



Queensland

Superannuation (State Public Sector) Amendment of Deed Regulation (No. 2) 2009

Subordinate Legislation 2009 No. 79

made under the

Superannuation (State Public Sector) Act 1990

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[s 1]

1 Short title

This regulation may be cited as the *Superannuation (State Public Sector) Amendment of Deed Regulation (No. 2) 2009*.

2 Commencement

This regulation, other than sections 4(2), 7, 8, 18 and 26, commences on 1 July 2009.

3 Deed amended

This regulation amends the *Superannuation (State Public Sector) Deed 1990*.

4 Amendment of s 4 (Definitions)

(1) Section 4—

insert—

‘APRA see the *Australian Prudential Regulation Authority Act 1998* (Cwlth), section 7.

compassionate ground see the SIS Regulation, regulation 6.01(2).

concessional contributions cap see the *Income Tax Assessment Act 1997* (Cwlth), section 292-20(2).

element taxed in the fund see the *Income Tax Assessment Act 1997* (Cwlth), section 995-1(1).

eligible temporary resident visa has the meaning given by the SIS regulation, regulation 6.01(2).

gainfully employed see the SIS regulation, regulation 1.03.

non-concessional contribution means—

- (a) a contribution complying with the *Income Tax Assessment Act 1997* (Cwlth), section 292-90(2); or
- (b) an amount mentioned in the *Income Tax Assessment Act 1997* (Cwlth), section 292-90(4).

non-concessional contributions cap see the *Income Tax Assessment Act 1997* (Cwlth), section 292-85(2).

non-public sector accumulation account means an account kept by the board under section 395.

superannuation interest see the *Income Tax Assessment Act 1997* (Cwlth), section 995-1(1).

taxed splittable contribution means a contribution made to the fund that is a taxable contribution under the *Income Tax Assessment Act 1997* (Cwlth), chapter 3, part 3-30, division 295, subdivision 295-C.

tax file number see the *Income Tax Assessment Act 1936* (Cwlth), section 202A.’.

- (2) Section 4, definition *closed defined benefit category*, after ‘the’—

insert—

‘standard defined benefit category,’.

5 Amendment of s 5 (Meaning of member)

Section 5(1)(b), after ‘account’—

insert—

‘or non-public sector accumulation account’.

6 Amendment of s 22 (Membership categories)

- (1) Section 22(1), after item ‘QAS accumulation category’—

insert—

- non-public sector accumulation category’.

- (2) Section 22(3), ‘other categories’—

omit, insert—

‘other categories, other than the non-public sector accumulation category,’.

[s 7]

7 Amendment of s 23C (Accumulation categories)

(1) Section 23C(1)(c)—

omit.

(2) Section 23C(2A)(c)—

omit.

8 Omission of s 23D (Standard defined benefit category)

Section 23D—

omit.

9 Amendment of s 26 (Transfers in)

Section 26(2)—

omit, insert—

‘(2) An amount received under subsection (1) must be paid, under an election of the member, into either or both of the following—

(a) the member’s accumulation account;

(b) if the member has a non-public sector accumulation account—the account.

‘(3) If the member does not make an election under subsection (2), the board must pay an amount received under subsection (1) into the member’s accumulation account or non-public sector accumulation account.’.

10 Amendment of s 27 (Transfers out)

(1) Section 27(2)(a), after ‘account’—

insert—

‘or non-public sector accumulation account’.

(2) Section 27(2)(b), after ‘26’—

insert—

‘or the member’s non-public sector accumulation account’.

11 Amendment of s 29H (Definitions for pt 7B)

Section 29H, definition *preservation cashing condition—*

insert—

‘(c) for a member of the non-public sector accumulation category—see section 390.’.

12 Amendment of s 29I (Eligibility to start a transition to retirement income stream)

Section 29I(a)

omit, insert—

‘(a) the member belongs to one or more of the following—

- (i) an accumulation category;
- (ii) the non-public sector accumulation category;
- (iii) the standard defined benefit category; and’.

13 Amendment of s 29J (Election to start a transition to retirement income stream)

Section 29J(2)(b)—

omit, insert—

‘(b) state—

- (i) whether the funds for the income stream are to come from one or more of the following—
 - (A) the member’s accumulation account;
 - (B) the member’s non-public sector accumulation account;
 - (C) the member’s defined benefit amount; and
- (ii) the amount or percentage of the member’s accumulation account, non-public sector

[s 14]

accumulation account or defined benefit amount that is to be used.’.

14 Amendment of s 29K (Membership of category continues for employed members)

(1) Section 29K, heading ‘for employed members’—

omit.

(2) Section 29K—

insert—

‘(3) A member does not stop being a member of the non-public sector accumulation category even if the total amount in the member’s non-public sector accumulation account is used for a transition to retirement pension.’.

15 Amendment of s 29L (Adjustment of member’s accumulation account or defined benefit amount etc.)

(1) Section 29L, heading—

omit, insert—

‘29L Start of a transition to retirement pension’.

(2) Section 29L(3) and (4)—

omit, insert—

‘(3) If any funds for the pension came from the member’s accumulation account or non-public sector accumulation account, the board must reduce the member’s accumulation account or non-public sector accumulation account by the amount used for the pension.

‘(4) If any funds for the pension came from the member’s defined benefit amount, the board must reduce the member’s defined benefit amount by the amount used for the pension.’.

(3) Section 29L(5), ‘(4)(a)’—

omit, insert—

‘(4)’.

16 Amendment of s 29M (Cancelling a transition to retirement pension)

(1) Section 29M(2)—

omit, insert—

‘(2) If a transition to retirement pension is cancelled, the board must transfer any remaining funds in the account for the pension to the member’s accumulation account or non-public sector accumulation account.’.

(2) Section 29M(3), ‘(2)(a)’—

omit, insert—

‘(2)’.

17 Amendment of s 32 (Definitions for ch 2)

Section 32—

insert—

‘*pre-existing condition*, of a member, means a medical condition the signs or symptoms of which existed before the start of the member’s contributory membership.’.

18 Replacement of s 34 (Continuity of membership when changing employers)

Section 34—

omit, insert—

‘34 Continuity of membership when changing employers

‘The membership of a member in the standard defined benefit category continues under section 32P of the Act only if the member has not made a withdrawal from the member’s accumulation account in relation to a benefit credited to the account under part 4.’.

[s 19]

19 Amendment of s 42 (Acceptance of contributions—member aged at least 65)

Section 42(4)—

omit.

20 Replacement of s 47 (Member's prospective membership benefit)

Section 47—

omit, insert—

'47 Member's prospective membership benefit

'(1) An employed member's prospective membership benefit is payable if—

- (a) the member has at least 2 years contributory membership; or
- (b) in the board's opinion, the member's total and permanent disability or death was not related to a pre-existing condition of the member.

'(2) The prospective membership benefit is the amount calculated using the following formula—

AP x PM x RA

where—

AP means the applicable percentage stated in schedule 1.

PM means the member's prospective membership.

RA means—

- (a) if the member has less than 7 years contributory membership and in the board's opinion, the member has a pre-existing condition—the relevant amount; or
- (b) otherwise—1.

'(3) If compulsory contributions have not been received for an employed member for 2 years, or a longer period of not more than 3 years the board considers to be just and equitable in the circumstances, the member is not entitled to a prospective

membership benefit until compulsory contributions are again received.

‘(4) In this section—

contributory membership does not include a period of membership included under section 54.

relevant amount means the amount calculated using the following formula—

$$[(CM - 24) \times 0.015] + 0.1$$

where—

CM means the member’s contributory membership expressed as a number of whole months.’.

21 Amendment of s 50 (Income protection benefit)

(1) Section 50(1)—

omit, insert—

‘(1) The board must pay an employed member a pension equal to 75% of final salary if—

- (a) the member becomes temporarily disabled; and
- (b) the member has been absent from duty on sick leave without salary for—

- (i) a continuous period of 14 days, whether or not working days; or
- (ii) a lesser period the board considers to be just and equitable in the circumstances; and

(c) either—

- (i) the member has contributory membership of 7 years or more; or
- (ii) the member has contributory membership of less than 7 years and in the board’s opinion the temporary disablement was not related to a pre-existing condition.’.

(2) Section 50—

[s 22]

insert—

- ‘(1C) If compulsory contributions have not been received for an employed member for 2 years, or a longer period of not more than 3 years the board considers to be just and equitable in the circumstances, the member is not entitled to a pension under this section until compulsory contributions are again received.’.

22 Amendment of s 65 (Voluntary insurance)

Section 65(4) and (5), after ‘account’—

insert—

‘or non-public sector accumulation account’.

23 Amendment of s 68 (Definitions for ch 3)

Section 68, definition *eligible temporary resident visa*—

omit.

24 Amendment of s 70 (Acceptance of contributions—member aged at least 65)

Section 70(5)—

omit, insert—

- ‘(5) If the board receives a contribution that does not comply with subsections (2) to (4), within 30 days of becoming aware of this, the board must return the contribution to the person who paid the contribution.’.

25 Amendment of s 76A (Definitions for div 3A)

Section 76A, definition *taxed splittable contribution*—

omit.

26 Amendment of s 76B (Meaning of spouse)

Section 76B(1)—

omit, insert—

‘(1) In this division—

spouse see the SIS Act, section 10.’.

27 Amendment of s 76E (Maximum amount for splittable contributions)

Section 76E(5), definitions *concessional contributions cap*, *element taxed in the fund* and *superannuation interest—*

omit.

28 Amendment of s 87 (Premiums)

Section 87—

insert—

‘(2) If there is an insufficient amount in the member’s accumulation account to pay the premiums and the member has a non-public sector accumulation account, the board may deduct all or part of the premiums from the member’s non-public sector accumulation account.’.

29 Amendment of s 89BA (Withdrawals on release authority)

Section 89BA(1) and (2), after ‘accumulation account’—

insert—

‘or non-public sector accumulation account’.

30 Amendment of s 89C (Definitions for pt 4A)

Section 89C, definitions *compassionate ground*, *medical transport* and *specialist—*

omit.

31 Replacement of ss 89D to 89H

Sections 89D to 89H—

[s 32]

omit, insert—

‘89D Access to accessible amount on compassionate grounds

- ‘(1) This section applies if under the SIS regulation, regulation 6.19A—
- (a) a member applies to APRA for payment of the whole, or a part, of the member’s accessible amount; and
 - (b) APRA decides that the member is entitled to a release of benefits on compassionate grounds.
- ‘(2) The board must pay to the member the amount approved by APRA.’.

32 Amendment of s 89KA (Definitions for pt 4AA)

Section 89KA, definitions *non-concessional contribution* and *tax file number—*

omit.

33 Amendment of s 337 (Voluntary contributions and eligible spouse contributions)

Section 337(4)—

omit.

34 Insertion of new ch 10

After section 388—

insert—

‘Chapter 10 Non-public sector accumulation category

‘Part 1 Preliminary

‘389 Application

‘This chapter applies to members in the non-public sector accumulation category.

‘390 Definitions for ch 10

‘In this chapter—

preservation cashing condition means the member—

- (a) permanently retiring from the workforce after reaching preservation age; or
- (b) ceasing to be gainfully employed on or after reaching 60 years; or
- (c) turns 65 years; or
- (d) dying; or
- (e) ceasing to be gainfully employed after becoming totally and permanently disabled; or
- (f) reaching preservation age after the member has permanently retired from the workforce for a reason other than becoming totally and permanently disabled; or
- (g) having been the holder of an eligible temporary resident visa that has expired or been cancelled and having permanently departed from Australia; or
- (h) ceasing to be gainfully employed at a time when the member’s preserved benefits in the fund are less than \$200; or

[s 34]

- (i) is a lost member under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cwlth), section 22 and the member's benefit is less than \$200; or
- (j) has a terminal medical condition within the meaning of the SIS regulation, regulation 6.01A.

'Part 2 Membership and contributions

'Division 1 Membership

'391 Eligibility for membership

'A person is eligible for membership in the non-public sector accumulation category if—

- (a) the person is a member mentioned under the Act, section 13(9A); and
- (b) the person's employer is approved, or is a member of a class of employers approved, under the Act, section 13(9A)(c).

'Division 2 Acceptance of contributions

'392 Acceptance of contributions—member at least 65 years

- '(1) This section relates to contributions paid for a member who is at least 65 years.
- '(2) The board may accept a contribution paid by the member only if—
 - (a) the member is less than 75 years; and
 - (b) the member was gainfully employed, in the financial year in which the contribution is made, for at least 40 hours in a period of not more than 30 consecutive days.

-
- ‘(3) For a financial year, the maximum amount of contributions the board may accept under subsection (2) is—
- (a) if the member is 64 years or less on 1 July of the financial year—3 times the non-concessional contributions cap; or
 - (b) if the member is more than 64 years but less than 75 years on 1 July of the financial year—the non-concessional contributions cap.
- ‘(4) The board may accept a contribution paid by the member’s employer only if the member is less than 75 years.
- ‘(5) If the board receives a contribution that does not comply with subsections (2) to (4), within 30 days of becoming aware of this, the board must return the contribution to the person who paid the contribution.

‘393 Acceptance of personal and eligible spouse contributions

- ‘(1) The board may in its absolute discretion accept personal contributions made by a member, or eligible spouse contributions made on behalf of a member or a member’s spouse, by such methods as the board may from time to time approve.
- ‘(2) Subsection (1) applies subject to section 392 and subsection (3).
- ‘(3) Despite subsection (1), the board must not accept eligible spouse contributions from a member who is more than 70 years.

‘394 Method of payment

‘All payments made to the board by an employer under this chapter must be made by such method as the board from time to time directs.

‘Division 3 Non-public sector accumulation account

‘395 Member’s non-public sector accumulation account

- ‘(1) The board must keep an account under this section (a *non-public sector accumulation account*) for each member.
- ‘(2) The following amounts must be credited to the account—
 - (a) contributions made for the member;
 - (b) an amount required to be paid to the account under this deed;
 - (c) any other amount payable to the member under this deed that the board considers is most appropriately dealt with by payment to the account.
- ‘(3) The following amounts must be debited from the account—
 - (a) benefits paid to, or in relation to, the member;
 - (b) reasonable administrative fees and charges decided by the board;
 - (c) if relevant, a provision for tax;
 - (d) any insurance premiums payable by the member;
 - (e) any other amount payable by the member under this deed that the board considers is most appropriately dealt with by payment from the account.

‘396 Crediting of earnings

- ‘(1) The board must credit a member’s non-public sector accumulation account with the amount, decided by the board, that reasonably reflects the after tax earnings derived from the investment of the amount in the account.
- ‘(2) In deciding the amount, the board must have regard to—
 - (a) the cost of administering all accumulation accounts and non-public sector accumulation accounts; and

- (b) the charges incurred in the investment of amounts in all accumulation accounts and non-public sector accumulation accounts; and
- (c) the allocation to, or deduction from, a reserve held for smoothing returns from the investment of amounts in all accumulation accounts and non-public sector accumulation accounts; and
- (d) if, under an investment policy established under section 11 of the Act, members may choose between 2 or more investment strategies—the investment strategies chosen by the member for the account.

‘Division 4 Spouse contributions—splitting amounts

‘397 Definitions for div 4

‘In this division—

splittable contribution has the meaning given by the SIS regulation, regulation 6.42.

spouse see section 398.

transfer amount see section 401(2).

‘398 Meaning of *spouse*

‘(1) In this division—

spouse see the SIS Act, section 10.

‘(2) This section applies despite the *Acts Interpretation Act 1954*, section 32DA.

‘399 Application of div 4

‘This division does not apply to a member’s interest in the member’s non-public sector accumulation account—

[s 34]

- (a) that is subject to a payment split under the *Family Law Act 1975* (Cwlth), part VIII B; or
- (b) on which a payment flag under the *Family Law Act 1975* (Cwlth), part VIII B is operating.

‘400 Maximum amount for splittable contributions

- ‘(1) The maximum amount for taxed splittable contributions, in a financial year, is the lesser amount of either—
 - (a) 85% of the amount of taxed splittable contributions made for a member in the financial year; or
 - (b) the concessional contributions cap.
- ‘(2) However, the amount under subsection (1) can not be more than the amount of the element taxed in the fund of the taxable component that would form part of the superannuation interest that would be payable if the applicant withdrew the whole amount in the applicant’s accumulation account at the time of the board giving effect to the application.

‘401 Application to transfer an amount into accumulation account for a member’s spouse

- ‘(1) This section applies to a member if the member’s spouse is—
 - (a) less than the preservation age; or
 - (b) at least the preservation age but not more than 65 years and has not—
 - (i) permanently retired from the workforce after reaching preservation age; or
 - (ii) ceased to be gainfully employed on or after reaching 60 years.
- ‘(2) The member may apply to the board to transfer into the accumulation account for the member’s spouse an amount in the member’s non-public sector accumulation account (the *transfer amount*) that is not more than the maximum amount of splittable contributions made to the fund by or for the member in the relevant financial year.

-
- ‘(3) However, the member may not make an application under subsection (2) if, in the financial year in which the application is made—
- (a) the member has already made an application (the *first application*) under this section relating to the relevant financial year; and
 - (b) the board is considering, or has given effect to, the first application.
- ‘(4) The application must include a statement by the member’s spouse that—
- (a) the member’s spouse is less than the preservation age; or
 - (b) the member’s spouse is at least the preservation age but not more than 65 years and has not—
 - (i) permanently retired from the workforce after reaching preservation age; or
 - (ii) ceased to be gainfully employed on or after reaching 60 years.
- ‘(5) In this section—
- preservation age*, for a spouse of a member, has the meaning given in section 4 as if the spouse were a member.
- relevant financial year* means—
- (a) if the whole amount in the member’s non-public sector accumulation account is to be transferred into the accumulation account for the member’s spouse—the financial year in which an application is made; or
 - (b) otherwise—the last financial year that ended before the application is made.

‘402 Decision on application

- ‘(1) The board may grant an application made under section 401 if—
- (a) the application complies with section 401; and

[s 34]

- (b) the board has no reason to believe that any statement made under section 401(4) in relation to the application is untrue; and
 - (c) the transfer amount is not more than the maximum amount for splittable contributions made by the member under section 400.
- ‘(2) If the board grants the application, the board must, within 90 days after the application is made—
- (a) transfer the transfer amount into the accumulation account for the member’s spouse; and
 - (b) reduce the member’s non-public sector accumulation account by the transfer amount.

‘Part 3 Benefits and payments

‘Division 1 Benefits

‘403 Time for payment of benefits

- ‘(1) This section applies if a preservation cashing condition for a member has happened and the member has applied, in writing, to the board for payment to the member of the whole, or part, of the amount in the member’s non-public sector accumulation account.
- ‘(2) The board must pay to the member the amount in the member’s non-public sector accumulation account or, if a lesser amount is requested by the member, the lesser amount.

‘404 Persons with right to payment of benefits

‘A benefit payable under this division must be paid to the member or, if the member is dead, to the member’s legal personal representative or to such individual as the board after the receipt of an application for the payment of the benefit in its discretion decides.

‘405 Application to be made for benefits

‘A member or individual claiming to be entitled to the benefit of a deceased member must apply to the board for the payment of the benefit in such a way, and produce such evidence of entitlement to payment of the benefit, as the board in its discretion decides.

‘406 Application for benefit by particular members

- ‘(1) This section applies to an application under this division for payment of the amount in the non-public sector accumulation account of a member who—
- (a) was the holder of an eligible temporary resident visa that has expired or been cancelled; and
 - (b) has permanently departed from Australia.
- ‘(2) The application must be accompanied by—
- (a) a written statement, from the Commonwealth department in which the *Migration Act 1958* (Cwlth) is administered, stating the member—
 - (i) was the holder of an eligible temporary resident visa that has expired or been cancelled; and
 - (ii) has permanently departed from Australia; and
 - (b) if the amount in the member’s non-public sector accumulation account is less than \$5000—
 - (i) a copy of a visa, or other evidence of a visa, showing the member was the holder of an eligible temporary resident visa that has expired or been cancelled; and
 - (ii) a copy of the member’s passport showing the member has permanently departed from Australia.
- ‘(3) For subsection (2)(a), the statement may be in electronic form.
- ‘(4) The payment may only be made as a single lump sum.
- ‘(5) Subsection (6) applies to any additional amount payable to the member under this deed that—

[s 34]

- (a) is received by the fund after payment of the amount in the member's non-public sector accumulation account; and
 - (b) relates to the member's employment before the application was made.
- '(6) The additional amount must be paid to the member without the board requiring a further application from the member for the amount.

'Division 2 Death and disablement insurance

'407 Arrangements for insurance

'The board may arrange a group life assurance policy to insure against the death or disablement of a member.

'408 Premiums

- '(1) Subject to its agreeing otherwise with an insured member, the board may deduct insurance premiums for death or disablement insurance from the member's non-public sector accumulation account.
- '(2) If there is an insufficient amount in the member's non-public sector accumulation account to pay the premiums and the member has an accumulation account, the board may deduct all or part of the premiums from the member's accumulation account.

'Division 3 Withdrawals from non-public sector accumulation account

'409 Compulsory withdrawals on death

'As soon as practicable after a member dies, the board must withdraw the amount in the member's non-public sector accumulation account and pay it to the member's legal

personal representative or another person who applies to the board to be paid the amount and who the board considers appropriate.

‘Part 4 Access on compassionate and severe financial hardship grounds

‘410 Definitions for pt 4

‘In this part—

accessible amount, for a member, means the amount in the member’s non-public sector accumulation account.

‘411 Application for access on compassionate grounds

‘(1) This section applies if under the SIS regulation, regulation 6.19A—

- (a) a member applies to APRA for payment of the whole, or a part, of the member’s accessible amount; and
- (b) APRA decides that the member is entitled to a release of benefits on compassionate grounds.

‘(2) The board must pay to the member the amount approved by APRA.

‘412 Application for access on severe financial hardship ground

‘(1) A member may apply to the board for payment of the whole, or a part, of the member’s accessible amount on a severe financial hardship ground.

‘(2) The board may pay the amount to the member only if the board is satisfied a severe financial hardship ground applies to the member.

‘(3) The payment may only be made as a single lump sum.

[s 34]

- ‘(4) A severe financial hardship ground applies to a member if—
- (a) the member gives the board a written statement from a Commonwealth income support agency stating—
 - (i) the member has received Commonwealth income support payments for a continuous period of 26 weeks; and
 - (ii) the member was receiving the income support payments at the date of the statement; and
 - (b) the board is satisfied the member can not meet reasonable and immediate family living expenses.
- ‘(5) Also, for a member who is 55 years and 39 weeks or more, a severe financial hardship ground applies to a member if—
- (a) the member gives the board a written statement from a Commonwealth income support agency stating the member received Commonwealth income support payments for a cumulative period of 39 weeks after the member turned 55 years; and
 - (b) the board is satisfied the member was not employed for at least 10 hours a week on the date of the member’s application to the board.
- ‘(6) The date of the statement mentioned in subsection (4)(a) must not be more than 21 days before the date of the member’s application to the board.

‘413 Limitations on access

- ‘(1) This section applies to a payment to a member on the severe financial hardship ground stated in section 412(4).
- ‘(2) The board may pay the member—
- (a) a minimum amount of—
 - (i) if the member’s accessible amount is \$1000 or more—\$1000; or
 - (ii) if the member’s accessible amount is less than \$1000—the member’s accessible amount; and

- (b) a maximum amount of \$10000.
- ‘(3) The board may not make a further payment to the member on the ground within 12 months after the payment.

‘Part 5 Tax file number

‘414 Tax file number not given to board

- ‘(1) This section applies if a member has not given the board details of the member’s tax file number.
- ‘(2) The board must—
 - (a) return any non-concessional contributions made by, or on behalf of, the member to the entity or person that paid the contribution within 30 days of becoming aware the amount was received; and
 - (b) not accept a non-concessional contribution made by, or on behalf of, the member until the member gives the board details of the member’s tax file number.’.

ENDNOTES

- 1 Consented to by the Board of Trustees of the State Public Sector Superannuation Scheme on 28 May 2009.
- 2 Made by the Governor in Council on 11 June 2009.
- 3 Notified in the gazette on 12 June 2009.
- 4 Laid before the Legislative Assembly on . . .
- 5 The administering agency is the Treasury Department.