



New South Wales

Parliamentary Contributory Superannuation Regulation 2018

under the

Parliamentary Contributory Superannuation Act 1971

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

DOMINIC PERROTTET, MP
Treasurer

Explanatory note

The object of this Regulation is to repeal and remake, without any substantial changes, the provisions of the *Parliamentary Contributory Superannuation Regulation 2013*, which would otherwise be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) meetings of the Trustees of the Parliamentary Contributory Superannuation Fund (the *trustees*) and the signing of cheques drawn on that fund,
- (b) the making of applications for pensions and other benefits,
- (c) the provision of evidence for the trustees of a person's age, marriage, de facto relationship or entitlement to receive a pension,
- (d) the making of declarations as to certain matters,
- (e) the notification to the trustees of a change in entitlement or address,
- (f) the keeping of records by the trustees,
- (g) the payment of superannuation contributions surcharge amounts,
- (h) matters relating to family law superannuation payments in respect of spouses or members or former members of the Parliamentary Contributory Superannuation Scheme,
- (i) savings and formal matters.

This Regulation is made under the *Parliamentary Contributory Superannuation Act 1971*, including sections 13, 16 (4), 26D (3) (b) and (8)–(10), 29C–29E and 33 (the general regulation-making power) and clause 1 of Schedule 1 to the Act.

This Regulation comprises or relates to matter set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Parliamentary Contributory Superannuation Regulation 2018*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Parliamentary Contributory Superannuation Regulation 2013*, which would otherwise be repealed on 1 September 2018 by section 10 (2) of the *Subordinate Legislation Act 1989*.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 member, being a notice that is received by the former member (whether before, on or after the commencement 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.

the Act means the *Parliamentary Contributory Superannuation Act 1971*.

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

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

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of the Regulation.

Part 2 General requirements

4 Meetings of trustees

- (1) Meetings of the trustees are to be held on such dates, and at such times and places, as the chairperson may appoint.
- (2) The procedure for calling a meeting is for the chairperson to notify the other trustees as to the date, time and place of the meeting.
- (3) The chairperson is to ensure that a written record is kept of each meeting of the trustees.
- (4) The functions conferred on the chairperson by this clause are, in the absence of the chairperson, to be exercised by the vice-chairperson.

5 Signing of cheques

Any cheque drawn on the Fund:

- (a) must be signed by at least 2 persons authorised by the trustees for that purpose, and
- (b) must be drawn to order and crossed “not negotiable”.

6 Applications for pensions and other benefits

An application for a pension or other benefit under the Act must be made in writing addressed to the trustees.

7 Evidence of age, marriage or entitlement

- (1) The trustees may require a member or former member to furnish documentary evidence of one or more of the following:
 - (a) his or her age,
 - (b) if the person is married, his or her marriage,
 - (c) if the person is in a registered relationship or an interstate registered relationship, within the meaning of the *Relationships Register Act 2010*, or in a de facto relationship, his or her relationship.

Note. *De facto relationship* is defined in section 21C of the *Interpretation Act 1987*.

- (2) The trustees may require the spouse or de facto partner of a member or former member to furnish documentary evidence of one or more of the following:
 - (a) his or her marriage to the member or former member,
 - (b) his or her registered relationship, interstate registered relationship or de facto relationship with the member or former member.
- (3) The trustees may require a person to furnish specified particulars as to the person’s entitlement to receive a pension under the Act.

Note. This provision gives the trustees authority to require information from persons applying for a pension under the Act in order to satisfy the trustees that they are eligible for the pension.

8 Trustees may require pensioner to sign declaration

The trustees may from time to time require a person who is receiving a pension under the Act to furnish a signed declaration, in a form approved by the trustees, to the effect that during the period in respect of which the pension has been paid:

- (a) the person has not become a member of the Parliament of the Commonwealth or of any other State or Territory, and

- (b) in the case of a person who is receiving a pension as the spouse or de facto partner of a member or former member who has died:
 - (i) the person has not become entitled to payment of any other pension because of having been a member of the Parliament of the Commonwealth or of any other State or Territory, and
 - (ii) the person has not become entitled to payment of any other pension as the spouse or de facto partner of a member of the Parliament of the Commonwealth or of any other State or Territory.

9 Notification to trustees

- (1) A person who ceases to be entitled to receive a pension under the Act must at once notify the trustees of that fact and of the date on which the person ceased to be so entitled.
- (2) Any person who is receiving a pension under the Act must notify the trustees of any change in the person's address.

10 Records

The trustees must cause records to be kept in respect of each member and person who is receiving or is entitled to receive a pension or other benefit under the Act showing all amounts paid into or from the Fund in respect of the member or person.

Part 3 Surcharge payments and benefit reductions

11 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 12 provides for further reduction of certain benefits resulting from the liability of a former member for superannuation contributions surcharge.

12 Further reduction of certain benefits resulting from liability for superannuation contributions surcharge

- (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
 - (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.

13 Limitation on payment of penalty interest

Clauses 11 and 12 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 25 June 2004 unless the request for the payment is made within such period after the notice is received as the trustees consider reasonable.

14 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:

- (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 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 2004 and before 30 June 2005.

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.

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.
- (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, SAS Trustee Corporation (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.
- (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.

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 certain 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 3 March 2011 (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

22 Repeal and savings

- (1) The *Parliamentary Contributory Superannuation Regulation 2013* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Parliamentary Contributory Superannuation Regulation 2013*, had effect under that Regulation continues to have effect under this Regulation.