

# Parliamentary Contributory Superannuation Regulation 2008

[2008-343]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Parliamentary Contributory Superannuation Regulation 2008



New South Wales

## 1 Name of Regulation

This Regulation is the *Parliamentary Contributory Superannuation Regulation 2008*.

## 2 Commencement

This Regulation commences on 1 September 2008.

### Note—

This Regulation replaces the *Parliamentary Contributory Superannuation Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

## 3 Interpretation

(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*.

**Note—**

Section 11 of the *Interpretation Act 1987* provides that expressions defined in the Act have the same meanings in this Regulation.

**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.

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

#### **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.

## **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.

### **15 Savings**

Any act, matter or thing that, immediately before the repeal of the [Parliamentary Contributory Superannuation Regulation 2003](#), had effect under that Regulation continues

to have effect under this Regulation.