



New South Wales

State Authorities Superannuation Amendment (Family Law) Regulation 2008

under the

State Authorities Superannuation Act 1987

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

JOSEPH TRIPODI, M.P.,
Minister for Finance

Explanatory note

The object of this Regulation is to amend the *State Authorities Superannuation Regulation 2005* to provide for the following matters relating to family law superannuation payments in respect of spouses of contributors or former contributors to the State Authorities Superannuation Scheme (and members or former members of certain former public sector schemes) (*contributors*):

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

This Regulation is made under the *State Authorities Superannuation Act 1987*, including sections 45I–45K and 55 (the general regulation-making power) and clause 1 of Schedule 6 to that Act.

2008 No 615

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

State Authorities Superannuation Amendment (Family Law) Regulation 2008

under the

State Authorities Superannuation Act 1987

1 Name of Regulation

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

2 Commencement

This Regulation commences on 19 December 2008.

3 Amendment of State Authorities Superannuation Regulation 2005

The *State Authorities 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

23A Interpretation

- (1) In this Part:
approved valuation method means Part 7 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.
contributor includes a former contributor.
- (2) Words and expressions used in this Part have the same meanings as they have in Part 5AA of the Act.

23B Application to other schemes

Without limiting section 45G of the Act, this Part applies to persons referred to in section 45G (1) of the Act in the same way as it applies to contributors.

23C Valuation of superannuation interests

- (1) This clause applies for the purposes of Part 5AA of the Act and the family law superannuation legislation.
- (2) The value of a superannuation interest of a contributor is to be determined in accordance with the approved valuation method.

23D Notice to contributor and non-contributor spouse when entitlement becomes payable

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

2008 No 615State Authorities Superannuation Amendment (Family Law) Regulation
2008Schedule 1 Amendment

- (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 contributor must:
 - (a) specify the estimated amount of the entitlement of the non-contributor 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 contributor under the State Authorities Superannuation Scheme.
- (4) The notice given to the non-contributor spouse must:
 - (a) specify the estimated amount of the entitlement of the non-contributor spouse and how it was calculated, and
 - (b) specify the circumstances in which the amount may be paid or released to the non-contributor spouse or must be transferred or rolled over to a complying superannuation fund or an RSA, and
 - (c) require the non-contributor spouse to nominate, within 28 days, whether the non-contributor 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 45I (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.

23E 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-contributor spouse, the amount must be paid or released by STC when, or as soon as practicable after, a nomination is received under clause 23D (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-contributor spouse after the end of the period referred to in clause 23D (5).
- (4) STC must give to the contributor, 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 contributor.
- (5) STC must give to the non-contributor 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 contributor and the non-contributor spouse.

23F Reduction of benefits of contributors

- (1) This clause applies if the amount of the family law superannuation entitlement of a non-contributor spouse is paid, released, transferred or rolled over under Part 5AA of the Act (a *family law superannuation payment* is made).
- (2) An employer financed benefit payable to the contributor (including a benefit deferred or transferred under the Act) is to be reduced in accordance with this clause at the time it is paid to the contributor or transferred.
- (3) A contributor financed benefit payable to the contributor (including a benefit deferred or transferred under the Act) is to be reduced in accordance with this clause when the superannuation entitlement of the non-contributor spouse is paid, released, transferred or rolled over.
- (4) The amount of the reduced employer financed 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 contributor if the family law superannuation payment had not been made.

A is the ratio of the amount paid in respect of 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 respect of more than one spouse of the contributor, the amount of the reduced employer financed 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) The amount of the reduced contributor financed benefit is to be calculated as follows:

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

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 respect of the non-contributor spouse to the value of the benefit of the contributor when the payment split occurred.

- (7) 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.

23G Effect of benefit reductions on other benefits

- (1) STC may commute part of a pension payable to a person referred to in section 45G (1) of the Act for the purposes of payment of the family law superannuation entitlement of the person's spouse and the amount of the pension is to be reduced in accordance with clause 23F.
- (2) Any 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 is to be based on the amount of the benefit as so reduced.
- (3) Nothing in this Part affects any other right of a person to commute a pension.

23H 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 a contributor or other person, it is taken to be operative for the purposes of section 45I of the Act when the benefit becomes so payable.

2008 No 615

State Authorities Superannuation Amendment (Family Law) Regulation
2008

Schedule 1 Amendment

- (3) For the purposes of the application of clause 23D to an existing entitlement, a nomination under clause 23D must be given by a non-contributor spouse within 3 months of being given notice under that clause.

23I Transitional provision relating to all family law superannuation entitlements

Clause 23D (2) does not apply in respect of a family law superannuation entitlement until 6 months after the commencement of this Part.

BY AUTHORITY
