



New South Wales

Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2004

under the

Superannuation Act 1916

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Superannuation Act 1916*.

JOHN DELLA BOSCA, M.L.C.,
Special Minister of State

Explanatory note

Under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth, superannuation contributions surcharge may be payable to the Commissioner of Taxation in respect of employer contributions paid to the State Superannuation Fund on behalf of a contributor. Before a superannuation benefit is paid, the SAS Trustee Corporation is required to deduct from the benefit an amount to offset the surcharge that may be payable. The maximum amount that may be deducted is capped (the “surcharge deduction cap”).

The object of this Regulation is to amend the *Superannuation Regulation 2001*:

- (a) to limit the liability of a former contributor for superannuation contributions surcharge arising from assessments made after benefits have commenced to be paid or been paid to the former contributor and that is additional to the amount already offset, and
- (b) to prescribe the maximum surcharge deduction amounts that may be determined by the SAS Trustee Corporation in respect of certain periods when benefits payable to members accrued so that the maximum amounts will be in line with maximum surcharge rates being charged or to be phased in by the Commonwealth for those periods.

The Regulation sets out the circumstances in which the SAS Trustee Corporation may reimburse a former contributor for additional superannuation contributions surcharge paid by the former contributor to the Commissioner of Taxation or, at the request of the

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former contributor, pay additional surcharge to the Commissioner on behalf of the former contributor.

The Regulation also enables the SAS Trustee Corporation to reduce the benefit paid to the former contributor to offset additional superannuation contributions surcharge payable by the former contributor.

This Regulation is made under the *Superannuation Act 1916*, including sections 61RA (1C) and (5)–(7) and 86 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2003*.

2 Commencement

- (1) This Regulation commences on the day it is published in the Gazette, except as provided by subclause (2).
- (2) Schedule 1 [4] commences on 1 October 2004.

3 Amendment of Superannuation Regulation 2001

The *Superannuation Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

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 (on or after the commencement of clause 10 of this Regulation) 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 61RA of the Act.

surcharge deduction cap means the maximum surcharge deduction amount that may be determined by STC under section 61RA (1C) of the Act in relation to a benefit payable to a former contributor.

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 contributor.

[2] Clause 7A

Insert after clause 7:

7A Further reduction of certain benefits resulting from liability for superannuation contributions surcharge: section 61RA (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 that is equal to the reduction amount to the former contributor or 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.

[3] Part 3

Insert after clause 9:

Part 3 Miscellaneous**10 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 7A provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

11 Limitation on payment of penalty interest

Clauses 7A and 10 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.

[4] Clause 12

Insert after clause 11:

12 Surcharge deduction amount

For the purposes of section 61RA (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 13.5% 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, and
- (d) 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 2005.