

FE301*

Fire and Emergency Services Superannuation Act 1985

Fire and Emergency Services (Superannuation Fund) Amendment Regulations 2008

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Fire and Emergency Services (Superannuation Fund) Amendment Regulations 2008*.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — 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. The regulations amended

The amendments in these regulations are to the *Fire and Emergency Services (Superannuation Fund) Regulations 1986*.

4. Regulation 3 amended

Regulation 3(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions —

“

“**earnings rate**”, in respect of a member, means the earnings rate determined by the Superannuation Board under regulation 9B for the member;

“**partner**” means —

- (a) a spouse; or
- (b) a de facto partner who is a spouse as defined in section 10 of the SIS Act;

“**SIS Regulations**” means the *Superannuation Industry (Supervision) Regulations 1994* of the Commonwealth;

“**splittable contribution**” has the same meaning as it has in Division 6.7 of the SIS Regulations;

”;

- (b) by deleting the definition of “preservation age” and inserting instead —

“

“**preservation age**” means, for a person who was born —

- (a) before 1 July 1960, 55 years of age;
- (b) during the year 1 July 1960 to 30 June 1961, 56 years of age;
- (c) during the year 1 July 1961 to 30 June 1962, 57 years of age;
- (d) during the year 1 July 1962 to 30 June 1963, 58 years of age;
- (e) during the year 1 July 1963 to 30 June 1964, 59 years of age;
- (f) after 30 June 1964, 60 years of age;

”;

- (c) in the definition of “maximum benefit” by deleting “under regulation 18 if the member had become totally and permanently disabled;” and inserting instead —

“

under regulation 18 if —

- (a) the member had become totally and permanently disabled; and
- (b) each reference in Schedule 2 to 12 783 days were a reference to 10 958 days;

”.

5. Regulation 9B replaced

Regulation 9B is repealed and the following regulation is inserted instead —

“

9B. Earnings rate

- (1) From time to time the Superannuation Board, on the advice of an actuary, is to determine an earnings rate for members.
- (2) The Superannuation Board may determine different earnings rates for different members or different classes of members.
- (3) An earnings rate may be positive or negative.

- (4) In determining an earnings rate the Superannuation Board is to have regard to —
- (a) the net earnings income derived from the investment of assets in the Superannuation Fund; and
 - (b) costs and expenses; and
 - (c) the desirability of averaging earnings in order to reduce fluctuations in earnings rates; and
 - (d) investment choices made by members; and
 - (e) any other matters that appear to the Superannuation Board to be relevant.

”.

6. Regulation 16BB inserted

After regulation 16BA the following regulation is inserted —

“

16BB. Contribution splitting

- (1) A member —
- (a) for whom splittable contributions have been made to the Superannuation Fund; and
 - (b) whose partner is also a member,
- may apply to the Superannuation Board to transfer some or all of those contributions to the partner's accumulation account in accordance with Division 6.7 of the SIS Regulations.
- (2) The Superannuation Board may accept an application under subregulation (1) if it is satisfied that the application complies with Division 6.7 of the SIS Regulations.
- (3) On acceptance of an application under subregulation (1) the Superannuation Board is to transfer the contributions as requested.

”.

7. Regulation 16C amended

- (1) Regulation 16C(2) is amended as follows:
- (a) after paragraph (a) by inserting —

“

- (aa) the amount of any splittable contributions transferred to the member under regulation 16BB; and

”.

- (b) in paragraph (g) by deleting “interest” and inserting instead —
“ earnings ”;
 - (c) after each of paragraphs (a), (b) to (fa) and (fc) by inserting —
“ and ”.
- (2) Regulation 16C(3) is amended as follows:
 - (a) after paragraph (ab) by inserting —
“
 - (ac) the amount of any splittable contribution transferred by the member under regulation 16BB; and”;
 - (b) after each of paragraphs (a), (aa) and (ab) by inserting —
“ and ”.
- (3) Regulation 16C(4) is repealed and the following subregulations are inserted instead —
“
 - (4) At least once every year the Superannuation Board must, for each member —
 - (a) calculate the member’s earnings for the period since earnings were last credited to the member’s accumulation account (or if no earnings have been credited, since the account was opened) by applying the member’s earnings rate to the balance in the account; and
 - (b) credit the amount of the member’s earnings to the member’s accumulation account.
 - (5) When making a calculation under subregulation (4)(a) the Superannuation Board may apply the earnings rate to daily balances, average balances or on such other basis as it considers appropriate.”.

8. Regulation 21AA amended

Regulation 21AA(1)(b) is deleted and the following paragraph is inserted instead —

- “
 - (b) satisfies a condition of release within the meaning of Part 6 of the SIS Regulations in respect of which the cashing restriction specified in the SIS Regulations Schedule 1 is nil,”.

9. Regulation 21AB inserted

After regulation 21AA the following regulation is inserted —

“

21AB. Phased retirement benefit

- (1) A member who —
 - (a) is at least the preservation age; and
 - (b) applies to the Superannuation Board for payment of a benefit under this regulation,is entitled to a benefit of the amount specified in the member's application, which must not exceed the balance of the member's accumulation account.
- (2) A benefit under this regulation is to be paid —
 - (a) under regulation 22 as a pension benefit; and
 - (b) on terms and conditions that ensure that the benefit is —
 - (i) a non-commutable allocated annuity; or
 - (ii) a non-commutable allocated pension; or
 - (iii) a non-commutable annuity; or
 - (iv) a non-commutable pension,(all as defined in the SIS Regulations).
- (3) For the purposes of regulation 22, an application under subregulation (1)(b) for payment of a benefit is taken to also be an application under regulation 22(1) for the benefit to be paid as a pension benefit.

”.

10. Regulation 21C amended

Regulation 21C(2) is repealed.

11. Regulation 21D inserted

After regulation 21C the following regulation is inserted —

“

21D. Delay in payment of benefit

- (1) If a benefit to which a member is entitled or which has become payable is not paid or transferred under regulation 21B(2) or (3) as soon as is permitted by these regulations, the Superannuation Board is to —
 - (a) retain the accumulation component of the benefit in the member's accumulation account; and
 - (b) if the benefit includes a defined benefit component, credit the amount of that component to the member's accumulation account; and

- (c) maintain the member's accumulation account in accordance with these regulations until the benefit is paid or transferred,

and when the benefit is paid or transferred, the amount to be paid or transferred is the balance in the account at that time.

- (2) This regulation does not apply to —
 - (a) a supplementary disablement benefit; or
 - (b) any part of a benefit that a person has elected under regulation 22 to receive as a pension.

”.

12. Regulation 22 amended

Regulation 22(2) is amended by deleting “If” and inserting instead —

“ Subject to regulation 21AB(2)(b), if ”.

13. Regulation 23 repealed

Regulation 23 is repealed.

14. Regulation 23BA amended

- (1) Regulation 23BA(1) is amended by deleting “regulation 23B(3)(c)” in both places where it occurs and inserting instead —

“ regulation 23B(3a)(c) ”.
- (2) Regulation 23BA(3) is amended by deleting “regulation 23B(3)(a)” and inserting instead —

“ regulation 23B(3a)(a) ”.
- (3) Regulation 23BA(5) is amended by deleting “regulation 23B(3)(b)” and inserting instead —

“ regulation 23B(3a)(b) ”.
- (4) Regulation 23BA(9) is amended by deleting “regulation 23B(3)” and inserting instead —

“ regulation 23B(3a) ”.

15. Regulation 23C amended

Regulation 23C(2) is amended as follows:

- (a) in paragraph (a) by deleting “regulation 23B(3)(a)” and inserting instead —

“ regulation 23B(3a)(a) ”;
- (b) in paragraph (b) by deleting “regulation 23B(3)(b)” and inserting instead —

“ regulation 23B(3a)(b) ”;

- (c) in paragraph (c) by deleting “regulation 23B(3)(c)” and inserting instead —
“ regulation 23B(3a)(c) ”.

16. Regulation 27 amended

Regulation 27(2) and (2a) are repealed.

17. Division heading and regulations 29 and 30 replaced

The heading to Part V Division 3 and regulations 29 and 30 are repealed and the following is inserted instead —

“

Division 3 — Miscellaneous

29. Unclaimed benefits

If a benefit that is payable to or in respect of a member becomes unclaimed money that the Superannuation Board is required —

- (a) by the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Commonwealth) to pay to the Commonwealth Commissioner of Taxation; or
- (b) by the *Unclaimed Money (Superannuation and RSA Providers) Act 2003* to pay to the Treasurer,

the Superannuation Board is to pay the benefit in accordance with that Act.

30. Assignment or charge of benefit prohibited

A person who is, or may become, entitled to a benefit cannot assign the person’s right to, or create a charge over, the benefit, and any purported assignment or charge is void.

”.

18. Regulation 41 amended

Regulation 41(8) is amended by deleting “paragraph (a)(iii)”.

19. Regulation 41A inserted

After regulation 41 the following regulation is inserted —

“

41A. Application of regulations to members reduced in rank

- (1) In this regulation —

“**highest rank**”, in relation to a member, means the highest rank at which the member has, at any time been employed by the member’s current employer;

“highest rank salary”, in relation to a member, means the annual rate of remuneration payable to an employee on the member’s highest rank;

“prescribed member” means a member referred to in subregulation (2);

“relevant percentage”, in relation to a member, means —

- (a) in respect of any period during which a prescribed member is classified as being employed at a rank lower than the member’s highest rank, the member’s actual annual rate of remuneration for that period expressed as a percentage of the member’s highest rank salary for that period;
 - (b) in respect of any other period, 100%.
- (2) If at any time a member is or has been classified by the employer as being employed at a rank lower than that at which the member was previously employed these regulations shall apply to that member with the modifications and variations set out in this regulation.
- (3) The employer shall advise the Superannuation Board and the member of a relevant percentage of a prescribed member —
- (a) when the member becomes a prescribed member; and
 - (b) whenever there is any change in that percentage.
- (4) For the purposes of determining the superannuation salary of a prescribed member the annual rate of remuneration of the member shall be deemed to be the actual annual rate of remuneration adjusted in the ratio that 100% bears to the relevant percentage of the member.
- (5) During any period of membership during which the relevant percentage of a prescribed member is less than 100% the contributions that would otherwise have been payable by the member under regulation 15 or by the employer under regulation 16 shall be reduced in the ratio that the relevant percentage of the member bears to 100%.
- (6) Where any benefit calculated under Schedule 1, Schedule 1A or Schedule 4 is payable to or in respect of a prescribed member in respect of any period of membership during which the relevant percentage of the member was less than 100%, that benefit shall be reduced in the ratio that the relevant percentage of the member during that period bears to 100%.

- (7) Where an amount has to be calculated using a membership period determined under Schedule 2 in order to determine a benefit under or by reference to regulation 17 that is payable to or in respect of a prescribed member and, immediately before the benefit became payable, the member was classified as being employed at a rank lower than the member's highest rank, that amount shall be reduced in the ratio that the relevant percentage of the member immediately before the benefit became payable bears to 100%.

”.

20. Regulation 46 amended

Regulation 46(3)(f) is amended by deleting “Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* (Commonwealth)” and inserting instead —

“

Australian Prudential Regulation Authority
established by the *Australian Prudential
Regulation Authority Act 1998*
(Commonwealth)

”.

21. Schedule 2 amended

Schedule 2 is amended by deleting “10 958 days” in the 3 places where it occurs and inserting instead —

“ 12 783 days ”.

22. Schedule 4 amended

Schedule 4 is amended by deleting the definition of “r” and inserting instead —

“

r is the discount factor determined by the Superannuation Board on the advice of an actuary to be appropriate to reflect the fact that the member has become entitled to a benefit under regulation 21(1) before the member reaches 55 years of age;

”.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.