



New South Wales

# Superannuation Regulation 2001

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

The objects of this Regulation are:

- (a) to provide for the reduction and calculation of benefits payable under the State Superannuation Scheme to or in respect of a contributor or former contributor to the Scheme who has received early release of a benefit on the ground of severe financial hardship or on compassionate grounds, and
- (b) to provide for consent to be obtained to the reduction before the early release of benefits, and
- (c) to enable pension benefits to be partly commuted to meet the amount by which the benefits are reduced, and
- (d) to make provision with respect to the early release of benefits during a transitional period.

This Regulation is made under the *Superannuation Act 1916*, including section 61RH, section 86 (the general regulation-making power) and clause 1 of Schedule 25.

This Regulation deals with matters of a machinery nature, matters of a savings and transitional nature and matters arising under legislation that complements Commonwealth legislation.

## **2001 No 619**

Superannuation Regulation 2001

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## **Superannuation Regulation 2001**

### **Part 1 Preliminary**

#### **1 Name of Regulation**

This Regulation is the *Superannuation Regulation 2001*.

#### **2 Commencement**

This Regulation commences on 10 August 2001.

#### **3 Definition**

In this Regulation:

*the Act* means the *Superannuation Act 1916*.

#### **4 Notes**

The explanatory note and table of contents in the text of this Regulation do not form part of this Regulation.

## **2001 No 619**

Clause 5 Superannuation Regulation 2001

Part 2 Reduction of benefits

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## **Part 2 Reduction of benefits**

### **5 Application of Part**

The benefits under the following provisions of the Act may be the subject of a reduction under this Part:

- (a) section 27 (Amount of pension payable on retirement),
- (b) section 28A (Pension on retirement before reaching 60 years of age),
- (c) section 28AA (Pension on retirement before age 60—component pension),
- (d) section 29 (Breakdown pensions),
- (e) section 30 (Pensions to spouse or de facto partner on death of contributor),
- (f) section 37 (Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service),
- (g) section 37A (Retrenchment benefits payable to contributors having not less than 3 years' contributing service),
- (h) section 37B (Deferral of payment of benefits on retrenchment),
- (i) section 38A (Withdrawal benefit),
- (j) section 47D (Benefits payable in respect of reduced value units),
- (k) Division 3A of Part 4 (Voluntarily deferred benefits),
- (l) Division 3B of Part 4 (Deferral of benefit for contributors aged 55 years and over in certain circumstances),
- (m) Division 3D of Part 4 (Compulsory preservation of benefits).

### **6 Reduction of benefits**

- (1) This clause applies to the reduction of benefits payable to or in respect of a contributor or former contributor (other than a benefit payable under section 61RF or 61RG of the Act) to whom a benefit has been released on the ground 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 benefit under Division 3A or 3B of Part 4 of the Act, or had a benefit preserved under the Act, STC must, on and from the date of release, calculate the amount of any benefit provided for or preserved (in the case of both a pension and lump sum) and reduce that amount by the amount of benefit released. The amount of benefit payable when the benefit provided for or preserved 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 benefit is deferred or preserved under the Act after the release to the contributor concerned of a benefit and before a benefit is otherwise payable, STC must, on and from the date the benefit is deferred or preserved, calculate the amount of benefit deferred or preserved (in the case of both a pension and lump sum) and reduce that amount by the amount debited to the debt account at the time the benefit is deferred or preserved. The amount of benefit payable when the deferred or preserved 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.
- (7) For the purposes of subclauses (2) and (4), STC may determine which component or components of a benefit are to be reduced.

## **7 Consent to benefit reduction**

Before releasing a benefit on the ground 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.

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Clause 8 Superannuation Regulation 2001

Part 2 Reduction of benefits

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### 8 Commutation of pensions for reduction of benefits

- (1) If a determination is made under this Division reducing a benefit that may be taken in the form of a pension, STC may, at its discretion and with the consent of the person to whom the pension is payable, commute part of the pension to a lump sum for the purposes of the payment to STC of the amount of the reduction.
- (2) Commutation of part of the pension:
  - (a) does not affect any other right that the person has to commute the pension under the Act, and
  - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
  - (c) is to be done on a basis determined by STC.
- (3) STC may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.

### 9 Release of benefits during transitional period

- (1) This clause applies to the release of a benefit to a contributor or former contributor on the ground of severe financial hardship or on compassionate grounds during the transitional period if:
  - (a) the release was not inconsistent with section 61RF or 61RG of the Act, as inserted 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 5, 6 and 8 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 sections 61RF and 61RG of the Act, as inserted by that Act.

BY AUTHORITY