



New South Wales

# Superannuation Regulation 2006

under the

Superannuation Act 1916

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

JOHN DELLA BOSCA, M.L.C.,  
Minister for Finance

## Explanatory note

The object of this Regulation is to remake, without any changes of substance other than the omission of a spent transitional provision, the *Superannuation Regulation 2001*, which is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) provides for the reduction and calculation of benefits payable under the State Superannuation Scheme (*the Scheme*) to or in respect of a contributor or former contributor to the Scheme who has received early release of a benefit on the grounds of severe financial hardship or on compassionate grounds, and
- (b) provides for consent to be obtained to the reduction before the early release of benefits, and
- (c) enables pension benefits to be partly commuted to meet the amount by which the benefits are reduced, and
- (d) limits the liability of a former contributor to the Scheme for superannuation contributions surcharge arising from assessments made after benefits have been paid (or commenced to be paid) to the former contributor, being an amount of surcharge that is additional to the capped amount already deducted from the benefit to offset the surcharge (which deduction is a statutory requirement before payment of the benefit), and

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#### Explanatory note

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- (e) prescribes the maximum surcharge deduction amounts that may be determined by the SAS Trustee Corporation (*the Corporation*) in respect of certain periods when benefits payable to contributors or former contributors to the Scheme accrued (so that the maximum amounts correspond to the maximum surcharge rates charged by the Commonwealth in respect of those periods), and
- (f) sets out the circumstances in which the Corporation may reimburse a former contributor to the Scheme for additional superannuation contributions surcharge paid by the former contributor to the Commissioner of Taxation or, at the request of the former contributor, pay additional surcharge to the Commissioner of Taxation on behalf of the former contributor, and
- (g) enables the Corporation to reduce the benefit paid to the former contributor so as to offset additional superannuation contributions surcharge payable by the former contributor.

It is necessary to remake the provisions of the *Superannuation Regulation 2001* concerning the superannuation contributions surcharge despite the Commonwealth's abolition of the surcharge (with effect from 1 July 2005). This is because any liability for the surcharge accrued by a contributor or former contributor to the Scheme before that abolition is not affected by the abolition.

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

This Regulation deals with matters of a machinery nature and matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth.

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Part 1 Preliminary

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## Superannuation Regulation 2006

under the

Superannuation Act 1916

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Superannuation Regulation 2006*.

#### 2 Commencement

This Regulation commences on 1 September 2006.

**Note.** This Regulation replaces the *Superannuation Regulation 2001* which is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

***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 25 June 2004) 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.

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

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

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Clause 4 Superannuation Regulation 2006

Part 2 Reduction of benefits

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## Part 2 Reduction of benefits

### 4 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' contributory 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).

### 5 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 under section 61RF (that is, on the grounds of the contributor's or former contributor's severe financial hardship) or under section 61RG (that is, 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.

## 6 Consent to benefit reduction

Before releasing a benefit under section 61RF of the Act (that is, on the grounds of a contributor's or former contributor's severe financial hardship) or under section 61RG of the Act (that is, 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.

## 7 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.

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Clause 8 Superannuation Regulation 2006

Part 2 Reduction of benefits

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- (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.

### 8 Commutation of pensions for reduction of benefits

- (1) If a determination is made under this Part 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 clause.



## Part 3 Miscellaneous

### 9 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 7 provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

### 10 Limitation on payment of penalty interest

Clauses 7 and 9 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.

### 11 Surcharge deduction: maximum 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

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- (c) 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 2004 and before 30 June 2005.

### 12 Saving

Any act, matter or thing that had effect under the *Superannuation Regulation 2001* immediately before the repeal of that Regulation is taken to have effect under this Regulation.

BY AUTHORITY

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