



New South Wales

# Superannuation Regulation 2022

under the

Superannuation Act 1916

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Superannuation Act 1916*.

MATT KEAN, MP  
Treasurer

## Explanatory note

The object of this Regulation is to repeal and remake, with some changes, the *Superannuation Regulation 2016*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following—

- (a) the reduction of benefits payable in relation to contributors or former contributors to whom a benefit has been released on the grounds of severe financial hardship or on compassionate grounds,
- (b) the reduction of benefits if a contributor fails to provide a tax file number to STC,
- (c) matters relating to the superannuation contributions surcharge,
- (d) the making of family law superannuation payments in relation to spouses or former spouses of contributors or former contributors,
- (e) the cancellation of breakdown pensions at the direction of the pensioner to whom the pension would have been paid,
- (f) savings and formal matters.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory, and
- (c) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Superannuation Regulation 2022

under the

Superannuation Act 1916

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Superannuation Regulation 2022*.

#### 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**Note**— This Regulation repeals and replaces the *Superannuation Regulation 2016*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this Regulation—

**additional surcharge amount** means the amount of superannuation contributions surcharge assessed to be payable by a post-payment surcharge assessment notice.

**approved valuation method**, for Part 3—see section 11.

**contributor**—

- (a) for Part 3—see section 11, and
- (b) otherwise—has the same meaning as in the Act.

**Commissioner of Taxation** means the person holding office for the time being as the Commissioner of Taxation under a law of the Commonwealth.

**deferred benefit**, for Part 3—see section 11.

**post-payment surcharge assessment notice** means a notice that—

- (a) is a notice of assessment of superannuation contributions surcharge under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth in relation to the employer contributions paid to the Fund on behalf of a former contributor, and
- (b) 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 the Act, section 61RA.

**surcharge deduction cap**, in relation to a former contributor, means the maximum surcharge deduction amount that may be determined by STC under the Act, section 61RA(1C) in relation to a benefit payable to the former contributor.

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

**total surcharge amount**, in relation to a former contributor, means the sum of—

- (a) the total amount of superannuation contributions surcharge that has been assessed to be payable in relation to 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 relation to the additional surcharge amount payable under the notice, and
  - (c) the amount of interest, if any, payable in relation to the surcharge debt account kept in relation to the former contributor.

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

## Part 2 Reduction of benefits

### Division 1 General

#### 4 Application of Division

The benefits under the following provisions of the Act may be the subject of a reduction under this Division—

- (a) section 27,
- (b) section 28A,
- (c) section 28AA,
- (d) section 29,
- (e) section 30,
- (f) section 37,
- (g) section 37A,
- (h) section 37B,
- (i) section 38A,
- (j) section 47D,
- (k) Part 4, Division 3A,
- (l) Part 4, Division 3B,
- (m) Part 4, Division 3D.

#### 5 Reductions relating to early release of benefit—the Act, s 61RH

- (1) This section applies to the reduction of benefits payable to, or in relation to, a contributor or former contributor to whom a benefit (an *early release benefit*) has been released under—
  - (a) section 61RF, or
  - (b) section 61RG.
- (2) If an early release benefit is released to a former contributor who has provided for a benefit under the Act, Part 4, Division 3A or 3B, or had a benefit preserved under the Act—
  - (a) STC must, on and from the date of release—
    - (i) calculate the amount of the benefit provided for or preserved, for both a pension and lump sum, and
    - (ii) reduce the amount of the benefit provided for or preserved by the amount of the early release benefit, and
  - (b) when the benefit provided for or preserved is payable, the amount of the benefit must be reduced by the amount of the early release benefit.
- (3) If subsection (2) does not apply, STC must—
  - (a) create a debt account in the Fund in relation to the contributor, and
  - (b) 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 subsection (3), if a benefit is deferred or preserved under the Act after the release of an early release benefit and before a benefit is otherwise payable to the contributor—
  - (a) STC must, on and from the date the benefit is deferred or preserved—

- (i) calculate the amount of benefit deferred or preserved, for both a pension and lump sum, and
    - (ii) reduce the amount of the benefit deferred or preserved by the amount debited to the debt account at the time the benefit is deferred or preserved, and
  - (b) when the deferred or preserved benefit is payable, the amount of the benefit must be reduced by the amount debited to the debt account at the time the benefit was deferred or preserved.
- (5) For subsections (3) and (4), the amount debited to the debt account must be the sum of—
- (a) the amount of all early release benefits released to the contributor, and
  - (b) interest on the 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 subsections (2) and (4), STC may determine which component or components of a benefit are to be reduced.
- (8) To avoid doubt, this section does not apply to reduce an early release benefit payable under the Act, section 61RF or 61RG.

**6 Consent to reduction relating to early release of benefit—the Act, s 61RH(2)(b)**

Before releasing a benefit under the Act, section 61RF or 61RG, STC must obtain the written consent of the contributor or former contributor to the reduction of future benefits as a consequence of the early release.

**7 Commutation of pensions for reduction relating to early release of benefit—the Act, s 61RH**

- (1) This section applies if a benefit that is to be reduced under section 5 may be taken in the form of a pension.
- (2) 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.
- (3) Commutation of part of the pension—
  - (a) does not affect other rights that the person has to commute the pension under the Act, and
  - (b) must not be taken into account for the purpose of determining whether, and to what extent, another right may be exercised, and
  - (c) must be done on a basis determined by STC.
- (4) STC may obtain actuarial advice for the purpose of determining the basis on which part of a pension is to be commuted under this section.

**8 Reduction for superannuation contributions surcharge—the Act, s 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) an amount, not being less than nil, equal to the amount of the surcharge deduction cap less any previously met surcharge liability, and

- (b) pay an amount equal to the reduction amount to the former contributor or the Commissioner of Taxation.
- (2) The *previously met surcharge liability* is 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 relation to which adjustments relating to the benefit of the former contributor have previously been made under this section or the Act in relation to the superannuation contributions surcharge.
- (3) STC may, for the purposes of determining an adjustment under this section, obtain—
  - (a) actuarial advice, or
  - (b) other advice, as STC thinks fit.
- (4) This section does not authorise STC to pay an amount that would result in payments made to or on behalf of the former contributor being greater than the total benefits to which the former contributor is entitled.
- (5) This section does not authorise STC to pay an amount of general interest charged in relation to an additional surcharge amount payable under a post-payment surcharge assessment notice unless—
  - (a) the request for the payment is made by the former contributor, and
  - (b) the request is made within a reasonable period after receiving the notice, as determined by STC.

**Note—** Sections 18 and 19 also relate to the superannuation contributions surcharge.

## **Division 2      Reductions relating to no-TFN tax—the Act, s 61RC(1)(d) and (5)**

### **9      Benefit reductions relating to no-TFN tax**

- (1) For the Act, section 61RC(1)(d), the benefits provided under the following provisions of the Act are prescribed—
  - (a) section 27,
  - (b) section 28A,
  - (c) section 28AA,
  - (d) section 29,
  - (e) section 30,
  - (f) section 37,
  - (g) section 37A,
  - (h) section 37B,
  - (i) section 38A,
  - (j) section 47D,
  - (k) Part 4, Division 3A,
  - (l) Part 4, Division 3B,
  - (m) Part 4, Division 3D.
- (2) STC must create a debt account in the Fund in relation to each contributor or former contributor in relation to whom a benefit is liable to be reduced under the Act, section 61RC.

- (3) STC must have regard to the debt account when determining the amount of the reduced benefit.

**Note—** Under the Act, section 61RC(3), the amount of the reduced benefit is to be determined by STC after obtaining actuarial advice.

#### **10 Provision of information**

STC must at least once a year—

- (a) provide each contributor and former contributor with a statement as to the balance of the debt account created by STC in relation to the contributor or former contributor, and
- (b) if a tax file number has not been previously provided to STC for a contributor or former contributor—request that the contributor or former contributor provide a tax file number to STC.



## Part 3 Family law provisions

### 11 Interpretation

- (1) In this Part—  
*approved valuation method* means the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003*, Schedule 2, Part 8 made under the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.  
*contributor* includes a former contributor.  
*deferred benefit* means a benefit under the Act, section 37B.
- (2) Words and expressions used in this Part have the same meaning as they have in the Act, Part 4A.

### 12 Valuation of superannuation interests—the Act, s 61WD(h)

- (1) This section applies for the purposes of—
  - (a) the Act, Part 4A, and
  - (b) the family law superannuation legislation.
- (2) The value of a contributor spouse's superannuation interest, other than in relation to a deferred benefit, must be determined in accordance with the approved valuation method.
- (3) The value of a superannuation interest relating to a deferred benefit must be determined in accordance with the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, Schedule 2, Part 7.

### 13 Notice to contributor and non-contributor spouse when entitlement becomes payable—the Act, ss 61WB(5) and 61WD(a), (b), (e)

- (1) If the superannuation interest of a contributor becomes subject to a payment split, STC must provide written notice of that fact to the following—
  - (a) the contributor,
  - (b) the non-contributor spouse.
- (2) The notice must be given—
  - (a) for a payment split under a superannuation agreement or flag lifting agreement—within 28 days after the operative time for the payment split, or
  - (b) for a payment split under a splitting order—within 28 days after the later of the following—
    - (i) the operative time for the payment split,
    - (ii) STC's receipt of a copy of the splitting order.
- (3) The notice given to the contributor must specify—
  - (a) the estimated amount of the family law superannuation entitlement of the non-contributor spouse and how it was calculated, and
  - (b) the period within which payment of the entitlement must be made, and
  - (c) the estimated effect of the payment on the entitlement of the contributor under the State Superannuation Scheme established under the Act.
- (4) The notice given to the non-contributor spouse must—
  - (a) specify the estimated amount of the family law superannuation entitlement of the non-contributor spouse and how it was calculated, and

- (b) specify the circumstances in which the amount—
  - (i) may be paid or released to the non-contributor spouse, or
  - (ii) must be transferred or rolled over to a complying superannuation fund or an RSA, and
- (c) require the non-contributor spouse to, within 60 days of the notice being given—
  - (i) if the non-contributor spouse meets a circumstance for payment or release—provide details as to the required method of payment, or
  - (ii) if the non-contributor spouse does not meet a circumstance for payment or release—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 Aware Super Fund if, within the 60 day period—
  - (i) the details are not provided, or
  - (ii) the nomination is not made.
- (5) For the Act, section 61WB(5)(a) and (b), the prescribed period is 60 days after notice is given under this section.
- (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 specified in subsection (2).
- (7) In this section—  
*operative time* has the same meaning as in the *Family Law Act 1975* of the Commonwealth, Part VIIIIB.

**14 Payment of family law superannuation entitlements—the Act, s 61WD(a), (b) and (f)**

- (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, the details referred to in section 13(4)(c)(i) are received.
- (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 an RSA nominated by the non-contributor spouse within 30 days of the nomination being made, or
  - (b) if no nomination is made within the 60 day period referred to in section 13(5)—to the Aware Super Fund within 30 days of the end of the period.
- (3) STC must give to the contributor, within 28 days after an amount of family law superannuation entitlement is paid, released, transferred or rolled over, a written notice 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.
- (4) STC must give to the non-contributor spouse, within 28 days after an amount of family law superannuation entitlement is paid, released, transferred or rolled over, a written notice 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) if the amount was transferred or rolled over—the name and contact details of the superannuation fund or RSA to which the amount was transferred or rolled over.

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

#### 15 Reduction of benefits of contributors—the Act, s 61WD(j)

- (1) This section applies if the amount of the family law superannuation entitlement of a non-contributor spouse is paid, released, transferred or rolled over under the Act, Part 4A.
- (2) Subject to subsection (3), a benefit payable to the contributor, including a benefit transferred under the Act, must be reduced in accordance with this section at the time it is paid to the contributor or transferred.
- (3) If the benefit is a deferred benefit, the deferred benefit must be reduced in accordance with this section—
- (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) otherwise—when the election to take the benefit takes effect.
- (4) The amount of the reduced benefit must 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 relation to 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.

- (5) If family law superannuation payments are made in relation to more than one spouse of the contributor, the amount of the reduced benefit, other than a deferred benefit, must be calculated by applying to the amount of the reduced benefit payable under subsection (4), the reduction factor for each family law superannuation payment.
- (6) Each reduction factor must be calculated as follows—

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

where—

*f* is the reduction factor.

*A* and *C* have the same meaning as in subsection (4).

- (7) In this section—

**benefit accrual**, at a particular point in time, means the benefit accrual 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.

**16 Effect of benefit reductions on pensions and other benefits—the Act, s 61WD(j) and (k)**

- (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.
- (2) If STC commutes part of a pension, the amount of the pension must be reduced in accordance with section 15.
- (3) A 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 must be based on the amount of the benefit as so reduced.
- (4) Nothing in this Part affects other rights of a contributor or other person to commute a pension or part of a pension under the Act.

**17 Apportionment of benefits between reserves—the Act, s 33B(2A)**

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

## Part 4 Miscellaneous

### 18 Payment by STC in relation to post-payment surcharge assessment notice received by former contributor—the Act, s 61RA(6) and (7)

- (1) If the total surcharge amount in relation to a former contributor who has paid an additional surcharge amount to the Commissioner of Taxation is greater than the surcharge deduction cap, STC may reimburse the former contributor by paying to the former contributor an amount equal to the following—
  - (a) the amount by which the total surcharge amount is greater than the surcharge deduction cap, less
  - (b) the amount, if any, previously reimbursed to or paid in relation to the former contributor by STC under this section 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 in relation to an additional surcharge amount that would, if paid, result in, or that has resulted in, the total surcharge amount being greater than the surcharge deduction cap, pay to the Commissioner of Taxation on behalf of the former contributor an amount equal to the following—
  - (a) the amount by which the total surcharge amount is greater than the surcharge deduction cap, less
  - (b) the amount, if any, previously reimbursed to, or paid in relation to, the former contributor by STC under this section or the Act for the purposes of superannuation contributions surcharge.
- (3) This section does not authorise STC to pay an amount of general interest charged in relation to an additional surcharge amount payable under a post-payment surcharge assessment notice unless—
  - (a) the request for the payment is made by the former contributor, and
  - (b) the request is made within a reasonable period after receiving the notice, as determined by STC.

**Note—** Section 8 provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

### 19 Maximum surcharge deduction amount—the Act, s 61RA(1C)(b)

For the Act, section 61RA(1C)(b), the surcharge deduction amount determined by STC must not be greater than the sum of the following—

- (a) an amount that is 15% of the employer-financed portion of the part of the benefit payable to the contributor or former contributor that accrued—
  - (i) after 20 August 1996, and
  - (ii) before 1 July 2003,
- (b) an amount that is 14.5% of the employer-financed portion of the part of the benefit payable to the contributor or former contributor that accrued—
  - (i) on or after 1 July 2003, and
  - (ii) before 1 July 2004,
- (c) an amount that is 12.5% of the employer-financed portion of the part of the benefit payable to the contributor or former contributor that accrued—
  - (i) on or after 1 July 2004, and
  - (ii) before 1 July 2005.

**20 Cancellation of breakdown pension at direction of pensioner—the Act, s 52(c)**

- (1) A pensioner who receives a breakdown pension that is not payable for the remainder of the pensioner's life may direct STC, by written notice, to cancel the pension.
- (2) The breakdown pension is cancelled on—
  - (a) the date STC receives the notice, or
  - (b) if a future date is specified in the notice for the cancellation—on the future date.
- (3) Subject to subsection (5), when the breakdown pension is cancelled, entitlement to a further pension or other benefit under the Act must be determined on the basis the pensioner ceased, on the cancellation, to be on leave of absence without pay as provided by the Act, sections 48 and 49.
- (4) The notice may direct—
  - (a) the cancellation have effect only for the period stated in the notice, being a period ending on—
    - (i) a specified date, or
    - (ii) the happening of a specified event, and
  - (b) STC to re-determine the grant of the pension at the end of the period.
- (5) If the notice directs that the cancellation have effect only for the period stated in the notice—
  - (a) the breakdown pension is not payable to the pensioner during the period, and
  - (b) at the end of the period STC may, on application, grant a breakdown pension or other pension or benefit for which the pensioner is eligible as if the pensioner had continued during the period as an employee on leave of absence without pay in accordance with the Act, sections 48 and 49.
- (6) The pensioner may, during the period the cancellation has effect, extend or reduce the period of cancellation by further written notice to STC.
- (7) In this section—  
***breakdown pension*** means a pension payable under the Act, section 29 or 52E.

**21 Savings and repeal**

- (1) The *Superannuation Regulation 2016* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Superannuation Regulation 2016*, had effect under that Regulation continues to have effect under this Regulation.