

# State Authorities Superannuation Regulation 2005

[2005-500]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Repeal**

The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2010.

### 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](#).

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# State Authorities Superannuation Regulation 2005



New South Wales

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# State Authorities Superannuation Regulation 2005



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation may be cited as the *State Authorities Superannuation Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 September 2005.

**Note—**

This Regulation replaces the *State Authorities Superannuation Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

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

**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 the 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 45A of the Act.

**surcharge deduction cap** means the maximum surcharge deduction amount that may be determined by STC under section 45A (1C) of the Act in relation to a benefit

payable to a former contributor.

**the Act** means the [State Authorities Superannuation Act 1987](#).

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

**Note—**

Section 3 (1) of the Act defines **STC** as the SAS Trustee Corporation continued under the [Superannuation Administration Act 1996](#).

- (2) Notes in the text of this Regulation do not form part of this Regulation.

## **Part 2 General provisions supplementary to Act**

### **4 Early retirement age**

For the purposes of the definition of **early retirement age** in section 3 (1) of the Act, the prescribed early retirement age is 58 years.

### **5 Determination of loading in respect of shift allowance**

- (1) In this clause:

**base salary**, in relation to a contributor, means the remuneration, salary or wages payable to the contributor under an award of an industrial tribunal or under an industrial or enterprise agreement, but excluding all additional allowances payable to the contributor.

**relevant period**, in relation to a contributor, means the period of 12 months ending with 31 December immediately preceding the date on which the salary of the contributor is to be calculated for the purposes of the Act.

**relevant shift** means a shift worked by an employee in respect of which a shift allowance is payable by an employer.

**trade union** means:

- (a) an industrial organisation of employees registered or recognised as such under

the *Industrial Relations Act 1996*, or

(b) an association of employees registered as an organisation under the *Workplace Relations Act 1996* of the Commonwealth.

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

(3) If:

- (a) there is in force an agreement between, or a practice accepted by, a trade union and the employer of a contributor which was in force immediately before 18 December 1987, and
- (b) the effect of the agreement or practice is that amounts that the employer pays to the contributor as shift allowances for relevant shifts worked by the contributor during a relevant period are treated as a loading for superannuation purposes, and
- (c) the total of those amounts is greater than that which would be determined under subclause (4) for that year in respect of the contributor,

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

(4) Except where subclause (3) or (5) applies, if a contributor is paid shift allowances for shifts that the contributor has worked during a relevant period, then, for the purposes of section 4 (1) (a) of the Act, the contributor's loading for those allowances is to be determined by reference to the number of relevant shifts the contributor is taken to have worked (as calculated in accordance with subclause (6)) during the relevant period. The loading is:

- (a) if during the relevant period the contributor is taken to have worked not more than 104 relevant shifts—no amount, or
- (b) if during the relevant period the contributor is taken to have worked more than 104 but not more than 156 relevant shifts—an amount equal to 10 per cent of the contributor's base salary for that period, or
- (c) if during the relevant period the contributor is taken to have worked more than 156 but not more than 208 relevant shifts—an amount equal to 15 per cent of the contributor's base salary for that period, or
- (d) if during the relevant period the contributor is taken to have worked more than 208 relevant shifts—an amount equal to 20 per cent of the contributor's base salary for that period.

- (5) If the amounts actually paid or payable to a contributor as shift allowances for shifts that the contributor has worked during a relevant period are less than the loading determined for the period in respect of the contributor in accordance with subclause (4), then, for the purposes of section 4 (1) (a) of the Act, the total of those amounts is the contributor's loading for those allowances.
- (6) For the purposes of subclause (4), the number of relevant shifts a contributor is taken to have worked during a relevant period is the number calculated as follows:

$$N = \frac{H}{H_0} \times S$$

where:

**N** is the number of relevant shifts the contributor is taken to have worked during the relevant period.

**H** is the number of hours per shift regularly required to be worked in relevant shifts during the relevant period.

**H<sub>0</sub>** is the smallest number of hours per shift regularly required to be worked (whether by the contributor or any comparable worker) in relevant shifts during any calendar year after 1987, including the relevant period.

**S** is the sum of:

- (a) the number of relevant shifts the contributor actually worked during the relevant period, and
- (b) the number of relevant shifts the contributor would have actually worked during the relevant period but for the contributor being on leave, being leave for which a shift allowance or an equivalent allowance or loading (including that part of annualised salary that replaces shift allowance in respect of the contributor) is paid.

## **6 Minimum amount for election to defer benefit**

The amount prescribed for the purposes of section 43 (1) and (1A) of the Act is \$500.

### **Note—**

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

## **7 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 17 provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

## **Part 3 Benefit reduction provisions**

### **Division 1 Benefit reductions relating to tax liabilities**

#### **8 Definitions**

In this Part:

***continuous contributory service***, in relation to a contributor, means the period beginning with the contributor's entry date and ending with the contributor's exit date.

***taxable date*** means the date on which STC first becomes or became liable to pay income tax under a Commonwealth taxation law in respect of employers' contributions to the Fund.

#### **9 Prescription of benefits**

- (1) Subject to subclause (2), the kinds of benefits prescribed for the purposes of section 45A of the Act (but limited to the matters referred to in subsection (2) of that section) are the benefits provided by section 37, 39, 40, 41, 42 or 43 of the Act.
- (2) A benefit arising as the result of the death of a person may be reduced by STC to offset tax liabilities of the Fund only as provided by clause 15.

**Note—**

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

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

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

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

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

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

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

## 10 Reduction for section 37 of Act

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

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

where:

**R** represents the amount of the reduction.

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

**B** represents the period in days of continuous contributory service that began on the taxable date.

**C** represents the period in days of continuous contributory service for the contributor.

**F** represents the contributor's final average salary.

### Note—

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

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

## 11 Reduction for sections 39 and 40 of Act

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

accordance with the formula set out in subclause (2).

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

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

where:

**R** represents the amount of the reduction.

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

**B** represents the period in days of continuous contributory service that began on the taxable date.

**C** represents the period in days of continuous contributory service for the contributor.

**S** represents the contributor's final salary.

**Note—**

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

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

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

## **12 Reduction for section 41 of Act**

(1) If:

(a) a benefit becomes payable under section 41 of the Act, and

(b) the contributor's period of continuous contributory service is 10 years or more,

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

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

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

where:

**R** represents the amount of the reduction.

**T** represents the period (expressed in years, with any fractional part of a year being

calculated on the basis of complete contribution periods) that commenced on the taxable date or the contributor's entry date (whichever last occurred) and ended on the contributor's exit date.

**C** represents the amount of the contributor-financed benefit payable under section 41 (2) (a) of the Act.

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

**Y** represents the number ascertained by adding together all of the contributor's contributed points figures calculated in relation to the contributor for the applicable contribution periods for the contributor.

- (3) A benefit payable under section 41 of the Act is not to be reduced if the contributor's period of continuous contributory service is less than 10 years.

**Note—**

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

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

### 13 Reduction for section 42 of Act

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

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

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

where:

**R** represents the amount of the reduction.

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

**B** represents the period in days of continuous contributory service that began on the taxable date.

**C** represents the period in days of continuous contributory service for the contributor.

**S** represents the contributor's final salary.

**Note—**

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

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

#### 14 Reduction for section 43 of Act

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

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

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

where:

**R** represents the amount of the reduction.

**A** represents the accrued benefit points for the contributor at the contributor's exit date.

**B** represents the period in days of continuous contributory service that began on the taxable date.

**C** represents the period in days of continuous contributory service for the contributor.

**F** represents the contributor's final average salary.

**K** represents the discount factor determined by STC for the purposes of section 43 (6) (b) of the Act.

**n** represents the period between the contributor's age at his or her exit date and the early retirement age, the period being expressed in years with any fractional part of a year being calculated on the basis of complete contribution periods.

#### Note—

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

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

#### 15 Transferred contributors: reduction of benefits

(1) If a transferred contributor referred to in the *State Authorities Superannuation (Transitional Provisions) Regulation 1988*, or any other person, having a right to do so, elects under clause 38 of that Regulation, to take a pension benefit, then, subject to subclause (3), the reduction in benefit prescribed for the purposes of section 45A of

the Act (but limited to the matters referred to in subsection (2) of that section) is the amount calculated in accordance with the formula set out in subclause (2).

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

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

where:

**R** represents the amount of the reduction.

**B** represents the period in days of continuous contributory service that began on the taxable date.

**C** represents the period in days of continuous contributory service for the transferred contributor concerned.

**P** represents:

- (a) the proportion of the pension that is attributable to accrued benefit points and that, but for this clause, would be payable under clause 40, 41, 42 or 43 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* to that transferred contributor, or
- (b) if that transferred contributor has died—the proportion of the pension that is attributable to accrued benefit points and that, but for this clause, would be payable under clause 44 of that Regulation to the spouse or de facto partner of that contributor.

(3) If, in accordance with clause 38 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988*, the transferred contributor or other person referred to in subclause (1) elects to convert to a pension benefit only a portion of the benefit points of the transferred contributor, the benefit to be derived from the benefit points remaining after conversion is subject to reduction in accordance with the relevant provisions of this Part that apply to that benefit.

(4) If the benefit of a transferred contributor within the meaning of the *State Authorities Superannuation (State Public Service Superannuation Scheme Transfer) (Savings and Transitional) Regulation 1989* is required to be reduced in accordance with a formula set out in clause 10, 11, 13 or 14 of this Regulation, the multiple “0.025” specified in the formula is, in relation to the contributor, to be read as the multiple “0.03”.

**Note—**

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

Clause 40 of the *State Authorities Superannuation (Transitional Provisions) Regulation 1988* sets out the formula

for calculating the pension payable to a transferred contributor (as so defined) who elects to take a pension benefit provided by that clause. (The pension is a normal employer-financed pension without reversion.)

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

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

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

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

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

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

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

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

#### **17 Further reduction of certain benefits resulting from liability for superannuation contributions surcharge: section 45A (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 equal to the reduction amount to the former contributor or to 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 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.

#### **18 Limitation on payment of penalty interest**

Clauses 7 and 17 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.

#### **19 Surcharge deduction amount**

For the purposes of section 45A (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.
- (d) (Repealed)



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

### **20 Application of Division**

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

- (a) a benefit under section 37 (Benefit at or after early retirement or on death at or after early retirement age),
- (b) a benefit under section 38 (Benefit on death before early retirement age),
- (c) a benefit under section 39 (Benefit on total and permanent invalidity before early retirement age),
- (d) a benefit under section 40 (Benefit on partial and permanent invalidity before early retirement age),
- (e) a benefit under section 41 (Benefit on resignation, dismissal or discharge before early retirement age),
- (f) a benefit under section 42 (Benefit on retrenchment before early retirement age),
- (g) a benefit under section 42AB (Compulsory preservation of benefits after changeover day),
- (h) a deferred benefit.

### **21 Reduction of benefits**

- (1) This clause applies to the reduction of benefits payable under the Act to or in respect of a contributor or former contributor (other than a benefit payable under section 43B or 43C of the Act) to whom a benefit has been previously released on the grounds of the contributor's or former contributor's severe financial hardship or on compassionate grounds.
- (2) If a benefit is released to a former contributor who has provided for a deferred benefit, STC must, on and from the date of the release, reduce the amount of the deferred benefit by the amount of benefit released. The amount of benefit payable when the deferred benefit is payable is to be reduced accordingly.
- (3) In any other case, STC must create a debt account in the Fund in respect of the contributor and must when a benefit is payable reduce the benefit that is payable by the amount debited to the debt account at the time the benefit is payable.
- (4) Despite subclause (3), if a contributor provides for a deferred benefit under the Act after the release of a benefit to the contributor concerned and before a benefit is otherwise payable, STC must, on and from the date the benefit is deferred, calculate

the amount of benefit deferred and reduce that amount by the amount debited to the debt account at the time the benefit is deferred. The amount of benefit payable when the deferred benefit is payable is to be reduced accordingly.

- (5) The amount debited to the debt account is to be the amount of benefit released together with interest on that amount at a rate determined by STC.
- (6) STC may obtain actuarial advice for the purpose of determining the amount of a reduced benefit.

## **22 Consent to benefit reduction**

Before releasing a benefit on the grounds 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.

## **23 Release of benefits during transitional period**

- (1) This clause applies to the release of a benefit to a contributor or former contributor on the grounds of severe financial hardship or on compassionate grounds during the transitional period if:
  - (a) the release was not inconsistent with section 43B or 43C of the Act, as amended by the [Superannuation Legislation Amendment Act 2000](#), and
  - (b) STC obtained the written consent of the contributor or former contributor to the reduction of benefits as a consequence of the early release.
- (2) Clauses 20 and 21 apply in respect of a release of benefit to which this clause applies in the same way as they apply to a release of benefit after the commencement of those clauses.
- (3) In this clause:

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

## **Part 3A Family law provisions**

### **23A Interpretation**

- (1) In this Part:

**approved valuation method** means Part 7 of Schedule 2 to the [Family Law \(Superannuation\) \(Methods and Factors for Valuing Particular Superannuation Interests\) Approval 2003](#) made under the [Family Law \(Superannuation\) Regulations 2001](#) of the Commonwealth.

**contributor** includes a former contributor.

- (2) Words and expressions used in this Part have the same meanings as they have in Part 5AA of the Act.

### **23B Application to other schemes**

Without limiting section 45G of the Act, this Part applies to persons referred to in section 45G (1) of the Act in the same way as it applies to contributors.

### **23C Valuation of superannuation interests**

- (1) This clause applies for the purposes of Part 5AA of the Act and the family law superannuation legislation.
- (2) The value of a superannuation interest of a contributor is to be determined in accordance with the approved valuation method.

### **23D Notice to contributor and non-contributor spouse when entitlement becomes payable**

- (1) If a superannuation interest of a contributor becomes subject to a payment split, STC must notify the contributor and the non-contributor spouse in relation to the interest, in writing, that the interest is subject to a payment split.
- (2) The notice must be given:
  - (a) in the case of a payment split under a superannuation agreement or flag lifting agreement—within 28 days after the operative time for the payment split, or
  - (b) in the case of a payment split under a splitting order—within 28 days after the operative time for the payment split or after STC receives a copy of the order (whichever is the later).
- (3) The notice given to the contributor must:
  - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
  - (b) specify the period within which payment of that entitlement is to be made, and
  - (c) specify the estimated effect of the payment on the entitlement of the contributor under the State Authorities Superannuation Scheme.
- (4) The notice given to the non-contributor spouse must:
  - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
  - (b) specify the circumstances in which the amount may be paid or released to the non-contributor spouse or must be transferred or rolled over to a complying

superannuation fund or an RSA, and

- (c) require the non-contributor spouse to nominate, within 28 days, whether the non-contributor spouse meets a circumstance for payment or release or, if not, to nominate a complying superannuation fund or an RSA to which the amount is to be paid, and
  - (d) specify that the amount will be credited to the First State Superannuation Fund if the nomination is not made within that period.
- (5) For the purposes of section 45I (5) (b) of the Act, the prescribed period within which a nomination must be made is 28 days after the giving of the notice under this clause.
- (6) STC is not required to give the notice if the superannuation interest ceases to be subject to a payment split within the notice period.

### **23E Payment of family law superannuation entitlements**

- (1) If the amount of a family law superannuation entitlement is to be paid or released to a non-contributor spouse, the amount must be paid or released by STC when, or as soon as practicable after, a nomination is received under clause 23D (4).
- (2) If the amount of a family law superannuation entitlement is to be transferred or rolled over, the amount must be transferred or rolled over:
  - (a) to a complying superannuation fund or RSA nominated under this Part within 90 days of the nomination being made, or
  - (b) if no nomination is made within the period prescribed by this Part, to the First State Superannuation Fund within 90 days of the end of the period.
- (3) Nothing in subclause (2) (b) prevents STC from transferring or rolling over the amount of a family law superannuation entitlement to a complying superannuation fund or RSA if a nomination is made by a non-contributor spouse after the end of the period referred to in clause 23D (5).
- (4) STC must give to the contributor, within 28 days after an amount of family law superannuation entitlement is paid or released or transferred or rolled over, a notice in writing stating:
  - (a) that the amount has been paid, released, transferred or rolled over, and
  - (b) the amount paid, released, transferred or rolled over and how it was calculated, and
  - (c) the estimated amount of adjustment made to the benefit of the contributor.
- (5) STC must give to the non-contributor spouse, within 28 days after an amount of family law superannuation entitlement is paid or released or transferred or rolled over, a

notice in writing stating:

- (a) that the amount has been paid, released, transferred or rolled over, and
- (b) the amount paid, released, transferred or rolled over and how it was calculated, and
- (c) the name and contact details of the superannuation fund or RSA, if any, to which the amount was transferred or rolled over.

**Note—**

Under regulation 59 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, STC may charge reasonable fees in respect of payment splits, payment flags, flag lifting and other related matters. Such fees are payable in equal parts by the contributor and the non-contributor spouse.

**23F Reduction of benefits of contributors**

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-contributor spouse is paid, released, transferred or rolled over under Part 5AA of the Act (a **family law superannuation payment** is made).
- (2) An employer financed benefit payable to the contributor (including a benefit deferred or transferred under the Act) is to be reduced in accordance with this clause at the time it is paid to the contributor or transferred.
- (3) A contributor financed benefit payable to the contributor (including a benefit deferred or transferred under the Act) is to be reduced in accordance with this clause when the superannuation entitlement of the non-contributor spouse is paid, released, transferred or rolled over.

- (4) The amount of the reduced employer financed benefit is to be calculated as follows:

$$r = v \times (1 - A \times C)$$

where:

**r** is the amount of the reduced benefit.

**v** is the amount of the benefit that would have been payable to the contributor if the family law superannuation payment had not been made.

**A** is the ratio of the amount paid in respect of the non-contributor spouse to the value of the benefit of the contributor when the payment split occurred.

**C** is the ratio of the benefit accrual when the payment split occurred to the benefit accrual when the benefit is payable or deferred or transferred (as the case requires).

- (5) If family law superannuation payments are made in respect of more than one spouse of the contributor, the amount of the reduced employer financed benefit is to be

calculated by applying to the amount of the benefit payable (as referred to in subclause (4)) the reduction factor for each family law superannuation payment. Each reduction factor is to be calculated as follows:

$$f = 1 - A \times C$$

where:

**f** is the reduction factor.

**A** and **C** have the same meanings as in subclause (4).

(6) The amount of the reduced contributor financed benefit is to be calculated as follows:

$$r = v \times (1 - A)$$

where:

**r** is the amount of the reduced benefit.

**v** is the amount of the benefit that would have been payable to the contributor if the family law superannuation payment had not been made.

**A** is the ratio of the amount paid in respect of the non-contributor spouse to the value of the benefit of the contributor when the payment split occurred.

(7) In this clause:

**benefit accrual** at any point in time means the benefit accrual as at that time as determined by STC on actuarial advice.

**value of a benefit** means the value of the benefit as determined by STC on actuarial advice.

### **23G Effect of benefit reductions on other benefits**

- (1) STC may commute part of a pension payable to a person referred to in section 45G (1) of the Act for the purposes of payment of the family law superannuation entitlement of the person's spouse and the amount of the pension is to be reduced in accordance with clause 23F.
- (2) Any benefit payable under the Act to a person on the death of a contributor whose benefit has been, or is to be, reduced as a result of a family law superannuation payment is to be based on the amount of the benefit as so reduced.
- (3) Nothing in this Part affects any other right of a person to commute a pension.

### **23H Transitional provisions relating to existing family law superannuation entitlements**

- (1) This clause applies to a family law superannuation entitlement that arose under a

superannuation agreement, flag lifting agreement or splitting order in force before the commencement of this Part (an **existing entitlement**).

- (2) If an existing entitlement consists of an interest that is not able to be calculated until a benefit becomes payable to a contributor or other person, it is taken to be operative for the purposes of section 45I of the Act when the benefit becomes so payable.
- (3) For the purposes of the application of clause 23D to an existing entitlement, a nomination under clause 23D must be given by a non-contributor spouse within 3 months of being given notice under that clause.

### **23I Transitional provision relating to all family law superannuation entitlements**

Clause 23D (2) does not apply in respect of a family law superannuation entitlement until 6 months after the commencement of this Part.

## **Part 4 Firefighters award**

### **24 Meaning of “permanent firefighter” and “retained firefighter”**

In this Part:

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

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

### **25 Prescription of firefighters award**

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

### **26 Provision of information**

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

### **27 Existing firefighters may no longer apply for cover for additional benefit**

- (1) This clause applies to an employee who was a permanent firefighter on 27 June 2003 and who had not, before that date, had an application for additional benefit cover approved under section 22 of the Act.
- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to be covered for the additional benefit while employed as a permanent firefighter.

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

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

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

- (1) This clause applies to an employee who was not a permanent firefighter immediately before 27 June 2003 and who had not had an application for additional benefit cover approved under section 22 of the Act at the time of commencing employment as a permanent firefighter.
- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to elect to be covered for the additional benefit while employed as a permanent firefighter.

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

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

## **Part 4A Police officers award**



### **30A Definitions**

In this Part:

**2005 police officers award** means the *Crown Employees (Police Officers Death and Disability) Award 2005*.

**FTC** means the FSS Trustee Corporation.

### **30B Prescription of police officers award**

For the purposes of the definition of **police officers award** in section 46A1 of the Act, the 2005 police officers award is prescribed.

### **30C Provision of information**

For the purposes of complying with or giving effect to the 2005 police officers award, and only with the consent of the relevant employee, STC may provide to the NSW Police Force or the FTC information about the employee obtained in the administration of the Act.

### **30D Existing police officers may no longer apply for cover for additional benefit**

- (1) This clause applies to an employee who was a police officer on 30 January 2006 and who had not, before that date, had an application for additional benefit cover approved under section 22 of the Act.
- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to be covered for the additional benefit while employed as a police officer.

### **30E Existing police officers who elect to relinquish cover for additional benefit**

- (1) This clause applies to a person who was a police officer on 30 January 2006 and who elects to relinquish cover for the additional benefit on or before 31 March 2006.
- (2) Despite section 22 of the Act, if this clause applies:
  - (a) the police officer ceases to be liable to pay the additional benefit levy in relation to any subsequent period during which the police officer is not covered, and
  - (b) STC must effect the cessation of the additional benefit cover of the person on and from 31 March 2006, and
  - (c) the police officer is not entitled to be covered for the additional benefit while employed as a police officer.

### **30F New police officer employees covered for additional benefit**

- (1) This clause applies to an employee who was not a police officer immediately before 30 January 2006 and who had not had an application for additional benefit cover approved under section 22 of the Act at the time of commencing employment as a

police officer.

- (2) Despite section 20 of the Act, a person to whom this clause applies is not entitled to elect to be covered for the additional benefit while employed as a police officer.

## **Part 5 Miscellaneous**

### **31 Savings provision**

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

### **32 Validation of shift loading determinations**

Anything done or omitted to be done, on or after 1 March 1999, that would have been validly done or omitted had clause 5 (6), as amended by Schedule 1 [1] to the *State Authorities Superannuation Amendment (Shift Allowance Loading) Regulation 2005*, been in force (under this Regulation, the *State Authorities Superannuation Regulation 2000* or the *State Authorities Superannuation Regulation 1995*) at the time that the thing was done or omitted, is validated.