

South Australia

# **Superannuation (Transition to Retirement) Variation Regulations 2008**

under the *Superannuation Act 1988*

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## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Variation provisions

### **Part 2—Variation of *Superannuation Regulations 2001***

- 4 Variation of regulation 19—Right to apply for commutation
- 5 Insertion of regulation 20A
  - 20A Commutation under section 40B
- 6 Insertion of Part 3A

#### **Part 3A—Transition to retirement**

- 23A Adjustments under section 26A
  - 23B Modification of section 26A(5)
  - 23C Adjustments under section 33A
  - 23D Application for benefit in respect of rollover account
  - 23E Certain provisions do not apply
  - 7 Revocation of regulation 27
- 

## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Superannuation (Transition to Retirement) Variation Regulations 2008*.

### **2—Commencement**

These regulations will come into operation on 1 July 2008.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## **Part 2—Variation of *Superannuation Regulations 2001***

### **4—Variation of regulation 19—Right to apply for commutation**

Regulation 19—after subregulation (1) insert:

- (1aa) Despite subregulation (1), a contributor who—
- (a) is in receipt of a draw down benefit under section 33A of the Act; and
  - (b) has retired from employment,
- may apply to the Board for the commutation of the draw down benefit within 6 months after the benefit first becomes payable.

### **5—Insertion of regulation 20A**

Before regulation 21 insert:

#### **20A—Commutation under section 40B**

Pursuant to section 40B(6) of the Act, the commutation factors set out in regulation 20 are to be applied in making a commutation under that section.

### **6—Insertion of Part 3A**

After Part 3 insert:

## **Part 3A—Transition to retirement**

### **23A—Adjustments under section 26A**

- (1) Pursuant to section 26A(9) of the Act, when a contributor for whom a draw down benefit has been determined under that section retires, the contributor's entitlement under section 27 of the Act will be subject to a reduction that takes effect by reducing—
- (a) the number of the contributor's contribution points; and
  - (b) the factor "M" in the formulae under section 27(2) of the Act,
- to the extent necessary to take into account, to its full extent, the employer funded component of the value of the draw down benefit determined for the contributor.
- (2) Pursuant to section 26A(10) of the Act, when the employment of a contributor for whom a draw down benefit has been determined under that section is terminated by the contributor's death, an entitlement under section 32 of the Act will be subject to a reduction that takes effect by reducing—
- (a) the number of the contributor's contribution points; and
  - (b) the factor "M" in the formula under section 32 of the Act relevant to the determination of the entitlement,

to the extent necessary to take into account, to its full extent, the employer funded component of the value of the draw down benefit determined for the contributor.

- (3) If 2 or more reductions are to be made under subregulation (1) or (2) in respect of a contributor's entitlement because the Board has determined 2 or more draw down benefits for the contributor, the Board may determine to apply the reductions to the entitlement separately or in aggregate.

### **23B—Modification of section 26A(5)**

Pursuant to section 26A(15) of the Act, subsection (5) of that section is modified so as to allow a contributor who has—

- (a) retired from employment; or
- (b) reached the age of 65 years,

to commute an entitlement to a draw down payment so that investment of the draw down benefit on account of which the payment is made is brought to an end and the balance paid to the member.

### **23C—Adjustments under section 33A**

- (1) Pursuant to section 33A(9)(b) of the Act, if the employment arrangements of a contributor who is receiving a draw down benefit under that section alter so that there is an increase in his or her salary, the contributions payable by the contributor under section 23 of the Act will, despite section 33A(8) of the Act and any provision of section 23 of the Act to the contrary, be fixed for a particular financial year on the basis of the contributor's salary as on 31 March of the year in which that financial year commences.
- (2) Pursuant to section 33A(10) of the Act, when a contributor to whom a draw down benefit has been paid under that section retires, the contributor's entitlement under section 34 of the Act will be subject to a reduction that takes effect by reducing—
- (a) the number of the contributor's contribution points; and
  - (b) the factors "n", " $n_1$ " and " $n_2$ " in the formula under section 34 of the Act relevant to the determination of the entitlement (or such of those factors as appear in the relevant formula),

to the extent necessary to take into account, to its full extent, the value of the draw down benefit paid to the contributor.

- (3) Pursuant to section 33A(11) of the Act, when the employment of a contributor to whom a draw down benefit has been paid under that section terminates on account of invalidity, the contributor's entitlement under section 37 of the Act (if any) will be adjusted in the following manner:
- (a) in the case of an entitlement under section 37(1) of the Act—the entitlement will be subject to a reduction that takes effect by reducing—
    - (i) the number of the contributor's contribution points; and
    - (ii) the factor "n" in the formula under subsection (2) of that section,to the extent necessary to take into account, to its full extent, the value of the draw down benefit paid to the contributor;
  - (b) in the case of an entitlement under paragraph (a) of section 37(3a) of the Act—the entitlement will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under that paragraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits;
  - (c) in the case of an entitlement under paragraph (b) of section 37(3a) of the Act—
    - (i) the employee component payable under subparagraph (i) of that paragraph will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under that subparagraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits; and
    - (ii) the employer component payable under subparagraph (ii) of that paragraph will be subject to a reduction that takes effect by reducing—
      - (A) the number of the contributor's contribution points; and
      - (B) the factor "M" in the formula under subparagraph (ii),to the extent necessary to take into account the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits.

- (4) If 2 or more reductions are to be made under subregulation (2) or (3)(a) in respect of a contributor's entitlement because the Board has determined 2 or more draw down benefits for the contributor, the Board may determine to apply the reductions to the entitlement separately or in aggregate.
- (5) Pursuant to section 33A(12) of the Act, when the employment of a contributor to whom a draw down benefit has been paid under that section terminates on account of the contributor's death, an entitlement under section 38 of the Act will be adjusted in accordance with the following:
  - (a) for the purposes of subsection (4) of section 38 of the Act, in calculating the amount of a pension to which a contributor would have been entitled if circumstances specified in paragraph (b) or (c) of that subsection applied, the amount of each draw down benefit paid to the contributor as an indexed pension (if any) is to be added to the amount that would, but for this paragraph, have been determined under the relevant provision to be the amount of the pension;
  - (b) in the case of an entitlement under section 38(6)(a) or (b) of the Act—the entitlement will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under the relevant paragraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits;
  - (c) in the case of an entitlement under subsection (7) of section 38 of the Act—
    - (i) the employee component payable under paragraph (a) of that subsection will be reduced by an amount determined by applying to the balance that would, but for this subregulation, have been payable to the contributor under that paragraph the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits; and
    - (ii) the employer component payable under paragraph (b) of that subsection will be subject to a reduction that takes effect by reducing—
      - (A) the number of the contributor's contribution points; and
      - (B) the factor "M" in the formulae under paragraph (b),

to the extent necessary to take into account the aggregate of the proportions of the contributor's notional retirement benefit that have been paid to the contributor as 1 or more draw down benefits.

- (6) In this regulation—

***notional retirement benefit***—a contributor's notional retirement benefit is the amount that would be payable to the contributor under section 34 of the Act if the contributor had retired from employment immediately before the date on which the Board determined that he or she was entitled to a draw down benefit (expressed as an amount per fortnight).

### **23D—Application for benefit in respect of rollover account**

- (1) Pursuant to section 33A(15) of the Act, a contributor who has a rollover account by virtue of the operation of section 47B of the Act may, in conjunction with an application under section 33A(1) of the Act, apply for a benefit with respect to the rollover account (after taking into account the operation of subregulation (2)).
- (2) The following provisions apply in relation to an application by a contributor for a benefit in respect of a rollover account:
- (a) the Board will determine a benefit (***a rollover draw down benefit***) on the basis of the contributor's application and on the basis that the maximum rollover draw down benefit to which the contributor is entitled will be a percentage of the balance of the contributor's rollover account equal to the percentage that the draw down benefit determined by the Board in respect of the contributor's associated application under section 33A(1) of the Act bears to the total benefit that would have been payable had the contributor retired from employment;
  - (b) the Board will then, according to an election made by the contributor as part of his or her application, invest (on behalf of and in the name of the contributor) the rollover draw down benefit—
    - (i) with the Superannuation Funds Management Corporation of South Australia; or
    - (ii) with another entity that will provide a non-commutable income stream for the contributor while the contributor continues to be employed in the workforce,so that the contributor receives (and only receives) a payment in the form of a pension or an annuity (***a rollover draw down payment***) on account of the benefit;
  - (c) the investment of a rollover draw down benefit under paragraph (b)(i) will be on terms and conditions determined by the Board;

- (d) an entitlement to a rollover draw down payment is not commutable until the contributor retires from employment or reaches the age of 65 years;
- (e) the determination of a benefit under this regulation must take into account the operation of any provision under Part 5A of the Act.

### **23E—Certain provisions do not apply**

Pursuant to section 59 of the Act, sections 28A, 28B, 35, 39A and 39B of the Act do not apply in respect of a contributor for whom a draw down benefit has been determined under section 26A or 33A of the Act.

### **7—Revocation of regulation 27**

Regulation 27—delete the regulation

#### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 26 June 2008

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