



New South Wales

# Parliamentary Contributory Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2004

under the

Parliamentary Contributory Superannuation Act 1971

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Parliamentary Contributory Superannuation Act 1971*.

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 Parliamentary Contributory Superannuation Fund on behalf of a member. Before a superannuation benefit is paid, the Trustees of the Fund are 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 *Parliamentary Contributory Superannuation Regulation 2003*:

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

## **2004 No 405**

Parliamentary Contributory Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2004

Explanatory note

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The Regulation sets out the circumstances in which the Trustees may reimburse a former member for additional superannuation contributions surcharge paid by the former member to the Commissioner of Taxation or, at the request of the former member, pay additional surcharge to the Commissioner on behalf of the former member.

The Regulation also enables the Trustees to reduce the benefit paid to the former member to offset additional superannuation contributions surcharge payable by the former member.

This Regulation is made under the *Parliamentary Contributory Superannuation Act 1971*, including sections 26D (3) and (8)–(10) and 33 (the general regulation-making power).

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## **Parliamentary Contributory Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2004**

under the

Parliamentary Contributory Superannuation Act 1971

### **1 Name of Regulation**

This Regulation is the *Parliamentary Contributory Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2004*.

### **2 Commencement**

- (1) This Regulation commences on the day it is published in the Gazette, except as provided by subclause (2).
- (2) Schedule 1 [3] commences on 1 July 2004.

### **3 Amendment of Parliamentary Contributory Superannuation Regulation 2003**

The *Parliamentary Contributory Superannuation Regulation 2003* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

### [1] Clause 2 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 member, being a notice that is received by the former member (whether before, on or after the commencement of clause 12A of this Regulation) after a benefit has commenced to be paid or has been paid to the former member.

***surcharge debt account*** has the same meaning as in section 26D of the Act.

***surcharge deduction cap*** means the maximum surcharge deduction amount that may be determined by the trustees under section 26D (3) of the Act in relation to a benefit payable to a former member.

***total surcharge amount***, in respect of a former member, 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 member's behalf up to and including the date on which the former member 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

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

**[2] Clauses 12A–12C**

Insert after clause 12:

**12A Payment by trustees in relation to post payment surcharge assessment notice received by former member**

- (1) If the total surcharge amount in respect of a former member who has paid an additional surcharge amount to the Commissioner of Taxation exceeds the surcharge deduction cap, the trustees may reimburse the former member by paying to the former member 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 member by the trustees under this clause or the Act for the purposes of superannuation contributions surcharge.
- (2) The trustees may, at the request of a former member 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 member 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 member by the trustees under this clause or the Act for the purposes of superannuation contributions surcharge.

**Note.** Clause 12B provides for further reduction of certain benefits resulting from the liability of a former member for superannuation contributions surcharge.

**12B Further reduction of certain benefits resulting from liability for superannuation contributions surcharge: section 26D (8)**

- (1) The trustees may, at the request of a former member:
- (a) adjust the amount of a benefit payable to the former member by reducing the benefit by an amount (the *reduction amount*) that is equivalent to the lesser of:
- (i) the additional surcharge amount, and

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Schedule 1 Amendments

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- (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 member or the Commissioner of Taxation.
- (2) In subclause (1), *previously met surcharge liability* means the sum of:
  - (a) all amounts paid by the former member to the trustees or the Commissioner of Taxation in relation to the total surcharge amount of the former member, and
  - (b) all amounts in respect of which adjustments relating to the benefit of the former member 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, the trustees may obtain actuarial advice or advice from any other persons, as the trustees think fit.
- (4) This clause does not authorise the trustees to pay any amount that would result in payments to or on behalf of the former member exceeding the total benefits to which the former member is entitled.

### 12C Limitation on payment of penalty interest

Clauses 12A and 12B do not authorise the trustees to pay any amount of general interest charged in respect of an additional surcharge amount payable under a post payment surcharge assessment notice received on or after the commencement of the *Parliamentary Contributory Superannuation Amendment (Superannuation Contributions Surcharge) Regulation 2004* unless the request for the payment is made within such period after the notice is received as the trustees consider reasonable.

### [3] Clause 12D

Insert after 12C:

### 12D Surcharge deduction amount

For the purposes of section 26D (3) (b) of the Act, the surcharge deduction amount determined by the trustees must not exceed the sum of:

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- (a) an amount that is 15% of the employer-financed portion of that part of the benefit payable to the member or former member 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 member or former member 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 member or former member 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 member or former member that accrued on or after 1 July 2005.