



New South Wales

Parliamentary Contributory Superannuation Amendment (Family Law) Regulation 2011

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*.

MICHAEL DALEY, MP
Minister for Finance

Explanatory note

The object of this Regulation is to amend the *Parliamentary Contributory Superannuation Regulation 2008* to provide for the following matters relating to family law superannuation payments in respect of spouses or former spouses of members or former members of the Parliamentary Contributory Superannuation Scheme:

- (a) the manner in which the superannuation interest of a member or former member (a *member spouse*) is to be valued for family law purposes,
- (b) the notification of member spouses, and spouses or former spouses (*non-member spouses*) of family law superannuation entitlements resulting from agreements or orders under the *Family Law Act 1975* of the Commonwealth,
- (c) the nomination by non-member spouses as to where family law superannuation entitlements are to be paid,
- (d) the reduction of benefits payable to member spouses whose non-member spouses have received family law superannuation entitlements,
- (e) the commutation of pensions payable to member spouses for the purposes of the payment to non-member spouses of family law superannuation entitlements,
- (f) provisions of a transitional nature.

The Regulation also makes consequential amendments.

This Regulation is made under the *Parliamentary Contributory Superannuation Act 1971*, including sections 29C–29E and 33 (the general regulation-making power) and clause 1 of Schedule 1 to that Act.

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Clause 1 Parliamentary Contributory Superannuation Amendment (Family Law)
Regulation 2011

**Parliamentary Contributory Superannuation
Amendment (Family Law) Regulation 2011**

under the

Parliamentary Contributory Superannuation Act 1971

1 Name of Regulation

This Regulation is the *Parliamentary Contributory Superannuation Amendment (Family Law) Regulation 2011*.

2 Commencement

This Regulation commences on 3 March 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Parliamentary Contributory Superannuation Regulation 2008

[1] **Part 1, heading**

Insert before clause 1:

Part 1 Preliminary

[2] **Part 2, heading**

Insert before clause 4:

Part 2 General requirements

[3] **Part 3, heading**

Insert before clause 11:

Part 3 Surcharge payments and benefit reductions

[4] **Part 4**

Insert after clause 14:

Part 4 Family law provisions

15 Interpretation

(1) In this Part:

approved valuation method means Part 10 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.

deferred benefit means a benefit deferred under section 19B or 22B of the Act.

deferred pension means a benefit deferred under section 19B of the Act.

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

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16 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 an interest referred to in subclause (3), (4) or (5)) of a member spouse is to be determined in accordance with the approved valuation method.
- (3) The value of a superannuation interest that is a deferred pension is to be determined in accordance with Part 7 of Schedule 2 to the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.
- (4) The value of a superannuation interest that is a benefit deferred under section 22B of the Act is to be determined in accordance with Part 5 of Schedule 2 to the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.
- (5) The value of a superannuation interest that is a pension first paid on or after 1 February 1990 to a member spouse who was not a member before that date is to be determined in accordance with Schedule 4 to the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

17 Notice to member spouse and non-member spouse when entitlement becomes payable

- (1) If a superannuation interest of a member spouse becomes subject to a payment split, the trustees must notify the member spouse and the non-member spouse in relation to the interest, in writing, that the interest is subject to a payment split.
- (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 the trustees receive a copy of the order (whichever is the later).
- (3) The notice given to the member spouse must:
 - (a) specify the estimated amount of the entitlement of the non-member 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 member spouse under the Parliamentary Contributory Superannuation Scheme.
- (4) The notice given to the non-member spouse must:
 - (a) specify the estimated amount of the entitlement of the non-member spouse and how it was calculated, and
 - (b) specify the circumstances in which the amount may be paid or released to the non-member spouse or must be transferred or rolled over to a complying superannuation fund or an RSA, and
 - (c) require the non-member spouse to nominate, within 28 days, whether the non-member 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 29C (5) (b) of the Act, the prescribed period within which a nomination must be made by a non-member spouse is 28 days after the giving of the notice under this clause.
- (6) The trustees are not required to give the notice if the superannuation interest ceases to be subject to a payment split within the notice period.

18 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-member spouse, the amount must be paid or released by the trustees when, or as soon as practicable after, a nomination is received under clause 17 (4) (c).
- (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.

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- (3) Nothing in subclause (2) (b) prevents the trustees 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-member spouse after the end of the period prescribed by clause 17 (5).
- (4) The trustees must give to the member 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
 - (c) the estimated effect of that action on the benefit of the member spouse.
- (5) The trustees must give to the non-member 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
 - (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 generally payable in equal parts by the member spouse and the non-member spouse.

19 Reduction of benefits of member spouses

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-member 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 member spouse (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 member spouse or transferred.

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- (3) A deferred benefit of the member spouse is to be reduced in accordance with this clause:
- (a) if the benefit was deferred before the superannuation entitlement of the non-member 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 benefit is deferred.
- (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 member spouse if the family law superannuation payment had not been made.

A is the ratio of the amount paid in respect of the non-member spouse to the value of the benefit of the member spouse 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).

- (5) If family law superannuation payments are made in respect of more than one spouse of the member spouse, 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 calculated in accordance with 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 the trustees on actuarial advice.
- value of a benefit** means the value of the benefit as determined by the trustees on actuarial advice.

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20 **Effect of benefit reductions on pensions and other benefits**

- (1) The trustees may commute part of a pension payable to a member spouse for the purposes of payment of the family law superannuation entitlement of a non-member spouse and the amount of the pension is to be reduced in accordance with clause 19.
- (2) Any benefit payable under the Act to a person on the death of a member spouse 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 member spouse or other person to commute a pension or part of a pension under the Act.

21 **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 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 member spouse or other person, it is taken to be operative for the purposes of section 29C of the Act when the benefit becomes so payable.
- (3) For the purposes of the application of clause 17 to an existing entitlement, a nomination under clause 17 must be given by a non-member spouse within 3 months of being given notice under that clause.

Part 5 **Miscellaneous**

[5] **Clause 15 (as so numbered before the commencement of item [4])**

Re-number as clause 22.