



New South Wales

# Parliamentary Contributory Superannuation Regulation 2024

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*.

DANIEL MOOKHEY, MLC  
Treasurer

## Explanatory note

The object of this regulation is to repeal and remake, with minor changes, the *Parliamentary Contributory Superannuation Regulation 2018*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation provides for the following—

- (a) the procedures for meetings of the trustees of the Parliamentary Contributory Superannuation Fund (the **Fund**),
- (b) the way in which a cheque may be drawn on the Fund,
- (c) the way in which an application for a pension or other benefit under the *Parliamentary Contributory Superannuation Act 1971* (**the Act**) may be made,
- (d) a power of the trustees to require a person to provide evidence of the person's age, relationship or entitlement under the Act,
- (e) a requirement to notify the trustees if a person ceases to be entitled to receive a pension under the Act,
- (f) the records the trustees must keep,
- (g) matters relating to family law superannuation payments to or in relation to members who have a superannuation interest under the Act, and the members' spouses.

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 that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Parliamentary Contributory Superannuation Regulation 2024

under the

Parliamentary Contributory Superannuation Act 1971

### Part 1 Preliminary

#### 1 Name of regulation

This regulation is the *Parliamentary Contributory Superannuation Regulation 2024*.

#### 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repeals and replaces the *Parliamentary Contributory Superannuation Regulation 2018*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this regulation—

*additional surcharge amount*, for Part 3—see section 12.

*Commissioner of Taxation*, for Part 3—see section 12.

*interstate registered relationship*, for Part 2, Division 2—see section 6.

*post payment surcharge assessment notice*, for Part 3—see section 12.

*prescribed period*, for Part 4—see section 17.

*registered relationship*, for Part 2, Division 2—see section 6.

*surcharge deduction cap*, for Part 3—see section 12.

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

*total surcharge amount*, for Part 3—see section 12.

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

## Part 2 General requirements

### Division 1 Procedures

#### 4 Signing cheques—the Act, s 13

A cheque drawn on an account containing money belonging to the Fund must be—

- (a) signed by at least 2 persons authorised by the trustees to do so, and
- (b) drawn to order, and
- (c) marked “not negotiable”.

#### 5 Meetings of trustees—the Act, s 16

- (1) For the Act, section 16(4), the chairperson may—
  - (a) decide the date, time and place for a meeting of the trustees, and
  - (b) call a meeting by notifying the other trustees of the date, time and place of the meeting.
- (2) The chairperson must ensure a written record is kept of each meeting of the trustees.
- (3) In the chairperson’s absence, the vice-chairperson may exercise the functions conferred on the chairperson by this section.

### Division 2 Documents, evidence and records—the Act, s 33

#### 6 Definitions

In this division—

*interstate registered relationship* has the same meaning as in the *Relationships Register Act 2010*.

*registered relationship* has the same meaning as in the *Relationships Register Act 2010*.

#### 7 Information given to trustees must be in writing

- (1) Information given to the trustees under the Act must, unless the Act specifies otherwise, be—
  - (a) in writing, and
  - (b) addressed to the trustees.
- (2) In this section—

*information* includes an application, a notice and a request.

#### 8 Evidence of age, relationship or entitlement

- (1) The trustees may exercise the powers specified in this section to enable the trustees to determine whether a person applying for a pension or other benefit under the Act is eligible to receive the pension or benefit.
- (2) The trustees may require—
  - (a) a member or former member to give the trustees documentary evidence of the person’s—
    - (i) age, and
    - (ii) relationship status, and

- (b) the spouse or de facto partner of a member or former member to give the trustees documentary evidence of the person's relationship to the member or former member, and
  - (c) a dependent child of a deceased member or former member to give the trustees specified information.
- (3) In this section—
- relationship status*** means—
- (a) if the member or former member is married—the fact that the person is married, or
  - (b) if the member or former member is in a registered relationship, an interstate registered relationship or a de facto relationship—the fact that the person is in a relationship of that kind.

## 9 Trustees may require pensioner to sign declaration

- (1) The trustees may require a person receiving a pension or other benefit under the Act to give the trustees a signed declaration that, during the period for which the pension or benefit has been paid—
- (a) the person has not become a member of another Parliament, or
  - (b) the person has not become entitled to payment of another pension because the person—
    - (i) has been a member of another Parliament, or
    - (ii) is in a relationship with a member of another Parliament.
- (2) In this section—
- another Parliament*** means the Parliament of the Commonwealth or a Parliament of another State.
- relationship*** means the following—
- (a) a marriage,
  - (b) a registered relationship,
  - (c) an interstate registered relationship,
  - (d) a de facto relationship.

## 10 Notifications to trustees

- (1) If a person ceases to be entitled to receive a pension or other benefit under the Act, the person must immediately notify the trustees of—
- (a) the fact that the person's entitlement has ceased, and
  - (b) the date on which the entitlement ceased.
- (2) A person receiving a pension or other benefit under the Act must notify the trustees of a change to the address at which the person may be contacted by the trustees.

## 11 Records

The trustees must keep records in relation to each member or other person who receives, is entitled to receive, or has received, a pension or other benefit under the Act showing the amounts paid into or from the Fund in relation to the member or other person.

## Part 3 Surcharge payments and benefit reductions

### 12 Definitions

In this part—

**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 relation to employer contributions paid to the Fund on behalf of a former member.

**surcharge deduction cap** means the maximum surcharge deduction amount that may be determined by the trustees under the Act, section 26D(3) in relation to a benefit payable to a former member.

**total surcharge amount**, for a former member, 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 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 relation to the additional surcharge amount payable under the notice, and
- (c) the amount, if any, of interest payable in relation to the surcharge debt account kept for the former member.

### 13 Payment by trustees in relation to additional surcharge amount—the Act, s 26D

- (1) This section applies in relation to a former member who has paid, or is liable to pay, an additional surcharge amount to the Commissioner of Taxation.
- (2) For the Act, section 26D(9), if the total surcharge amount for the former member exceeds the surcharge deduction cap, the trustees may—
  - (a) if the former member has paid the additional surcharge amount—reimburse the former member by paying the excess amount to the former member, or
  - (b) if the former member has not paid the additional surcharge amount—pay the excess amount to the Commissioner of Taxation at the former member's request.
- (3) In this section—

**excess amount** means—

  - (a) an amount equal to the amount by which the total surcharge amount for a former member exceeds the surcharge deduction cap, minus
  - (b) any amount the trustees previously reimbursed or paid in relation to the former member's superannuation contributions surcharge.

### 14 Further reduction of certain benefits resulting from liability for superannuation contributions surcharge—the Act, s 26D

- (1) For the Act, section 26D(9)(b), the trustees may, at the request of a former member—
  - (a) reduce the amount of the former member's benefit by the lesser of—
    - (i) the additional surcharge amount for the former member, and

- (ii) the amount, not less than \$0, that is equal to the amount of the surcharge deduction cap after deducting any previously met surcharge liability, and
- (b) pay the lesser amount to—
  - (i) the former member, or
  - (ii) the Commissioner of Taxation.
- (2) The trustees may request actuarial advice for the purposes of determining the amount by which the former member's benefit is to be reduced.
- (3) In this section—

*previously met surcharge liability* means the sum of—

  - (a) all amounts paid by the former member in relation to the former member's total surcharge amount to—
    - (i) the trustees, or
    - (ii) the Commissioner of Taxation, and
  - (b) all amounts that have previously been reduced under this section or the Act, section 26D in relation to the former member's superannuation contributions surcharge.

#### **15 Limitation on payment of penalty interest**

Sections 13 and 14 do not authorise the trustees to pay general interest charged in relation to an additional surcharge amount payable by a post payment surcharge assessment notice received on or after 25 June 2004, unless—

- (a) the former member requests payment of the interest, and
- (b) the request is made within a reasonable period after the former member receives the notice.

#### **16 Surcharge deduction amount—the Act, s 26D**

For the Act, section 26D(3)(b), the following amounts are prescribed—

- (a) for a benefit payable to a member or former member that accrued after 20 August 1996 and before 1 July 2003—15%,
- (b) for a benefit payable to a member or former member that accrued on or after 1 July 2003 and before 30 June 2004—14.5%,
- (c) for a benefit payable to a member or former member that accrued on or after 1 July 2004 and before 30 June 2005—12.5%.

## Part 4 Family law provisions

### 17 Definition

In this part—

**prescribed period** means the period prescribed by section 18.

### 18 Prescribed period for non-member spouses to nominate fund or RSA—the Act, s 29C

For the Act, section 29C(5)(b), the prescribed period is 28 days after a notice under section 20(1) is received by the non-member spouse.

### 19 Valuation of superannuation interests—the Act, s 29E

- (1) This section applies for the purposes of the Act, Part 4A and the family law superannuation legislation.
- (2) For the Act, section 29E(h), the value of a superannuation interest of a member spouse must be determined in accordance with the following methods—
  - (a) for a pension deferred under the Act, section 19B—the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, Schedule 2, Part 7,
  - (b) for a benefit preserved under the Act, section 22B—the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, Schedule 2, Part 5,
  - (c) for a pension first paid on or after 1 February 1990 to a member spouse who was not a member before that date—the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, Schedule 4,
  - (d) for an interest not specified in paragraphs (a)–(c)—the approved valuation method.
- (3) In this section—

**approved valuation method** means the *Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval 2003*, Schedule 2, Part 10, made under the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

### 20 Notice to member spouse and non-member spouse when entitlement becomes payable—the Act, 29E

- (1) For the Act, section 29E(e), if a superannuation interest of a member spouse is subject to a payment split, the trustees must give the member spouse and non-member spouse written notice that the interest is subject to a payment split.
- (2) The trustees must give notice—
  - (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—
    - (i) the operative time for the payment split, or
    - (ii) the trustees receiving a copy of the order.
- (3) The notice given to the member spouse must specify the following—
  - (a) the estimated amount of the non-member spouse’s family law superannuation entitlement,
  - (b) how the amount was calculated,
  - (c) the period within which the amount will be paid,



- (d) the estimated effect of the payment on the member spouse's entitlement under the Parliamentary Contributory Superannuation Scheme.
- (4) For the Act, section 29E(a) and (e), the notice given to the non-member spouse must—
  - (a) specify the estimated amount of the non-member spouse's family law superannuation entitlement, and
  - (b) specify how the amount was calculated, and
  - (c) specify the circumstances in which—
    - (i) the amount may be paid or released to the non-member spouse, or
    - (ii) the amount must be transferred or rolled over to a complying superannuation fund or an RSA, and
  - (d) invite the non-member spouse to respond to the notice within the prescribed period by—
    - (i) advising the trustees that the amount may be paid or released to the non-member spouse because of a circumstance specified in the notice, or
    - (ii) nominating a complying superannuation fund or RSA for the transfer or rollover of the amount, and
  - (e) inform the non-member spouse that the amount will be credited to the Aware Super Fund if—
    - (i) the amount is not payable under the Act, section 29C(3)(a), and
    - (ii) the non-member spouse does not respond to the notice within the prescribed period.
- (5) Subsection (1) does not apply if the superannuation interest ceases to be subject to a payment split before the end of the period specified in subsection (2) in which the trustee must give notice.
- (6) In this section—

*operative time* has the same meaning as in the *Family Law Act 1975* of the Commonwealth, Part VIIIIB.

## 21 Family law superannuation payments—the Act, s 29E

- (1) For the Act, section 29E(f), the trustees must pay a family law superannuation payment within the following periods—
  - (a) for a payment in the circumstance specified in the Act, section 29C(3)(a)—as soon as practicable after receiving notice from the non-member spouse,
  - (b) for a payment in the circumstance specified in the Act, section 29C(3)(b)—within 90 days after receiving the non-member spouse's nomination of a complying superannuation fund or RSA,
  - (c) for a payment in the circumstance specified in the Act, section 29C(5)—within 90 days of the end of the prescribed period.
- (2) The trustees must, within 28 days after taking an action specified in subsection (1), give the member spouse and non-member spouse a written notice stating—
  - (a) that the trustees paid, released, transferred or rolled over the non-member spouse's family law superannuation entitlement, and
  - (b) the amount of the entitlement, and
  - (c) how the amount was calculated, and

- (d) in the notice given to the member spouse—the estimated effect of the action on the member spouse’s entitlement under the Parliamentary Contributory Superannuation Scheme, and
- (e) in the notice given to the non-member spouse, if the amount was transferred or rolled over to a superannuation fund or RSA—the name and contact details of the superannuation fund or RSA.

**Note**— See the *Family Law (Superannuation) Regulations 2001* of the Commonwealth, regulation 59 in relation to fees the trustees may charge in relation to certain actions taken under this section.

## 22 Reduction of benefits of member spouse—the Act, s 29E

- (1) For the Act, section 29E(j), if a family law superannuation payment is made, the benefit payable to the member spouse under the Act is reduced in accordance with subsection (2) at the following times—
  - (a) for a benefit, including a benefit transferred under the Act, and other than a deferred benefit—when the benefit is paid or transferred to the member spouse,
  - (b) for a deferred benefit—
    - (i) if the benefit is deferred before the family law superannuation payment is made—when the payment is made, or
    - (ii) if the benefit is deferred after the family law superannuation payment is made—when the benefit is deferred.

- (2) The benefit is reduced in accordance with the following calculation—

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

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 under the Act if the family law superannuation payment had not been made.

*A* is the ratio of the amount of the family law superannuation payment made to the non-member spouse to the value of the member spouse’s benefit when the payment split occurred.

*C* is the ratio of the benefit accrual at the time of the payment split to the benefit accrual for the member spouse’s benefit when the benefit is payable, deferred or transferred, as the case requires.

- (3) If family law superannuation payments are made to, or in relation to, more than one non-member spouse, the amount of the member spouse’s reduced benefit is further reduced by multiplying the reduced benefit by the following reduction factor for each family law superannuation payment—

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

where—

*f* is the reduction factor.

*A* and *C* have the same meanings as in subsection (2).

- (4) Subsection (3) does not apply if the reduced benefit is a deferred benefit.

- (5) In this section—

**benefit accrual**, for a benefit at a point in time, means the benefit accrual at that time as determined by the trustees in accordance with actuarial advice.

**deferred benefit** means a benefit—

- (a) deferred under the Act, section 19B, or

(b) preserved under the Act, section 22B.

**make**, in relation to a family law superannuation payment, means pay, release, transfer or rollover to, or in relation to, the non-member spouse.

**value**, of a benefit, means the value of the benefit as determined by the trustees in accordance with actuarial advice.

**23 Effect of benefit reductions on pensions and other benefits—the Act, ss 29E and 33**

(1) For the Act, section 29E(k)—

- (a) the trustees may commute part of a pension payable to a member spouse for the purposes of paying a family law superannuation entitlement to, or in relation to, a non-member spouse, and
- (b) the amount of the commuted pension is reduced in accordance with section 22.

(2) For the Act, sections 29E(j) and 33, if a benefit is payable under the Act to a person on the death of a member spouse whose benefit has been, or is to be, reduced because of a family law superannuation payment, the benefit payable to the person is determined according to the reduced benefit.

**24 Transitional provisions relating to certain family law superannuation entitlements arising before 3 March 2011**

(1) If an existing entitlement is an interest that is not able to be calculated until a benefit becomes payable to a member spouse or other person, the entitlement is taken to be operative for the purposes of the Act, section 29C when the benefit becomes payable to the member spouse or other person.

(2) For the purposes of the application of section 20 to an existing entitlement, a non-member spouse must respond to a notice as specified in section 20(4)(d) within 3 months of being given the notice.

(3) In this section—

**existing entitlement** means a family law superannuation entitlement that arose under a superannuation agreement, flag lifting agreement or splitting order in force before 3 March 2011.

## **Part 5 Miscellaneous**

### **25 Repeal and savings**

- (1) The *Parliamentary Contributory Superannuation Regulation 2018* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Parliamentary Contributory Superannuation Regulation 2018*, had effect under that regulation continues to have effect under this regulation.