



New South Wales

# Superannuation Amendment (Family Law) Regulation 2008

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*.

JOSEPH TRIPODI, M.P.,  
Minister for Finance

## Explanatory note

The object of this Regulation is to amend the *Superannuation Regulation 2006* to provide for the following matters relating to family law superannuation payments in respect of spouses or former spouses of contributors to the State Superannuation Scheme:

- (a) the manner in which the superannuation interest of a contributor is to be valued for family law purposes,
- (b) the notification of contributors, and spouses or former spouses (*non-contributor spouses*), of family law superannuation entitlements resulting from agreements or orders under Commonwealth family law,
- (c) the nomination by non-contributor spouses as to where family law superannuation entitlements are to be paid,
- (d) the reduction of benefits payable to contributors whose non-contributor spouses have received family law superannuation entitlements,
- (e) the commutation of pensions payable to former contributors for the purposes of the payment to non-contributor spouses of family law superannuation entitlements,
- (f) the apportionment of family law superannuation payments from the State Superannuation Fund to reserves in that Fund,
- (g) provisions of a transitional nature.

This Regulation is made under the *Superannuation Act 1916*, including sections 33B (2A), 61WB–61WD and 86 (the general regulation-making power) and clause 1 of Schedule 25 to that Act.

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# **Superannuation Amendment (Family Law) Regulation 2008**

under the

Superannuation Act 1916

### **1 Name of Regulation**

This Regulation is the *Superannuation Amendment (Family Law) Regulation 2008*.

### **2 Commencement**

This Regulation commences on 19 December 2008.

### **3 Amendment of Superannuation Regulation 2006**

The *Superannuation Regulation 2006* is amended as set out in Schedule 1.

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## Schedule 1    Amendment

(Clause 3)

### Part 2A

Insert after Part 2:

## Part 2A Family law provisions

### 8A Interpretation

- (1) In this Part:

*approved valuation method* means Part 8 of Schedule 2 to the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003* made under the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

*contributor* includes a former contributor.

*deferred benefit* means a benefit under section 37B of the Act.

- (2) Words and expressions used in this Part have the same meanings as they have in Part 4A of the Act.

### 8B Valuation of superannuation interests

- (1) This clause applies for the purposes of Part 4A of the Act and the family law superannuation legislation.
- (2) The value of a superannuation interest (other than of a deferred benefit) of a contributor is to be determined in accordance with the approved valuation method.
- (3) The value of a superannuation interest relating to a deferred benefit is to be determined in accordance with Part 6 of Schedule 2 to the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

### 8C Notice to contributor and non-contributor spouse when entitlement becomes payable

- (1) If a superannuation interest of a contributor becomes subject to a payment split, STC must notify the contributor and the non-contributor spouse in relation to the interest, in writing, that the interest is subject to a payment split.

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- (2) The notice must be given:
  - (a) in the case of a payment split under a superannuation agreement or flag lifting agreement—within 28 days after the operative time for the payment split, or
  - (b) in the case of a payment split under a splitting order—within 28 days after the operative time for the payment split or after STC receives a copy of the order (whichever is the later).
- (3) The notice given to the contributor must:
  - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
  - (b) specify the period within which payment of that entitlement is to be made, and
  - (c) specify the estimated effect of the payment on the entitlement of the contributor under the State Superannuation Scheme.
- (4) The notice given to the non-contributor spouse must:
  - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
  - (b) specify the circumstances in which the amount may be paid or released to the non-contributor spouse or must be transferred or rolled over to a complying superannuation fund or an RSA, and
  - (c) require the non-contributor spouse to nominate, within 28 days, whether the non-contributor spouse meets a circumstance for payment or release or, if not, to nominate a complying superannuation fund or an RSA to which the amount is to be paid, and
  - (d) specify that the amount will be credited to the First State Superannuation Fund if the nomination is not made within that period.
- (5) For the purposes of section 61WB (5) (b) of the Act, the prescribed period within which a nomination must be made by a non-contributor spouse is 28 days after the giving of the notice under this clause.
- (6) STC is not required to give the notice if the superannuation interest ceases to be subject to a payment split within the notice period.

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**8D Payment of family law superannuation entitlements**

- (1) If the amount of a family law superannuation entitlement is to be paid or released to a non-contributor spouse, the amount must be paid or released by STC when, or as soon as practicable after, a nomination is received under clause 8C (4).
- (2) If the amount of a family law superannuation entitlement is to be transferred or rolled over, the amount must be transferred or rolled over:
  - (a) to a complying superannuation fund or RSA nominated under this Part within 90 days of the nomination being made, or
  - (b) if no nomination is made within the period prescribed by this Part, to the First State Superannuation Fund within 90 days of the end of the period.
- (3) Nothing in subclause (2) (b) prevents STC from transferring or rolling over the amount of a family law superannuation entitlement to a complying superannuation fund or RSA if a nomination is made by a non-contributor spouse after the end of the period referred to in clause 8C (5).
- (4) STC must give to the contributor, within 28 days after an amount of family law superannuation entitlement is paid or released or transferred or rolled over, a notice in writing stating:
  - (a) that the amount has been paid, released, transferred or rolled over, and
  - (b) the amount paid, released, transferred or rolled over and how it was calculated, and
  - (c) the estimated effect of that action on the benefit of the contributor.
- (5) STC must give to the non-contributor spouse, within 28 days after an amount of family law superannuation entitlement is paid or released or transferred or rolled over, a notice in writing stating:
  - (a) that the amount has been paid, released, transferred or rolled over, and
  - (b) the amount paid, released, transferred or rolled over and how it was calculated, and

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- (c) the name and contact details of the superannuation fund or RSA, if any, to which the amount was transferred or rolled over.

**Note.** Under regulation 59 of the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, STC may charge reasonable fees in respect of payment splits, payment flags, flag lifting and other related matters. Such fees are payable in equal parts by the contributor and the non-contributor spouse.

#### 8E Reduction of benefits of contributors

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-contributor spouse is paid, released, transferred or rolled over under Part 4A of the Act (a *family law superannuation payment* is made).
- (2) A benefit payable to the contributor (including a benefit transferred under the Act), other than a deferred benefit, is to be reduced in accordance with this clause at the time it is paid to the contributor or transferred.
- (3) A deferred benefit of the contributor is to be reduced in accordance with this clause:
- (a) if the election to take the benefit was made before the superannuation entitlement of the non-contributor spouse was paid, released, transferred or rolled over, at the time the entitlement is paid, released, transferred or rolled over, or
- (b) in any other case, when the election to take the benefit takes effect.
- (4) The amount of the reduced benefit is to be calculated as follows:

$$r = v \times (1 - A \times C)$$

where:

*r* is the amount of the reduced benefit.

*v* is the amount of the benefit that would have been payable to the contributor if the family law superannuation payment had not been made.

*A* is the ratio of the amount paid in respect of the non-contributor spouse to the value of the benefit of the contributor when the payment split occurred.

*C* is the ratio of the benefit accrual when the payment split occurred to the benefit accrual when the benefit is payable or deferred or transferred (as the case requires).

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- (5) If family law superannuation payments are made in respect of more than one spouse of the contributor, the amount of the reduced benefit (other than a deferred benefit) is to be calculated by applying to the amount of the benefit payable (as referred to in subclause (4)) the reduction factor for each family law superannuation payment. Each reduction factor is to be calculated as follows:

$$f = 1 - A \times C$$

where:

*f* is the reduction factor.

*A* and *C* have the same meanings as in subclause (4).

- (6) In this clause:

**benefit accrual** at any point in time means the benefit accrual as at that time as determined by STC on actuarial advice.

**value of a benefit** means the value of the benefit as determined by STC on actuarial advice.

**8F Effect of benefit reductions on pensions and other benefits**

- (1) STC may commute part of a pension payable to a contributor for the purposes of payment of the family law superannuation entitlement of a non-contributor spouse and the amount of the pension is to be reduced in accordance with clause 8E.
- (2) Any benefit payable under the Act to a person on the death of a contributor whose benefit has been, or is to be, reduced as a result of a family law superannuation payment is to be based on the amount of the benefit as so reduced.
- (3) Nothing in this Part affects any other right of a contributor or other person to commute a pension or part of a pension under the Act.

**8G Apportionment of benefits between reserves**

For the purposes of section 33B (2A) of the Act, the portion of a payment to be made from the contributors' reserve and the portion to be made from the employers' reserve is to be determined by STC on actuarial advice.

**8H Transitional provisions relating to existing family law superannuation entitlements**

- (1) This clause applies to a family law superannuation entitlement that arose under a superannuation agreement, flag lifting

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agreement or splitting order in force before the commencement of this Part (an *existing entitlement*).

- (2) If an existing entitlement consists of an interest that is not able to be calculated until a benefit becomes payable to a contributor or other person, it is taken to be operative for the purposes of section 61WB of the Act when the benefit becomes so payable.
- (3) For the purposes of the application of clause 8C to an existing entitlement, a nomination under clause 8C must be given by a non-contributor spouse within 3 months of being given notice under that clause.

### **8I Transitional provision relating to all family law superannuation entitlements**

Clause 8C (2) does not apply in respect of a family law superannuation entitlement until 6 months after the commencement of this Part.

BY AUTHORITY

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