



New South Wales

# State Authorities Non-contributory Superannuation Regulation 2010

under the

State Authorities Non-contributory Superannuation Act 1987

Her Excellency the Governor, on a certificate given under section 34 (2) of the *State Authorities Non-contributory Superannuation Act 1987*, with the advice of the Executive Council, has made the following Regulation under the *State Authorities Non-contributory Superannuation Act 1987*.

MICHAEL DALEY, MP  
Minister for Finance

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *State Authorities Non-contributory Superannuation Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the reduction of benefits in order to offset certain tax liabilities,
- (b) the reduction of benefits payable in respect of employees to whom benefits have been released on the grounds of severe financial hardship or on compassionate grounds,
- (c) the making of family law superannuation payments in respect of spouses or former spouses of employees,
- (d) the treatment of shift allowance loading as part of an employee's salary,
- (e) determining the eligible service of employees,
- (f) death or incapacity benefits for firefighters,
- (g) savings, transitional and formal matters.

This Regulation is made under the *State Authorities Non-contributory Superannuation Act 1987*, including sections 4 (1) (a) (i), 22 (3), 23B, 26A (2) (a) and (b), 27AJ (5), 27AK (3), 27AL and 34 (the general regulation-making power) and clause 1 (1) of Schedule 5.

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This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature, matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## 2010 No 490

Clause 1 State Authorities Non-contributory Superannuation Regulation 2010

Part 1 Preliminary

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# State Authorities Non-contributory Superannuation Regulation 2010

under the

State Authorities Non-contributory Superannuation Act 1987

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *State Authorities Non-contributory Superannuation Regulation 2010*.

### 2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *State Authorities Non-contributory Superannuation Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

(1) In this Regulation:

*the Act* means the *State Authorities Non-contributory Superannuation Act 1987*.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Benefit reduction provisions

### Division 1 General

#### 4 Definitions

In this Part:

*final average salary* and *final salary* have the same meaning as they have in Part 4 of the Act.

*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.

**Note.** By way of example only, the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* of the Commonwealth are Commonwealth taxation laws for the purposes of this clause.

#### 5 Prescription of benefits

- (1) For the purposes of section 26A (2) (a) of the Act, the kinds of benefits prescribed for the purposes of section 26A of the Act are the benefits provided by sections 22, 24 and 26E of the Act.
- (2) The benefits referred to in subclause (1) do not include a benefit payable as a result of the death of an employee.

#### 6 Reduction of basic benefit

- (1) For the purposes of section 26A (2) (b) of the Act, the formula set out in subclause (2) is prescribed as the method of calculating a reduction for the purposes of section 26A whenever the basic benefit:
  - (a) is payable under section 23 of the Act in respect of an employee, or
  - (b) is preserved in respect of an employee in accordance with section 24 of the Act.
- (2) For the purposes of subclause (1), the formula is:

$$R = 0.03 \times F \times Z \times 0.15$$

where:

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

**F** represents:

- (a) in the case of the employee's resignation or retirement—the employee's final average salary, or
- (b) in any other case—the employee's final salary.

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Part 2 Benefit reduction provisions

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*Z* represents the employee's years of eligible service calculated on a daily basis, commencing on or after the taxable date.

- (3) This clause does not apply if the basic benefit is payable as a result of the death of a person who was, immediately before death, an employee.

### 7 Reduction of deferred accrued benefit

- (1) For the purposes of section 26A (2) (b) of the Act, the formula set out in subclause (2) is prescribed as the method of calculating a reduction for the purposes of section 26A whenever a deferred accrued benefit:
- (a) is payable in respect of an employee, or
  - (b) is preserved in accordance with section 26F of the Act in respect of an employee.
- (2) For the purposes of subclause (1), the formula is:

$$R = 0.03 \times F \times Z \times 0.15$$

where:

*R* represents the amount of the reduction.

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

*Z* represents the employee's years of eligible service calculated on a daily basis, during the period commencing on the taxable date and ending on 30 June 1992.

- (3) This clause does not apply if the deferred accrued benefit is payable in consequence of the death of a person who was, immediately before death, an employee.

## Division 2 Reductions relating to early release of benefits

### 8 Application of Division

A benefit under section 22, 24 or 26E of the Act may be the subject of a reduction under this Division.

### 9 Reduction of benefits

- (1) For the purposes of section 23B of the Act, this clause applies to the reduction of benefits payable under the Act to or in respect of an employee or former employee to whom a benefit has been previously released on the grounds of the employee's or former employee's severe financial hardship or on compassionate grounds.
- (2) If a benefit is released to a former employee who had preserved the basic benefit, STC must, on and from the date of the release, calculate the amount of the preserved basic benefit and reduce that amount by the

amount of benefit released. The amount of benefit payable when the benefit preserved is payable is to be reduced accordingly.

- (3) In any other case, STC must create a debt account in respect of the employee or former employee and must when a benefit is payable reduce the benefit that is payable by the amount debited to the debt account at the time the benefit is payable.
- (4) Despite subclause (3), if a benefit is preserved under the Act after the release of a benefit and before a benefit is otherwise payable, STC must, on and from the date the benefit is preserved, calculate the amount of benefit preserved and reduce that amount by the amount debited to the debt account at the time the benefit is preserved. The amount of benefit payable when the benefit provided for or preserved is payable is to be reduced accordingly.
- (5) The amount debited to the debt account is to be the amount of benefit released together with interest on that amount at a rate determined by STC.
- (6) STC may obtain actuarial advice for the purpose of determining the amount of a reduced benefit.

#### **10 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 employee or former employee to the reduction of benefits as a consequence of the early release.

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Part 3 Family law provisions

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### Part 3 Family law provisions

#### 11 Definitions

- (1) In this Part:
  - approved valuation method* means Part 9 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.
  - deferred benefit* means a benefit preserved under section 24 of the Act.
  - employee* includes a former employee.
- (2) Words and expressions used in this Part have the same meanings as they have in Part 4D of the Act.

#### 12 Valuation of superannuation interests

For the purposes of Part 4D of the Act and the family law superannuation legislation, the value of a superannuation interest of an employee is to be determined in accordance with the approved valuation method.

#### 13 Notice when entitlement becomes payable

- (1) If a superannuation interest of an employee becomes subject to a payment split, STC must notify the employee and the non-employee 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 employee must:
  - (a) specify the estimated amount of the entitlement of the non-employee 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 employee under the State Authorities Non-contributory Superannuation Scheme.

- (4) The notice given to the non-employee spouse must:
- (a) specify the estimated amount of the entitlement of the non-employee spouse and how it was calculated, and
  - (b) specify the circumstances in which the amount may be paid or released to the non-employee spouse or must be transferred or rolled over to a complying superannuation fund or an RSA, and
  - (c) require the non-employee spouse to nominate, within 28 days, whether the non-employee 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 27AJ (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.

#### **14 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-employee spouse, the amount must be paid or released by STC when, or as soon as practicable after, a nomination is received under clause 13 (4) (c).
- (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-employee spouse after the end of the period referred to in clause 13 (5).

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Part 3 Family law provisions

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- (4) STC must give to the employee, 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 employee.
- (5) STC must give to the non-employee 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 employee and the non-employee spouse.

### 15 Reduction of benefits of employees

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-employee spouse is paid, released, transferred or rolled over under Part 4D of the Act (a ***family law superannuation payment*** is made).
- (2) A benefit payable to the employee (including a benefit transferred under the Act), other than a deferred benefit, is to be reduced in accordance with this clause at the time it is paid to the contributor or transferred.
- (3) A deferred benefit of the employee is to be reduced in accordance with this clause:
  - (a) if the benefit was preserved before the superannuation entitlement of the non-employee spouse was paid, released, transferred or rolled over, at the time the entitlement is paid, released, transferred or rolled over, or
  - (b) in any other case, when the benefit is preserved.

- (4) The amount of the reduced 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 employee if the family law superannuation payment had not been made.

$A$  is the ratio of the amount paid in respect of the non-employee spouse to the value of the benefit of the employee 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 employee, the amount of the reduced benefit (other than a deferred 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) 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.

## 16 Effect of benefit reductions on pensions and other benefits

Any benefit payable under the Act to a person on the death of an employee 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.

## 17 Transitional—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

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Part 3 Family law provisions

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splitting order in force before 19 December 2008 (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 an employee or other person, the entitlement is taken to be operative for the purposes of section 27AJ of the Act when the benefit becomes so payable.
- (3) For the purposes of the application of clause 13 to an existing entitlement, a nomination under clause 13 must be given by a non-employee spouse within 3 months of being given notice under that clause.

## Part 4 Miscellaneous

### 18 Determination of loading in respect of shift allowance

(1) In this clause:

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

**relevant period**, in relation to an employee, means the period of 12 months ending with 31 December immediately preceding the date on which the salary of the employee 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 *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

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

(3) If:

- (a) there is in force an agreement between, or a practice accepted by, a trade union and the employer of an employee 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 employee as shift allowances for relevant shifts that the employee works 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 employee,

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

(4) Subject to subclauses (3) and (5), if an employee is paid shift allowances for shifts worked by the employee during a relevant period, then, for the purposes of section 4 (1) (a) (i) of the Act, the employee's

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loading for those allowances is to be determined by reference to the number of relevant shifts the employee 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 employee is taken to have worked not more than 104 relevant shifts—no amount, or
  - (b) if during the relevant period the employee is taken to have worked more than 104 but not more than 156 relevant shifts—an amount equal to 10 per cent of the employee's base salary for that period, or
  - (c) if during the relevant period the employee is taken to have worked more than 156 but not more than 208 relevant shifts—an amount equal to 15 per cent of the employee's base salary for that period, or
  - (d) if during the relevant period the employee is taken to have worked more than 208 relevant shifts—an amount equal to 20 per cent of the employee's base salary for that period.
- (5) If the amounts actually paid or payable to an employee as shift allowances for shifts that the employee has worked during a relevant period are less than the loading determined for that period in respect of the employee in accordance with subclause (4), then, for the purposes of section 4 (1) (a) (i) of the Act, the total of those amounts is the employee's loading for those allowances.
- (6) For the purposes of subclause (4), the number of relevant shifts an employee 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 employee 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 employee 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 employee actually worked during the relevant period, and

- (b) the number of relevant shifts the employee would have actually worked during the relevant period but for the employee 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 employee) is paid.

#### 19 Determination of eligible service

- (1) For the purposes of section 22 (3) of the Act, the eligible service accrued by an employee for any day is such proportion of a day as is equal to the salary ratio of the employee on that day.
- (2) An employee who is on leave without pay that is not prescribed leave has a salary ratio of 0 in respect of that leave.
- (3) A continuous period of leave without pay is not to be regarded as leave without pay for the purposes of this clause if the period is not prescribed leave and the period is 5 days or less.
- (4) For the purposes this clause:

***leave without pay***, in relation to an employee, means a period of leave from employment with an employer (otherwise than on secondment as referred to in section 4 of the Act) during which the employee is not entitled to receive payment of salary from the employer.

***prescribed leave***, in relation to an employee, means leave without pay during which the employee on leave is absent from employment with an employer:

- (a) because of a grant of sick leave, or
- (b) for a period during which the employee receives periodic payments under an Act providing compensation for workers' injuries, or
- (c) because of a grant of maternity leave, or
- (d) under an agreement with the employer for the secondment of the employee to employment that is not employment with a person who is not an employer within the meaning of the Act, or
- (e) for the purpose of enabling the employee to perform trade union duties unless, in a particular case, the employer certifies to STC in writing that this paragraph is not to apply, or
- (f) for the purpose of enabling the employee to perform duties that the employer certifies to STC in writing to be in the interests of the employer or the State, or
- (g) while on service with the naval, military or air forces of the Commonwealth, or

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Clause 20 State Authorities Non-contributory Superannuation Regulation 2010

Part 4 Miscellaneous

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- (h) in other circumstances decided by STC for the purposes of this clause.

### 20 Death or incapacity benefits for firefighters

- (1) In this clause:  
*2003 firefighters award* means the *Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2003*.
- (2) For the purposes of the definition of *firefighters award* in section 27AE of the Act, the 2003 firefighters award is prescribed.
- (3) 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 obtained about the employee in the administration of the Act.
- (4) STC must, for the purposes of complying with or giving effect to the 2003 firefighters award, transfer to the Death and Disability Superannuation Fund the amount required as an offset under the 2003 firefighters award.
- (5) However, that amount must not be transferred unless the firefighter concerned has consented to the transfer.

### 21 Savings

Any act, matter or thing that, immediately before the repeal of the *State Authorities Non-contributory Superannuation Regulation 2005* had effect under that Regulation continues to have effect under this Regulation.