



New South Wales

State Authorities Non-contributory Superannuation Amendment (Family Law) Regulation 2008

under the

State Authorities Non-contributory Superannuation Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *State Authorities Non-contributory Superannuation Act 1987*.

JOSEPH TRIPODI, M.P.,
Minister for Finance

Explanatory note

The object of this Regulation is to amend the *State Authorities Non-contributory Superannuation Regulation 2005* to provide for the following matters relating to family law superannuation payments in respect of spouses or former spouses of employees under the State Authorities Non-contributory Superannuation Scheme:

- (a) the manner in which the superannuation interest of an employee is to be valued for family law purposes,
- (b) the notification of employees, and spouses or former spouses (*non-employee spouses*), of family law superannuation entitlements resulting from agreements or orders under Commonwealth family law,
- (c) the nomination by non-employee spouses as to where family law superannuation entitlements are to be paid,
- (d) the reduction of benefits payable to employees whose non-employee spouses have received family law superannuation entitlements,
- (e) provisions of a transitional nature.

This Regulation is made under the *State Authorities Non-contributory Superannuation Act 1987*, including sections 27AJ–27AL and 36 (the general regulation-making power) and clause 1 of Schedule 5 to the Act.

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Clause 1 State Authorities Non-contributory Superannuation Amendment (Family Law) Regulation 2008

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1 Name of Regulation

This Regulation is the *State Authorities Non-contributory Superannuation Amendment (Family Law) Regulation 2008*.

2 Commencement

This Regulation commences on 19 December 2008.

3 Amendment of State Authorities Non-contributory Superannuation Regulation 2005

The *State Authorities Non-contributory Superannuation Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Part 3A

Insert after Part 3:

Part 3A Family law provisions

12A Interpretation

(1) In this Part:

approved valuation method means Part 9 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 preserved under section 24 of the Act.

employee includes a former employee.

(2) Words and expressions used in this Part have the same meaning as they have in Part 4D of the Act.

12B Valuation of superannuation interests

(1) This clause applies for the purposes of Part 4D of the Act and the family law superannuation legislation.

(2) The value of a superannuation interest of an employee is to be determined in accordance with the approved valuation method.

12C Notice to employee and non-employee spouse when entitlement becomes payable

(1) If a superannuation interest of an employee becomes subject to a payment split, STC must notify the employee and the non-employee 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

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- (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 STC receives a copy of the order (whichever is the later).
- (3) The notice given to the employee must:
 - (a) specify the estimated amount of the entitlement of the non-employee 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 employee under the State Authorities Non-contributory Superannuation Scheme.
- (4) The notice given to the non-employee spouse must:
 - (a) specify the estimated amount of the entitlement of the non-employee spouse and how it was calculated, and
 - (b) specify the circumstances in which the amount may be paid or released to the non-employee spouse or must be transferred or rolled over to a complying superannuation fund or an RSA, and
 - (c) require the non-employee spouse to nominate, within 28 days, whether the non-employee 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 27AJ (5) (b) of the Act, the prescribed period within which a nomination must be made is 28 days after the giving of the notice under this clause.
- (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.

12D 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-employee spouse, the amount must be paid or released by STC when, or as soon as practicable after, a nomination is received under clause 12C (4).

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- (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 STC 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-employee spouse after the end of the period referred to in clause 12C (5).
 - (4) STC must give to the employee, 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 amount of adjustment made to the benefit of the employee.
 - (5) STC must give to the non-employee 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, STC may charge reasonable fees in respect of payment splits, payment flags, flag lifting and other related matters. Such fees are payable in equal parts by the employee and the non-employee spouse.

12E Reduction of benefits of employees

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-employee spouse is paid,

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released, transferred or rolled over under Part 4D of the Act (a *family law superannuation payment* is made).

- (2) A benefit payable to the employee (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 contributor or transferred.
- (3) A deferred benefit of the employee is to be reduced in accordance with this clause:
 - (a) if the benefit was preserved before the superannuation entitlement of the non-employee 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 preserved.
- (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 employee if the family law superannuation payment had not been made.

A is the ratio of the amount paid in respect of the non-employee spouse to the value of the benefit of the employee 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 employee, 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 referred to in 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 STC on actuarial advice.

value of a benefit means the value of the benefit as determined by STC on actuarial advice.

12F Effect of benefit reductions on pensions and other benefits

Any benefit payable under the Act to a person on the death of an employee 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.

12G Transitional provisions relating to 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 the commencement of this Part (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 an employee or other person, it is taken to be operative for the purposes of section 27AJ of the Act when the benefit becomes so payable.
- (3) For the purposes of the application of clause 12C to an existing entitlement, a nomination under clause 12C must be given by a non-employee spouse within 3 months of being given notice under that clause.

12H Transitional provision relating to all family law superannuation entitlements

Clause 12C (2) does not apply in respect of a family law superannuation entitlement until 6 months after the commencement of this Part.