

# Superannuation Regulation 2001

[2001-619]



New South Wales

## Status Information

### Currency of version

Repealed version for 9 December 2005 to 31 August 2006 (accessed 11 January 2025 at 5:19)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2006.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Superannuation Regulation 2001



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Superannuation Regulation 2001*.

### 2 Commencement

This Regulation commences on 10 August 2001.

### 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.

**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 contributor, being a notice that is received (on or after the commencement of clause 10 of this Regulation) 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 section 61RA of the Act.

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

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

**total surcharge amount**, in respect of a former contributor, 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 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 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 contributor.

#### **4 Notes**

The explanatory note and table of contents in the text of this Regulation do not form part of this Regulation.

## **Part 2 Reduction of benefits**

### **5 Application of Part**

The benefits under the following provisions of the Act may be the subject of a reduction under this Part:

- (a) section 27 (Amount of pension payable on retirement),
- (b) section 28A (Pension on retirement before reaching 60 years of age),
- (c) section 28AA (Pension on retirement before age 60—component pension),
- (d) section 29 (Breakdown pensions),
- (e) section 30 (Pensions to spouse or de facto partner on death of contributor),
- (f) section 37 (Retrenchment benefits payable to an employee who is retrenched after completing 10 years' service),
- (g) section 37A (Retrenchment benefits payable to contributors having not less than 3 years' contributing service),
- (h) section 37B (Deferral of payment of benefits on retrenchment),
- (i) section 38A (Withdrawal benefit),
- (j) section 47D (Benefits payable in respect of reduced value units),
- (k) Division 3A of Part 4 (Voluntarily deferred benefits),
- (l) Division 3B of Part 4 (Deferral of benefit for contributors aged 55 years and over in certain circumstances),

(m) Division 3D of Part 4 (Compulsory preservation of benefits).

## **6 Reduction of benefits**

- (1) This clause applies to the reduction of benefits payable to or in respect of a contributor or former contributor (other than a benefit payable under section 61RF or 61RG of the Act) to whom a benefit has been released on the ground of the contributor's or former contributor's severe financial hardship or on compassionate grounds.
- (2) If a benefit is released to a former contributor who has provided for a benefit under Division 3A or 3B of Part 4 of the Act, or had a benefit preserved under the Act, STC must, on and from the date of release, calculate the amount of any benefit provided for or preserved (in the case of both a pension and lump sum) and reduce that amount by the amount of benefit released. The amount of benefit payable when the benefit provided for or preserved is payable is to be reduced accordingly.
- (3) In any other case, STC must create a debt account in the Fund in respect of the contributor and must 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 subclause (3), if a benefit is deferred or preserved under the Act after the release to the contributor concerned of a benefit and before a benefit is otherwise payable, STC must, on and from the date the benefit is deferred or preserved, calculate the amount of benefit deferred or preserved (in the case of both a pension and lump sum) and reduce that amount by the amount debited to the debt account at the time the benefit is deferred or preserved. The amount of benefit payable when the deferred or preserved benefit is payable is to be reduced accordingly.
- (5) The amount debited to the debt account is to be the amount of benefit released together with interest on that 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 the purposes of subclauses (2) and (4), STC may determine which component or components of a benefit are to be reduced.

## **7 Consent to benefit reduction**

Before releasing a benefit on the ground of severe financial hardship or on compassionate grounds, STC must obtain the written consent of the contributor or former contributor to the reduction of benefits as a consequence of the early release.

### **7A Further reduction of certain benefits resulting from liability for superannuation contributions surcharge: section 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) 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 contributor or the Commissioner of Taxation.
- (2) In subclause (1), **previously met surcharge liability** means 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 respect of which adjustments relating to the benefit of the former contributor 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, STC may obtain actuarial advice or advice from any other persons, as STC thinks fit.
- (4) This clause does not authorise STC to pay any amount that would result in payments made to or on behalf of the former contributor exceeding the total benefits to which the former contributor is entitled.

## **8 Commutation of pensions for reduction of benefits**

- (1) If a determination is made under this Division reducing a benefit that may be taken in the form of a pension, 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.
- (2) Commutation of part of the pension:
  - (a) does not affect any other right that the person has to commute the pension under the Act, and
  - (b) is not to be taken into account for the purpose of determining whether, and to what extent, any such other right may be exercised, and
  - (c) is to be done on a basis determined by STC.
- (3) 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.

## 9 Release of benefits during transitional period

- (1) This clause applies to the release of a benefit to a contributor or former contributor on the ground of severe financial hardship or on compassionate grounds during the transitional period if:
  - (a) the release was not inconsistent with section 61RF or 61RG of the Act, as inserted by the *Superannuation Legislation Amendment Act 2000*, and
  - (b) STC obtained the written consent of the contributor or former contributor to the reduction of benefits as a consequence of the early release.
- (2) Clauses 5, 6 and 8 apply in respect of a release of benefit to which this clause applies in the same way as they apply to a release of benefit after the commencement of those clauses.
- (3) In this clause:

**transitional period** means the period commencing on the date of assent to the *Superannuation Legislation Amendment Act 2000* and ending on the commencement of sections 61RF and 61RG of the Act, as inserted by that Act.

## Part 3 Miscellaneous

### 10 Payment by STC in relation to post payment surcharge assessment notice received by former contributor

- (1) If the total surcharge amount in respect of a former contributor who has paid an additional surcharge amount to the Commissioner of Taxation exceeds the surcharge deduction cap, STC may reimburse the former contributor by paying to the former contributor 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 contributor by STC under this clause 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 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 contributor 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 contributor by STC under this clause or the Act for the purposes of superannuation contributions surcharge.

#### Note—

Clause 7A provides for further reduction of certain benefits resulting from the liability of a former contributor for superannuation contributions surcharge.

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

Clauses 7A and 10 do not authorise STC to pay any amount of general interest charged in respect of an additional surcharge amount payable under a post payment surcharge assessment notice unless the request for the payment is made within such period after the notice is received as STC considers reasonable.

## **12 Surcharge deduction amount**

For the purposes of section 61RA (1C) of the Act, the surcharge deduction amount determined by STC 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 contributor or former contributor 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 contributor or former contributor 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 contributor or former contributor that accrued on or after 1 July 2004 and before 30 June 2005.
- (d) (Repealed)