



New South Wales

# **Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1999**

under the

Superannuation Administration Act 1996

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Superannuation Administration Act 1996*.

MICHAEL RUEBEN EGAN, M.L.C.,

Treasurer

## **Explanatory note**

The object of this Regulation is to provide for a degree of membership mobility to and from the local government superannuation scheme and public sector superannuation schemes, as envisaged by section 128A of the *Superannuation Administration Act 1996*.

Since the establishment of the local government superannuation scheme on 1 July 1997, it has been impossible for persons who transferred employment from the public sector to the local government sector on that day to rejoin any defined-benefit public sector scheme, if they transfer back to the public sector. This Regulation amends the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997* to enable:

- (a) movement of members from a public sector defined-benefits scheme (that is, the State Superannuation Scheme, the State Authorities Superannuation Scheme or the State Authorities Non-contributory Superannuation Scheme) to equivalent defined-benefit divisions of the local government

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superannuation scheme in the event that such members secure employment, in the prescribed circumstances, with employers responsible for contributing to the payment of benefits under that scheme, and

- (b) movement of members from defined-benefit divisions of the local government superannuation scheme (all of whom were previously members of a public sector defined-benefit scheme) to a public sector defined-benefit scheme in the event that such members secure employment, in the prescribed circumstances, with employers associated with those public sector schemes.

Provision is made requiring the existing rights of members to their accrued or preserved benefits, and their rights to accrue defined benefits on an ongoing basis, to be re-established in the scheme to which they transfer, in accordance with the rules of that scheme. Provision is also made as to appeal rights relating to any existing disputes and disputes arising as a result of the transfer process. Appeals relating to matters arising under the transferor superannuation scheme, including matters relating to determinations under the proposed provisions and payments on transfer are to be dealt with under the transferor scheme. Appeals relating to matters arising under the transferee superannuation scheme, including determinations as to rights on transfer, are to be dealt with under the transferee superannuation scheme.

Consequential amendments are also made.

The transfer option is conferred on employees whose transfer of employment takes place on or after 1 July 1997.

This Regulation is made under section 128A of the *Superannuation Administration Act 1996* (inserted by the *Superannuation Legislation Further Amendment Act 1998*) and section 129 of that Act (the general regulation-making power).

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## **Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1999**

### **1 Name of Regulation**

This Regulation is the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment Regulation 1999*.

### **2 Commencement**

This Regulation commences on 1 October 1999.

### **3 Amendment of Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997**

The *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997* is amended as set out in Schedule 1.

### **4 Notes**

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 3)

**[1] Clause 13 Effect of transfers**

Omit "Regulation" from clause 13 (1).  
Insert instead "Part".

**[2] Clause 13 (2)**

Omit "regulation". Insert instead "Part".

**[3] Clause 16 Transfer of assets to LGSS**

Insert "and transferred under Part 2" after "local government superannuation scheme" where secondly occurring in clause 16 (1).

**[4] Part 5**

Insert after Part 4:

### Part 5 Mobility between schemes

#### Division 1 Preliminary

##### 19 Definitions

In this Regulation:

*appointed day* means 1 October 1999.

*election* means an election under Division 4 to exercise a transfer option referred to in section 128A of the Act.

*STC employer* means an employer responsible for making contributions under a superannuation scheme of which STC is trustee.

*transferee scheme* means the superannuation scheme to which a person elects to transfer in accordance with this Part.

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*transferor scheme* means the superannuation scheme from which a person elects to transfer in accordance with this Part.

## Division 2 Eligibility to exercise transfer option

### 20 Relevant public sector employment

- (1) For the purposes of section 128A (2) (a) of the Act, a prescribed public sector employer is an employer listed in Schedule 3 to the *Superannuation Act 1916* or in Schedule 1 to the *State Authorities Superannuation Act 1987*.
- (2) For the purposes of section 128A (3) (b) of the Act, a prescribed public sector employer is an employer:
  - (a) listed in Schedule 3 to the *Superannuation Act 1916* or in Schedule 1 to the *State Authorities Superannuation Act 1987*, and
  - (b) that is responsible for making contributions under an STC scheme of which the employee concerned was previously a member or to which the employee concerned previously contributed.

**Note.** Subsections (2) and (3) of section 128A of the Act limit the transfer option available under that section to a class of employees who are employed by a “prescribed public sector employer”.

### 21 Eligible employees and contributors

The following persons are eligible to exercise a transfer option:

- (a) a *Category 1 elector*—that is, a person who, on the appointed day, was a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme and who, in accordance with clause 23, is taken to have transferred employment,
- (b) a *Category 2 elector*—a person who, on the appointed day, was a contributor to Division B or D of the local government superannuation scheme and who, in accordance with clause 24, is taken to have transferred employment,

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- (c) a **Category 3 elector**—a person who, on the appointed day, held deferred benefits in both the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme in relation to the same period of employment and who, in accordance with clause 25, is taken to have transferred employment,
- (d) a **Category 4 elector**—a person who, on the appointed day, held deferred benefits in both the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme in relation to the same period of employment and who, in accordance with clause 26, is taken to have transferred employment,
- (e) a **Category 5 elector**—a person who, on the appointed day, held deferred benefits in each of Divisions B and C of the local government superannuation scheme in relation to the same period of employment and who, in accordance with clause 27, is taken to have transferred employment,
- (f) a **Category 6 elector**—a person who, on the appointed day, held deferred benefits in each of Divisions C and D of the local government superannuation scheme in relation to the same period of employment and who, in accordance with clause 28, is taken to have transferred employment.

**Note.** This clause allows (subject to the employment continuity restrictions imposed by Division 3):

- (a) transfers from STC schemes to the local government superannuation scheme by a member of an STC scheme who leaves a public sector employer prescribed for the purposes of the relevant STC scheme to take up employment with a local government employer, and
- (b) transfers from the local government superannuation scheme to STC schemes by a member of the local government superannuation scheme who was previously a member of an STC scheme and who leaves a local government employer to take up employment with a public sector employer prescribed for the purposes of the relevant STC scheme.

### **Division 3      Transfer of employment**

#### **22    Application of Division**

The provisions of this Division define, for the purposes of section 128A (2) (b) and (3) (b) of the Act, the circumstances in which a transfer of employment is taken to have occurred.

#### **23    Contributors to SSS or SASS**

A person who is a Category 1 elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the appointed day, to be a contributor to the State Superannuation Scheme or to the State Authorities Superannuation Scheme, and
- (b) within 3 months after ceasing to be a contributor to that scheme, the person has become an employee of an employer under the local government superannuation scheme.

#### **24    Contributors to the local government superannuation scheme**

A person who is a Category 2 elector is taken to have transferred employment if:

- (a) the person has ceased, on or after the appointed day, to be a contributor to Division B or D of the local government superannuation scheme, and
- (b) within 3 months after ceasing to be such a contributor, the person has become an employee of an STC employer.

#### **25    Holders of deferred benefits in SSS and SANCSS**

- (1) A person who is a Category 3 elector is taken to have transferred employment if:

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- (a) within the prescribed time after the person's benefits in the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme were deferred, the person has become an employee of an employer under the local government superannuation scheme, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of employers under the local government superannuation scheme or STC employers (or any combination of both), with no break in service longer than the prescribed time.
- (2) In this clause, the *prescribed time* means the time allowed for the purposes of section 38C (2) of the *Superannuation Act 1916*.

#### **26 Holders of deferred benefits in SASS and SANCSS**

- (1) A person who is a Category 4 elector is taken to have transferred employment if:
- (a) within the prescribed time after the person's benefits in the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme were deferred, the person has become an employee of an employer under the local government superannuation scheme, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of employers under the local government superannuation scheme or STC employers (or any combination of both), with no break in service longer than the prescribed time.
- (2) In this clause, the *prescribed time* means the time allowed for the purposes of section 30 (2) of the *State Authorities Superannuation Act 1987*.



**27 Holders of deferred benefits in Divisions B and C of local government superannuation scheme**

- (1) A person who is a Category 5 elector is taken to have transferred employment if:
  - (a) within the prescribed time after the person's benefits in Divisions B and C of the local government superannuation scheme were deferred, the person has become an employee of an STC employer, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of STC employers or employers under the local government superannuation scheme (or any combination of both), with no break in service longer than the prescribed time.
- (2) In this clause, the *prescribed time* means the time allowed for the purposes of section 30 (2) of the *State Authorities Superannuation Act 1987*.

**28 Holders of deferred benefits in Divisions C and D of local government superannuation scheme**

- (1) A person who is a Category 6 elector is taken to have transferred employment if:
  - (a) within the prescribed time after the person's benefits in Divisions C and D of the local government superannuation scheme were deferred, the person has become an employee of an STC employer, and
  - (b) the person has thereafter remained an employee of that employer, or been employed by a succession of STC employers or employers under the local government superannuation scheme (or any combination of both), with no break in service longer than the prescribed time.
- (2) In this clause, the *prescribed time* means the time allowed for the purposes of section 38C (2) of the *Superannuation Act 1916*.

## **Division 4 Exercise of transfer option**

### **29 Manner and form of exercising option**

An election to exercise a transfer option is to be given in writing to the trustee of the transferee scheme, using a form approved by that trustee.

### **30 Provision of information**

- (1) An elector must provide such information as may be required to complete the election form, being information that the trustees of the transferor or transferee schemes may reasonably require to give effect to the election.
- (2) Either trustee is entitled to require the other to provide information (including members' files) reasonably necessary to give effect to the election.
- (3) Either trustee is entitled to require an employer, under a scheme for which it is trustee, to provide such information as may be reasonably necessary to the trustee in order to give effect to the election.

### **31 Time within which option may be exercised**

- (1) An election by a Category 1 or 2 elector who, in accordance with clause 23 or 24, is taken to have transferred employment must be made within 3 months after the transfer of employment.
- (2) An election by a Category 3, 4, 5 or 6 elector who, in accordance with clause 25, 26, 27 or 28, is taken to have transferred employment before the appointed day must be made within 12 months after that day.
- (3) An election by a Category 3, 4, 5 or 6 elector who, in accordance with clause 25, 26, 27 or 28, is taken to have transferred employment on or after the appointed day must be made within 12 months after the transfer of employment.
- (4) An election takes effect when the election form, duly completed, is received by the trustee of the transferee scheme.

- (5) However, an election does not take effect if an elector has applied for a payment of a benefit (including a deferred benefit) under the transferor scheme before the election is received by the trustee of the transferee scheme.
- (6) Despite any other provision of this clause, the trustee of the transferee scheme may allow an elector an additional period, not exceeding 12 months, in which to make an election if the trustee thinks it appropriate in the circumstances.

## **Division 5      Transfer of assets on exercise of transfer option**

### **32    Amounts transferable on exercise of option**

- (1) On the exercise by a person of a transfer option, there is payable by the trustee of the transferor scheme to the trustee of the transferee scheme:
  - (a) an eligible termination payment calculated in accordance with clause 33, and
  - (b) the difference between:
    - (i) the sum of the primary and supplementary amounts calculated in accordance with clauses 34 and 35, and
    - (ii) the eligible termination payment referred to in paragraph (a).
- (2) It is the duty of scheme trustees to ensure that the payments prescribed by this clause are duly made and credited to the appropriate accounts for the employee concerned in the transferee scheme.

### **33    Eligible termination payment**

- (1) For a Category 1 or 2 elector, the eligible termination payment is the amount that would have been immediately payable to the person, in accordance with the rules of the transferor scheme, on the person's resignation from his or her employment.

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- (2) For a Category 3 elector, the eligible termination payment is the sum of:
  - (a) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 52I of the *Superannuation Act 1916*, and
  - (b) the amount of benefit to which the person was entitled on that date under the *State Authorities Non-contributory Superannuation Act 1987*.
- (3) For a Category 4 elector, the eligible termination payment is the sum of:
  - (a) the amount that would have been payable if, on the date the election takes effect, the person had elected to take the benefit payable under section 43 (7) of the *State Authorities Superannuation Act 1987*, and
  - (b) the amount of benefit to which the person was entitled on that date under the *State Authorities Non-contributory Superannuation Act 1987*.
- (4) For a Category 5 elector, the eligible termination payment is the sum of:
  - (a) the amount of benefit to which the elector would have been entitled under subrule 5.10.10 of Schedule 2 to the trust deed governing the local government superannuation scheme if the elector had resigned from employment and had, on the date the election takes effect, made any necessary election under that Schedule, and
  - (b) the amount of benefit to which the person was entitled on that date under Schedule 3 to the trust deed governing the local government superannuation scheme.
- (5) For a Category 6 elector, the eligible termination payment is the sum of:
  - (a) the amount of cash termination benefit to which the elector would have been entitled under subrule 16.11 of Schedule 4 to the trust deed governing the local government superannuation scheme if the elector had

resigned from employment and had, on the date the election takes effect, made any necessary election under that Schedule, and

- (b) the amount of benefit to which the person was entitled on that date under Schedule 3 to the trust deed governing the local government superannuation scheme.

#### **34 Primary amount**

- (1) For a Category 1, 3 or 4 elector, the primary amount is the amount determined by STC on actuarial advice to be the value of the person's accrued benefit in the State Superannuation Scheme or the State Authorities Superannuation Scheme at the time of the election.
- (2) For a Category 2, 5 or 6 elector, the primary amount is the amount determined by the trustee of the transferor scheme on actuarial advice to be the value of the person's accrued benefit in Division B or D of the local government superannuation scheme, as the case may be, at the time of the election.

#### **35 Supplementary amount**

- (1) For a Category 1, 3 or 4 elector, the supplementary amount is the amount of benefit to which the person was entitled under the *State Authorities Non-contributory Superannuation Act 1987* on the date the election takes effect.
- (2) For a Category 2, 5 or 6 elector, the supplementary amount is the amount of benefit to which the person was entitled under Schedule 3 to the trust deed governing the local government superannuation scheme on the date the election takes effect.

**Division 6 Rights of persons exercising transfer option**

**36 Duty of trustees to electors**

- (1) It is the duty of the trustee of the transferee scheme under an election made by an eligible person to establish the person as a member of or contributor to the scheme.
- (2) An elector transferring from Divisions B and C in the local government superannuation scheme is to be established in the State Authorities Superannuation Scheme and in the State Authorities Non-contributory Superannuation Scheme.
- (3) An elector transferring from Divisions C and D in the local government superannuation scheme is to be established in the State Superannuation Scheme and in the State Authorities Non-contributory Superannuation Scheme.
- (4) An elector transferring from the State Authorities Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be established in Divisions B and C of the local government superannuation scheme.
- (5) An elector transferring from the State Superannuation Scheme and the State Authorities Non-contributory Superannuation Scheme is to be established in Divisions C and D of the local government superannuation scheme.

**37 Trustees to determine rights of electors**

- (1) The trustee of the transferee scheme is to determine, with actuarial advice, the rights of the elector in the scheme.
- (2) Regard must also be had to any rights the elector had in the transferor scheme and the rights established in the transferee scheme must be as near as possible to them.
- (3) In particular, the trustee is to take into account the following:
  - (a) the elector's accrued benefits in the transferor scheme, as certified by the trustee of that scheme,
  - (b) the benefits that the elector could have accrued by normal retirement age in the transferor scheme,

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- (c) the elector's employment status (including salary and whether full-time or part-time) in the transferee scheme, on commencement or recommencement of membership of the scheme,
  - (d) the amounts being transferred under Division 5.
- (4) In the case of a Category 3, 4, 5 or 6 elector, the trustee must also take into account:
- (a) the period of employment, with any employer responsible for making contributions under either the transferor or transferee scheme, in the period between the date the benefit was deferred and the date that the elector again becomes a member of the transferee scheme, and
  - (b) any employer contributions made by any such employer to any complying superannuation fund within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth in respect of the elector during that period.

**38 Automatic accrual of certain rights**

- (1) A person who by election rejoins the State Superannuation Scheme is taken to have met the medical requirements of Part 2A of the *Superannuation Act 1916*.
- (2) A person who by election joins or rejoins Division D of the local government superannuation scheme is taken to have met the medical requirements of clause 3 of Schedule 4 of the trust deed governing the local government superannuation scheme.
- (3) A person who was covered for additional benefits in Division B of the local government superannuation scheme and who by election rejoins the State Authorities Superannuation Scheme is taken to have submitted an application for additional benefit cover under section 20 (1) of the *State Authorities Superannuation Act 1987*, and STC is taken to have approved that application.

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- (4) A person who was covered for additional benefits in the State Authorities Superannuation Scheme and who by election joins or rejoins Division B of the local government superannuation scheme is taken to have submitted an application for additional benefit cover under subrule 3.2.1 of Schedule 2 to the trust deed governing that scheme, and the trustee of that scheme is taken to have approved that application.
- (5) Additional benefit cover imputed by subclause (3) or (4) may be revoked in accordance with the rules of the relevant transferee scheme.

### 39 Effect of transfers

On an election taking effect under this Part, and subject to any appeal rights referred to in this Part, the elector ceases to have any entitlements, rights and obligations under the scheme from which the person transferred to the extent to which the member is transferred.

### 40 Appeal rights

- (1) The rights of appeal available to an elector before a transfer option takes effect continue to apply in respect of:
  - (a) matters or disputes arising before that option takes effect, and
  - (b) any matters or disputes arising from determinations by the trustee of the transferor scheme under this Part or in relation to any payment from the transferor scheme.
- (2) An elector who transfers to a transferee scheme has, in respect of any determination by the trustee of the transferee scheme as to the elector's rights in that scheme on transfer to the scheme, the same rights of appeal as in respect of a determination by a trustee under the superannuation scheme concerned.

BY AUTHORITY