

SZ301\*

State Superannuation Act 2000

## **State Superannuation Amendment Regulations 2008**

Made by the deputy of the Governor in Executive Council.

### **Part 1 — Preliminary**

#### **1. Citation**

These regulations are the *State Superannuation Amendment Regulations 2008*.

#### **2. Commencement**

These regulations come into operation as follows:

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

#### **3. Regulations amended**

- (1) The amendments in Part 2 are to the *State Superannuation Regulations 2001*.
- (2) The amendments in Part 3 are to the *Superannuation and Family Benefits Act 1938* as continued in force by the *State Superannuation (Transitional and Consequential Provisions) Act 2000* section 26.

### **Part 2 — Amendments to *State Superannuation Regulations 2001***

#### **Division 1 — General**

#### **4. Regulation 31 amended**

Regulation 31(3)(a) is amended by deleting “Fund;” and inserting instead —

“ Account; ”.

**5. Regulation 35 amended**

- (1) Regulation 35(2)(a) is amended by deleting “leave;” and inserting instead —  
 “ leave (“**continued contributions option**”); or ”.
- (2) Regulation 35(3) is amended as follows:
- (a) by deleting “to continue paying member contributions” and inserting instead —  
 “ the deferred contributions option ”;
- (b) by deleting “deferred contribution option” and inserting instead —  
 “ continued contributions option ”.

**6. Regulation 47A amended**

Regulation 47A(6)(a) and “or” after it are deleted and the following is inserted instead —

- “
- (a) any benefit subsequently arising in respect of the Member under this Division; or
- ”.

**7. Schedule 2 amended**

Schedule 2 Part 6 clause 17 is amended in the definition of “magistrate” by inserting after “means” —

- “
- a magistrate of the Magistrates Court or, in respect of a day before 1 May 2005,
- ”.

**Division 2 — Family law property settlements**

**8. Regulation 3 amended**

Regulation 3(1) is amended by inserting in the appropriate alphabetical position —

- “
- “**Family Law Act**” means the *Family Law Act 1975* (Commonwealth) Part VIII B;
- ”.

**9. Part 5A inserted**

Before Part 6 the following Part is inserted —

“

**Part 5A — Family law property settlements**

**219A. Interpretation**

- (1) In this Part —
- “**ex-spouse**”, in relation to a Member in relation to whose superannuation interest a splitting

instrument has been served on the Board, means the other party to the marriage in relation to which the splitting instrument was made;

**“splitting instrument”** means —

- (a) a splitting order; or
- (b) a superannuation agreement that provides for a payment split; or
- (c) a flag lifting agreement that provides for a payment split;

**“superannuation interest”** means a superannuation interest (as defined in the Family Law Act section 90MD) in a scheme under the Act other than an unsplitable interest;

**“value”**, in relation to the superannuation interest of an ex-spouse, means the value of that interest determined in accordance with the *Family Law (Superannuation) Regulations 2001* (Commonwealth) regulation 14G.

(2) In this Part the following terms each have the meaning given in the Family Law Act section 90MD —

- (a) **“flag lifting agreement”**;
- (b) subject to subregulation (3), **“operative time”**;
- (c) **“payment split”**;
- (d) **“splitting order”**;
- (e) **“superannuation agreement”**;
- (f) **“unsplitable interest”**.

(3) If —

- (a) a splitting instrument is served on the Board before 1 February 2008; and
- (b) the time that would, but for this subregulation, be the operative time in relation to that splitting instrument is before 1 February 2008,

then the operative time in relation to that splitting instrument is 1 February 2008.

#### **219B. Application of Part**

This Part applies in relation to a Member if the Board is served with a splitting instrument that relates to the superannuation interest of the Member.

#### **219C. Clean break at operative time**

If this Part applies in relation to a Member, at the operative time —

- (a) the Member’s ex-spouse becomes entitled to a superannuation interest of an amount equal to

the value of the ex-spouse's entitlement in respect of the Member's superannuation interest at the operative time; and

- (b) there is a corresponding reduction in value of the Member's superannuation interest.

**219D. New interest for ex-spouse**

- (1) The value of the ex-spouse's entitlement under regulation 219C(a) is to be determined in accordance with the *Family Law (Superannuation) Regulations 2001* (Commonwealth) regulation 14G.
- (2) When an ex-spouse becomes entitled to a superannuation interest under regulation 219C(a) the Board is to transfer to the fund determined under subregulation (3) an amount equal to —
  - (a) the value of the ex-spouse's entitlement; less
  - (b) any fees payable by the ex-spouse under the Family Law Act section 90MY.
- (3) The superannuation fund to which the amount is to be transferred is —
  - (a) if —
    - (i) the ex-spouse has nominated a superannuation fund to which the amount is to be transferred; and
    - (ii) the Board is able to transfer the amount to that fund,that fund; or
  - (b) if paragraph (a) does not apply and the ex-spouse is a member of the West State scheme in respect of whom transfers to that scheme may be accepted, that scheme; or
  - (c) if neither paragraph (a) nor (b) apply, GESB Superannuation within the meaning given in section 42(1) of the Act.
- (4) A nomination for the purposes of subregulation (3)(a) must be made in writing to the Board within 28 days (or such longer period as the Board allows) of the ex-spouse being requested by the Board to nominate a fund.

**219E. Reduction of Member's interest to be apportioned**

If a Member whose superannuation interest is reduced under regulation 219C(b) is a member of 2 or more schemes, the reduction is to be apportioned proportionately between the Member's superannuation interests in each scheme in which he or she is a member, unless the splitting instrument provides otherwise.

**219F. Reduction of interest in accumulation scheme**

- (1) In this regulation —  
“**accumulation scheme**” means the West State Super Scheme, GESB Super Scheme, Retirement Income Scheme, Term Allocated Pension Scheme or Retirement Access Scheme.
- (2) If the value of a Member’s superannuation interest in an accumulation scheme is reduced under regulation 219C(b), the balance in the Member’s account in that scheme is reduced by an amount equal to the value of the ex-spouse’s entitlement under regulation 219C(a).

**219G. Reduction of interest in Gold State Super Scheme**

- (1) If the value of a Member’s superannuation interest in the Gold State Super Scheme is reduced under regulation 219C(b) the value of the reduction is to be calculated by the actuary and may be effected —
  - (a) by the deduction of a monetary amount, with or without interest; or
  - (b) by the reduction by a specified amount of the multiple of final remuneration used to calculate the Member’s superannuation interest; or
  - (c) in any other manner agreed between the actuary and the Board.
- (2) If the Member is a Part 1 Member within the meaning of Schedule 2 Part 1 clause 1(1), the reduction is to be apportioned proportionally between —
  - (a) the Member’s superannuation interest to the extent that it arises under Part 2 of these regulations; and
  - (b) the Member’s superannuation interest to the extent that it arises under Schedule 2 Part 1.
- (3) If the Member is a Part 6 Member within the meaning of Schedule 2 Part 6 clause 17, the reduction is to be apportioned proportionally between —
  - (a) the Member’s superannuation interest to the extent that it arises under Part 2 of these regulations; and
  - (b) the Member’s superannuation interest to the extent that it arises under Schedule 2 Part 6.

**219H. Notice of clean break**

- (1) When the Board transfers an amount under regulation 219D in respect of a Member’s ex-spouse the Board must —
  - (a) give the ex-spouse a notice setting out the matters mentioned in subregulation (2); and

- (b) give the Member a notice setting out the matters mentioned in subregulation (3).
- (2) The notice to the ex-spouse must set out —
- (a) that the new interest has been created; and
  - (b) the value of that interest and how that value was calculated; and
  - (c) the fund to which the transfer under regulation 219D(2) was made; and
  - (d) if the transfer was made to GESB Superannuation in accordance with regulation 219D(3)(c), details of how the trustee of that fund can be contacted.
- (3) The notice to the Member must set out —
- (a) that a new interest has been created for the ex-spouse and that a corresponding reduction has been made to the Member's interest; and
  - (b) the value of the ex-spouse's interest and how that value was calculated; and
  - (c) the amount by which, or the manner in which, the Member's interest has been reduced.

”.

**10. Regulation 224G inserted**

After regulation 224F the following regulation is inserted —

“

**224G. Family law information**

- (1) If the Board is required by the Family Law Act to give information to a person, nothing in these regulations (including regulation 224F) affects the Board's obligation to give that information to that person or its ability to give information in accordance with subregulation (2).
- (2) If the Board receives an application for information under the Family Law Act, the Board may provide to the applicant, in addition to the information required by that Act to be provided, any further information that the Board considers is reasonably necessary for the applicant to understand the superannuation interest to which the application relates.

”.

**11. Regulation 245 amended**

Regulation 245 is amended by deleting “A person” and inserting instead —

“ Subject to the Family Law Act a person ”.

**12. Regulation 246 amended**

Regulation 246 is amended by deleting “Where,” and inserting instead —

“ Subject to the Family Law Act where, ”.

**Part 3 — Amendments to *Superannuation and Family Benefits Act 1938*****13. Section 24A amended**

Section 24A(4) is amended by inserting after “under the” —  
“ *State* ”.

**14. Section 60AB inserted**

After section 60AA the following section is inserted —

“

**60AB. Contributor remaining in service: deemed retirement on election to take pension**

(1) This section applies to a contributor if —

(a) the contributor —

- (i) has attained the age of 65 years; or
- (ii) has elected to contribute for a pension on retirement at an age earlier than 65 years and has attained that age; or
- (iii) has determined his pension under section 60AA;

and

(b) the contributor remains in service.

(2) A contributor to whom this section applies may elect to receive his pension notwithstanding that he remains in service.

(3) An election for the purposes of subsection (2) takes effect on the day on which it is received by the Board or a later day specified in it.

(4) If a contributor makes an election under this section then notwithstanding anything else in this Act, for the purposes of this Act the contributor is deemed to have retired from service on the day on which the election takes effect.

”.

**15. Section 62 amended**

Section 62(4)(a) is amended by deleting “(No. 2) 2006” and inserting instead —

“ 2007 ”.

