or personal property) that, immediately before that date, was vested in the old board became vested in the SAS Board,
- (b) all money that, immediately before that date, was payable to the old board became payable to the SAS Board,
- (c) any liquidated or unliquidated claim that, immediately before that date, was



enforceable by or against the old board became enforceable by or against the SAS Board,

- (d) any proceeding that was pending immediately before that date at the suit of or against the old board became a proceeding pending at the suit of or against the SAS Board,
- (e) any contract or arrangement entered into with the old board and in force immediately before that date became a contract or arrangement entered into with the SAS Board,
- (f) any security or charge given to or by the old board and in force immediately before that date became a security or charge given to or by the SAS Board,
- (g) any act, matter or thing that was done or had been omitted to be done before that date by, to or in respect of the old board is (to the extent that that act, matter or thing has any effect) to be taken to have been done or omitted to have been done by, to or in respect of the SAS Board.

#### **10 Government Railways Superannuation Account**

- (1) As soon as practicable after receiving the amount standing to the credit of the Government Railways Superannuation Account, the SAS Board must apportion the amount among the contributors' accounts established under section 12 of the later Act in respect of transferred contributors and among such other of that Board's accounts and reserves it considers to be appropriate.
- (2) There is to be transferred to the credit of the SAS Fund from the State Rail Authority Fund such money as may be required to meet claims by or in respect of transferred contributors and transferred pensioners.
- (3) Money standing to the credit of the accounts and reserves referred to in subclause (1) is to be applied in paying pensions and other amounts which are payable to or in respect of transferred contributors and transferred pensioners in accordance with the later Act and this Regulation.
- (4) Money referred to in subclause (3) includes interest up to and including the day immediately before the transfer date at such rate or rates as the old board and the Treasurer determine.

#### **11 Annual reports etc**

- (1) If the old board had not, before 1 June 1990, complied with a provision of the *Annual Reports (Statutory Bodies) Act 1984* requiring the preparation and submission of an annual report or a statement of accounts relating to a period which had expired before that day, the SAS Board must comply with the provision.
- (2) The first annual report and statement of accounts of the SAS Board after 1 June 1990

must contain such further matters in respect of the old board (other than matters dealt with by subclause (1)) as would have been required to be included in an annual report or statement of accounts of the old board if this Regulation had not been made.

## **12 Appeals**

An appeal pending before the Industrial Commission of New South Wales immediately before 1 June 1990 under a provision of the *Government Railways (Superannuation) Act 1912* is to be treated as if it were an appeal made under section 27 of the *Superannuation Administration Act 1987*.

## **13 Delegations**

A delegation effected by the old board and in force immediately before 1 June 1990 is to be taken to have been effected under the *Superannuation Administration Act 1987* by the SAS Board.

# **Part 4 Benefits payable in respect of transferred pensioners and transferred contributors**

## **14 Retirement benefit**

- (1) A male transferred contributor who retires on or after reaching 60 years of age, or a female transferred contributor who retires on or after reaching 58 years of age, is entitled to elect to receive either—
  - (a) a retirement benefit in the form of—
    - (i) a pension calculated in accordance with the formula set out in subclause (4), and
    - (ii) a lump sum consisting of a contributor-financed benefit comprising the amount in the transferred contributor's account and an employer-financed benefit calculated in accordance with the formula set out in subclause (5), or
  - (b) a retirement benefit in the form of a lump sum calculated in accordance with section 37 (2) of the later Act.
- (2) A male transferred contributor who retires before reaching 60 years of age, on grounds other than physical or mental incapacity, does not have the option of electing to receive a pension under this clause and is entitled only to a lump sum calculated in accordance with section 37 (2) of the later Act.
- (3) A female transferred contributor who retires on or after reaching 55 years of age is entitled to receive a retirement benefit in the form of—
  - (a) a pension calculated in accordance with the formula set out in subclause (4), and
  - (b) a lump sum consisting of a contributor-financed benefit comprising the amount in

the transferred contributor's account and an employer-financed benefit calculated in accordance with the formula set out in subclause (5).

- (4) The formula referred to in subclause (1) (a) (i) and subclause (3) (a) is as follows—

$$TP = \frac{(1/40 \times K \times S \times 10) - EC}{W \times 0.025}$$

where—

**P** represents the pension to be calculated, and

**K** represents the amount of \$1,600 adjusted as provided by subclause (7), and

**S** represents the number of complete years of service of the transferred contributor not exceeding 40, and

**C** represents the number of days of continuous contributory service that the transferred contributor has had with one or more employers during the period beginning with the transfer date and ending with that contributor's exit date, and

**D** represents the number of days of continuous contributory service that the transferred contributor has had with one or more employers during the period beginning with that contributor's entry date as determined in accordance with clause 7 (2) and ending with his or her exit date.

- (5) The formula referred to in subclause (1) (a) (ii) and subclause (3) (b) is as follows—

$$TP = \frac{(1/40 \times K \times S \times 10) - EC}{W \times 0.025}$$

where—

**E** represents the amount to be calculated, and

**F** represents the final average salary of the transferred contributor, and

**A** represents the accrued benefit points for the transferred contributor at the transferred contributor's exit date, and

**TP** represents the transferred contributor's transfer points as referred to in clause 8 (1).

- (6) A transferred pensioner who, immediately before the transfer date, was entitled to receive a superannuation allowance or prescribed pension under the earlier Act is entitled to receive a pension of a similar amount under this Regulation, but subject to any adjustments that may be made under Part 5.
- (7) If there is an adjustment percentage for a year as provided by Part 5, the amount represented by the symbol K in subclause (4) is to be adjusted in accordance with that

Part, on and from the adjustment date for that year, by that percentage.

- (8) If there have been previous adjustments under subclause (7), or under section 123A (1) of the earlier Act, the amount of \$1,600 referred to in the definition of the symbol K in subclause (4) is taken to be a reference to that amount as previously adjusted.

## **15 Invalidation benefits**

(1) If—

- (a) a transferred contributor who is under 58 years of age retires on the grounds of permanent physical or mental incapacity, and
- (b) an approval under section 22 of the later Act (approval of application) is in force in respect of that contributor,

that contributor is eligible for a benefit payable under section 39 of the later Act (benefit on total and permanent invalidity before early retirement age) and to no other benefit.

(2) If a transferred contributor who is under 58 years of age retires on the grounds of permanent physical or mental incapacity and becomes eligible for—

- (a) a benefit payable under section 40 of the later Act (benefit on partial and permanent invalidity before early retirement age), or
- (b) a benefit payable under section 39 of that Act (but where no approval under section 22 of that Act is in force),

that person is entitled to receive—

- (c) that benefit, or
- (d) a pension and a lump sum in accordance with clause 14 (1) (a), but if the contributor elects to take the pension and lump sum referred to in paragraph (d), the symbol “F” in clause 14 (5) represents the person’s final salary.

(3) If a transferred contributor who has reached 58 years of age retires on the grounds of permanent physical or mental incapacity, the contributor is entitled to receive a pension and lump sum benefit in accordance with clause 14 (1) (a) or a lump sum benefit in accordance with clause 14 (1) (b).

## **16 Medical examination of officers receiving an invalidity benefit in the form of a pension**

(1) If a transferred pensioner, or a former transferred contributor, who has retired from employment with an employer on account of permanent physical or mental incapacity is receiving an invalidity benefit in the form of a pension, the pensioner or former contributor is required to submit to a medical examination as and when specified by the SAS Board.

- (2) If the pensioner or former contributor fails to comply with that requirement within the period allowed by the SAS Board, the pension ceases to be payable until the requirement is complied with.
- (3) If at any time the SAS Board believes that the health of the pensioner or former contributor has improved to such an extent as to enable the pensioner or former contributor to resume his or her duties as an employee, the employer from whose service the pensioner or former contributor was retired may, at the request or on the advice of the SAS Board, require the pensioner or former contributor—
  - (a) to resume those duties, or
  - (b) to undertake other duties at a salary not less than the salary currently payable to employees with the same classification and the same length of service as the pensioner or former contributor had when he or she was retired.
- (4) On the making of such a requirement, any pension payable to the pensioner or former contributor ceases to be payable.
- (5) If the pensioner or former contributor, having resumed or undertaken duties in accordance with a requirement under subclause (2), suffers a recurrence of his or her physical or mental incapacity, the pensioner or former contributor is again entitled to receive his or her pension, together with any increase in that pension to which he or she would be entitled as a result of additional service.

**17 Entitlement to a spouse pension on death of transferred pensioner or transferred contributor**

- (1) If a transferred pensioner who was receiving a superannuation allowance under the earlier Act immediately before the transfer date dies on or after the transfer date and is survived by a person—
  - (a) to whom the pensioner was married, or
  - (b) who was the de facto partner of the pensioner,at the time when the superannuation allowance first became payable, then, subject to subclause (5), that person is entitled to receive a spouse pension in accordance with subclause (4).
- (1A) If a transferred pensioner who was receiving a superannuation allowance under the earlier Act immediately before the transfer date dies on or after the transfer date and is survived by an eligible person—
  - (a) to whom the pensioner was married, or
  - (b) who was the de facto partner of the pensioner,

for 3 years or more immediately before the death, then, subject to subclause (5), that person is entitled to receive a spouse pension in accordance with subclause (4).

(1B) If a transferred pensioner who was receiving a superannuation allowance under the earlier Act immediately before the transfer date dies on or after the transfer date and is survived by an eligible person—

(a) to whom the pensioner was married, or

(b) who was the de facto partner of the pensioner,

for less than 3 years immediately before the death, then, subject to subclause (5), that person is entitled to receive a spouse pension in accordance with subclause (4), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

(2) If a transferred contributor dies before becoming entitled to receive a benefit under this Regulation and is survived by a spouse or de facto partner, the spouse or de facto partner may, subject to subclause (5), elect to receive one of the following benefits—

(a) a benefit consisting of—

(i) a spouse pension in accordance with subclause (4), and

(ii) a lump sum calculated in accordance with clause 14 (5), or

(b) if the contributor had reached 58 years of age when he or she died—a benefit payable in accordance with section 37 of the later Act (benefit at or after early retirement or on death at or after early retirement age), or

(c) if the contributor had not reached 58 years of age when he or she died—a benefit payable in accordance with section 38 of the later Act (benefit on death before early retirement age).

(3) If a transferred contributor who is receiving a pension under this Regulation dies on or after the transfer date and is survived by a person—

(a) to whom the contributor was married, or

(b) who was the de facto partner of the contributor,

at the time when the pension first became payable, then, subject to subclause (5), that person is entitled to receive a spouse pension in accordance with subclause (4).

(3A) If a transferred contributor who is receiving a pension under this Regulation dies on or after the transfer date and is survived by an eligible person—

(a) to whom the contributor was married, or

(b) who was the de facto partner of the contributor,

for 3 years or more immediately before the death, then, subject to subclause (5), that person is entitled to receive a spouse pension in accordance with subclause (4).

(3B) If a transferred contributor who is receiving a pension under this Regulation dies on or after the transfer date and is survived by an eligible person—

(a) to whom the contributor was married, or

(b) who was the de facto partner of the contributor,

for less than 3 years immediately before the death, then, subject to subclause (5), that person is entitled to receive a spouse pension in accordance with subclause (4), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

(4) The amount of a spouse pension referred to in subclauses (1)–(3B) is—

(a) if the spouse or de facto partner has not reached 70 years of age, the lesser of—

(i) the maximum total amount that, if received by the spouse or de facto partner, would not, by virtue of clause 17 (5) (a), operate to disqualify him or her as a spouse or de facto partner to whom a spouse pension may be paid, or

(ii) the amount of pension payable at the maximum rate per year shown in column 2 of Schedule 2 opposite the period of service shown in column 1 of that Schedule which is appropriate to the deceased transferred pensioner or deceased transferred contributor concerned, and

(b) if the spouse or de facto partner has reached 70 years of age, the amount of pension payable at the maximum rate per year shown in column 2 of Schedule 2 opposite the period of service shown in column 1 of that Schedule which is appropriate to the deceased transferred pensioner or deceased transferred contributor concerned.

(5) If—

(a) the spouse or de facto partner of a deceased transferred pensioner or deceased transferred contributor is under 70 years of age and is not entitled to receive, or at any time after the transfer date ceases to be entitled to receive, a full Commonwealth pension without any reduction on account of property or income, or both, in accordance with the law of the Commonwealth under which that pension is paid, or

(b) the spouse or de facto partner of a deceased transferred pensioner or deceased transferred contributor has reached 70 years of age and is not entitled to receive a full or part Commonwealth pension,

that spouse or de facto partner is, with effect from and including the transfer date or,

as the case may be, the date on which the entitlement ceased, disqualified from being entitled to receive a spouse pension under this clause.

- (6) The SAS Board may vary the amount of a spouse pension payable to a spouse or de facto partner (including any amount payable under Part 5) if, having regard to any relevant income or property or both of the spouse or de facto partner and to the provisions of subclause (4) (a), the SAS Board believes it is necessary to make a variation to ensure that the spouse or de facto partner continues to be entitled to receive such a pension.
- (7) If a transferred contributor receives a benefit consisting wholly of a lump sum in respect of his or her period of service before the transfer date, no spouse pension is payable to the contributor's spouse or de facto partner under this clause.
- (8) If a contributor under the earlier Act—
  - (a) has died before the transfer date, and
  - (b) is survived by a spouse who remarries on or after the transfer date,the spouse is not, on the grounds of remarriage alone, precluded from being entitled to receive a spouse pension under this clause.
- (9) The spouse of a former contributor to the Government Railways Superannuation Account who has ceased to be entitled to receive a prescribed pension under the earlier Act by virtue of having remarried is disqualified from being entitled to receive a spouse pension under this Regulation while the marriage continues to subsist.
- (10) If a contributor under the earlier Act—
  - (a) has died before the transfer date, and
  - (b) is survived by a person with whom that contributor was living in a bona fide domestic relationship as that person's spouse,that person is not entitled to receive a spouse pension under this clause.
- (11) The spouse or de facto partner of a deceased contributor under the earlier Act is not entitled to receive more than one spouse pension under this Regulation.
- (12) In any case where, but for subclause (11), the spouse or de facto partner of a deceased contributor under the earlier Act would be entitled to receive two or more pensions under this Regulation, the spouse or de facto partner is, subject to this clause, entitled to receive payment of the spouse pension nominated by the SAS Board which, as calculated by reference only to subclause (4), is the higher or highest of those pensions.
- (13) For the purposes of subclauses (1A), (1B), (3A) and (3B), a person is an **eligible**



**person** if—

- (a) the person became the spouse or de facto partner of the transferred pensioner or contributor after the transferred pensioner or contributor became entitled to a superannuation allowance or pension, and
- (b) the person has or had in his or her marriage or relationship with the transferred pensioner or contributor a child, being—
  - (i) a child of the eligible person and the transferred pensioner or contributor who was, in the opinion of the SAS Board, wholly or substantially dependent on the transferred pensioner or contributor at any time during the marriage or relationship, or
  - (ii) a child of the transferred pensioner or contributor who was conceived before and born alive after the death of the transferred pensioner or contributor.

**18 Election by transferred contributor to take a pension benefit**

An application by a transferred contributor or the spouse or de facto partner of a transferred pensioner or transferred contributor for, or an election by transferred contributor or the spouse or de facto partner of such a contributor to take, a benefit under this Regulation must—

- (a) be in a form approved by the SAS Board, and
- (b) be signed by that transferred contributor or spouse or de facto partner (as the case requires), and
- (c) specify such matters and be accompanied by such information as the SAS Board may require, and
- (d) be lodged at the office of the SAS Board within the period of 3 months (or within such extended period as that Board may in special circumstances allow) that immediately follows the contributor's exit date.

**19 Payment of a pension benefit**

- (1) The pension benefit payable to a transferred pensioner under this Regulation is to be calculated with effect from and including the transfer date and is payable in equal fortnightly instalments at the rate of  $\frac{14}{365}$  of the annual pension.
- (2) If a transferred contributor has elected to take a retirement benefit in the form of a pension under this Regulation, that benefit is to be calculated with effect from that contributor's exit date and is payable in equal fortnightly instalments at the rate of  $\frac{14}{365}$  of the annual pension.
- (3) If the spouse or de facto partner of a deceased transferred pensioner or deceased

transferred contributor has elected to take a pension benefit under this Regulation, that benefit is to be calculated with effect from the date of death of that pensioner or contributor and is payable in equal fortnightly instalments at the rate of 14/365 of the annual pension.

## 20 Resumption of payment of a spouse pension after suspension

- (1) If the spouse or de facto partner of a deceased contributor under the earlier Act ceases to be disqualified from being entitled to receive a spouse pension under this Regulation, the spouse or de facto partner may apply in writing to the SAS Board for the resumption of payment of the pension and that Board may, subject to this clause, cause payment of the pension to be resumed—
  - (a) with effect from the date (as determined by that Board), when the disqualification ceased, but
  - (b) if the date so determined would be more than 6 months before the date on which the application for resumption of payment of the pension was received by the SAS Board—with effect from the date of receipt of the application or such earlier date (not being earlier than the date on which the disqualification ceased) as the SAS Board may determine.
- (2) The first instalment of a spouse pension of which payment is resumed under subclause (1) is to be paid on a date to be determined by the SAS Board.
- (3) If a spouse or de facto partner applies to the SAS Board for resumption of payment of a spouse pension under this Regulation, that Board may require the spouse or de facto partner to provide that Board with such information as it considers necessary to enable it to decide whether or not the spouse or de facto partner is entitled to resumption of payment of the spouse pension.
- (4) The SAS Board may refuse such an application if information required by it under subclause (3) is not provided.

## Part 5 Periodic adjustment of pensions

### 21 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 22 (calculation of adjustment percentage), the percentage for that year calculated in accordance with that clause.

**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 Commonwealth Statistician.

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

**suspended pension**, in relation to an adjustment date, means a spouse pension that is not payable under this Regulation at that adjustment date only because of the operation of a provision of clause 17.

**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 22 (1) (a)—to increasing the pension, or
  - (b) if the adjustment percentage is calculated in accordance with the formula specified in clause 22 (1) (b)—to reducing the pension.

## 22 Calculation of adjustment percentage

- (1) For the purposes or the definition of **adjustment percentage** in clause 21 (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—

$$TP = \frac{(1/40 \times K \times S \times 10) - EC}{W \times 0.025}$$

- (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—

$$TP = \frac{(1/40 \times K \times S \times 10) - EC}{W \times 0.025}$$

where, in the case of either formula—

**P** represents the percentage to be ascertained, and

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

**L** represents 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, 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 to be taken to have not been published, and
  - (b) the Index number for that quarter is to be 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 1990, the Commonwealth 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 1990, the Commonwealth 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.
- (6) The substitution of subclause (2) by the *State Authorities Superannuation (Government Railways Superannuation Scheme Transfer) (Savings and Transitional) Amendment Regulation 2002* does not affect the calculation of an adjustment percentage for a year if the June quarter in that year ended before the commencement of subclause (2) as so substituted.

### **23 Adjustment of pension**

- (1) Subject to this Part, if there is an adjustment percentage for a year, the amount of the pension payable on the adjustment date for that year is adjusted by virtue of this clause by that percentage on and from that adjustment date.

- (2) A reference in subclause (1) to the amount of a pension payable to a person includes a reference to the pension that would have been payable to that person but for a determination by the SAS Board under clause 25 (1).

#### **24 Application of clause 23 to suspended pensions**

- (1) Clause 23 applies to and in respect of a suspended pension in the same way as it applies to and in respect of a pension payable to a spouse under this Regulation, and so applies as if clause 17 (5) and (9) had not been made.
- (2) Subclause (1) does not have the effect of authorising or requiring the payment at any time of a suspended pension or any part of such a pension.

#### **25 Restriction on automatic adjustment of pension**

- (1) If the SAS Board considers that an increase in accordance with this Part in a pension payable to a person under this Regulation would prejudicially affect that person as regards to some advantageous situation in which, but for being so affected, that person would be placed, that Board may make a determination—
- (a) not to pay the amount of the increase, or
  - (b) to pay a specified increase of a lesser amount.
- (2) A determination under this clause is subject to clause 26 but otherwise has effect according to its tenor, and once the determination has had effect a person is not entitled to be paid or to recover any amount that would have been payable but for the determination.
- (3) A determination made under this clause must be disregarded in calculating a pension payable to the spouse of a deceased pensioner to whom the determination relates but such a determination may be made in relation to the pension so calculated.

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

Irrespective of anything in this Part—

- (a) a pension payable under this Regulation (other than a pension payable to a person by virtue of that person's being the spouse of a contributor under the earlier Act) must not be reduced below the fortnightly amount that would have been payable but for this Part, and
- (b) a pension so payable to a person by virtue of that person's being the spouse of a contributor under the earlier Act must not be reduced below the fortnightly amount that would have been payable by reference to the superannuation allowance that would have been payable to that contributor but for this Regulation.

## **27 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.

## **28 Adjustment of amounts specified in Schedule 2**

- (1) If there is an adjustment percentage for a year, the amounts shown in column 2 of Schedule 2 are taken to be adjusted, on and from the adjustment date for that year, by that percentage.
- (2) The amounts referred to in subclause (1) are not to be reduced, by the operation of that subclause, below the amounts respectively set out in column 3 of that Schedule.
- (3) If the amounts referred to in subclause (1) are taken to be adjusted by the operation of that subclause, the amounts as so adjusted are, for the purposes of this Part, to be taken to be shown in column 2 of that Schedule instead of those previously shown or taken to be shown.

## **Part 6 Miscellaneous**

### **29 Guarantee**

- (1) Irrespective of any other provision of this Regulation, if—
  - (a) a benefit under the later Act becomes payable to a transferred pensioner or transferred contributor or to the spouse or de facto partner of such a pensioner or contributor, and
  - (b) the SAS Board is satisfied that that pensioner, contributor or spouse or de facto partner was disadvantaged by the operation of the provisions of this Regulation, that Board is to pay such additional amount as it considers to be necessary to remove that disadvantage.
- (2) Whenever the SAS Board pays a benefit in accordance with subclause (1), it must debit to the appropriate account or reserve established in the SAS Fund the difference between the amount of the benefit so paid and the amount that, but for subclause (1), would have been paid under the later Act.

## **Schedule 1 List of transferred contributors whose 65th birthdays fall**

**within the 2 months beginning on 1 April 1990**

(Clauses 2 (2), 3)

Albert L. Grigg  
Francis L. Fletcher  
Donald Lidster  
Beatrice Parker

**Schedule 2 Table for calculating annual spouse's pension**

(Clauses 17, 28)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Period of service</b>	<b>Maximum rate of pension per year</b>	<b>Level below which pension cannot be reduced</b>
	<b>\$</b>	<b>\$</b>
10 years or more but less than 21 years	683.80	205.17
21 years or more but less than 22 years	703.32	211.04
22 years or more but less than 23 years	722.90	216.90
23 years or more but less than 24 years	742.42	222.77
24 years or more but less than 25 years	761.97	228.63
25 years or more but less than 26 years	781.49	234.51
26 years or more but less than 27 years	801.04	240.37
27 years or more but less than 28 years	820.59	246.23
28 years or more but less than 29 years	840.11	252.10
29 years or more but less than 30 years	859.66	257.96
30 years or more	879.17	263.84