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STATE SUPERANNUATION ACT 2000

STATE SUPERANNUATION AMENDMENT REGULATIONS 2013

State Superannuation Act 2000

State Superannuation Amendment Regulations 2013

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

1. Citation

These regulations are the *State Superannuation Amendment Regulations 2013*.

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. Regulations amended

These regulations amend the *State Superannuation Regulations 2001*.

4. Regulation 3 amended

- (1) In regulation 3(1) delete the definitions of:
remuneration
salary sacrifice agreement
- (2) In regulation 3(1) insert in alphabetical order:

salary or wages has the meaning given in the SGA Act section 11;

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salary sacrifice agreement means an agreement under which a worker agrees to forego an amount of salary or wages in consideration of another payment, benefit or allowance;

- (3) In regulation 3(1) in the definition of *worker* paragraph (i) delete “remuneration” and insert:

compensation

5. Regulation 4 amended

- (1) In regulation 4(1) and (2) delete “Board” and insert:

Treasurer

- (2) In regulation 4(3):

- (a) delete “Board” and insert:

Treasurer

- (b) delete “Member.” and insert:

worker.

- (3) In regulation 4(4) delete “Board” and insert:

Treasurer

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- (4) In regulation 4(5):
- (a) delete “Board” and insert:
Treasurer
 - (b) delete paragraphs (b) and (c) and insert:
 - (b) in respect of workers who are not Gold State Super Members and who are paid periodically at intervals of less than 3 months — the workers’ pay periods; and
 - (c) in respect of workers who are not mentioned in paragraph (a) or (b) — each quarter.

6. Regulations 5, 6 and 6A deleted

Delete regulations 5, 6 and 6A.

7. Regulation 8 amended

In regulation 8(10) delete “remuneration” and insert:

compensation

8. Part 2A replaced

Delete Part 2A and insert:

Part 2A — Employer contributions obligations**12A. Terms used**

In this Part —

employee has the meaning given in the SGA Act section 12;

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ordinary time earnings has the meaning given in the SGA Act section 6(1);

section 4B contribution means a superannuation contribution that an Employer is required to make by section 4B of the Act;

section 4C contribution means a superannuation contribution that an Employer is required to make by regulation 12D.

12B. Default funds

For the purposes of paragraph (a) of the definition of *default fund* in section 4A(1) of the Act, the default fund for an employee is —

- (a) if the employee is a West State Super Member — the West State Super Scheme;
- (b) in any other case — the GESB Super Scheme.

12C. Calculation and payment of section 4B contributions

- (1) An Employer required to make section 4B contributions for an employee must calculate and pay the section 4B contributions for each contribution period of the employee.
- (2) The amount of the section 4B contributions to be paid for an employee for a contribution period is the amount that would be required under section 4B of the Act in respect of the employee if —
 - (a) that contribution period were the only period during which the employee was an employee of the Employer; and
 - (b) the Employer had not previously made any contributions for the employee.

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- (3) An Employer must pay the section 4B contribution for a contribution period —
- (a) if the contribution period is the employee's pay period — within 14 days after the end of that period; or
 - (b) otherwise — within 28 days after the end of the contribution period.

12D. Section 4C contributions

- (1) For each contribution period of a worker for which the Employer would be required to make section 4B contributions for the worker, but for the worker not being an employee, the Employer must make superannuation contributions for the worker as if the worker were an employee.
- (2) For each contribution period of a worker in which the worker receives an item listed in the Table from an Employer which is not taken into account in calculating the contributions required by section 4B, the Employer must make a superannuation contribution for the worker of an amount equal to the monetary value of that item, determined by the Employer, multiplied by the charge percentage applicable, at the time of making the contribution, under the SGA Act section 19.
- (3) A determination by an Employer as to the value of an item listed in the Table that would reduce the value of the item for a person who is a worker at the time the determination is made does not apply to that person unless the person gives notice to the Employer consenting to its application.

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1.	An amount of salary or wages which is not ordinary time earnings because it represents the excess of salary or wages over the maximum contribution base for the purposes of the SGA Act.
2.	The amount of a weekly payment of compensation under the <i>Workers' Compensation and Injury Management Act 1981</i> .
3.	An amount of salary or wages paid by way of annual leave loading.
4.	An amount of salary or wages paid to a worker in lieu of overtime payments for hours that exceed ordinary hours of work for the worker's position, the working of which is a standard and permanent requirement for occupants of the worker's position.
5.	The amount of an on-call allowance paid to a worker.
6.	A payment, benefit or allowance to which a worker is entitled under a salary sacrifice agreement.
7.	An amount of salary or wages paid to a worker — (a) who is the holder of a visa or entry permit of a class set out in the <i>Superannuation Guarantee (Administration) Regulations 1993</i> (Commonwealth) regulation 7(1); and (b) who satisfies any conditions set out in that regulation in relation to the visa or entry permit held.

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8.	An amount of salary or wages paid to a worker for a period of maternity leave, early paid leave for an expectant mother if the Employer is unable to transfer her to a safe job, paternity leave, pre-adoption leave, adoption leave or other parental leave.
9.	An amount of salary or wages paid — (a) to a worker who is engaging in jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; and (b) by the worker's usual Employer while the worker is absent from his or her usual employment.
10.	An amount of salary or wages paid — (a) to a worker who is engaging in a voluntary emergency management activity within the meaning given in the <i>Fair Work Act 2009</i> (Commonwealth) section 109(1); and (b) by the worker's usual Employer while the worker is absent from his or her usual employment.
11.	An amount of salary or wages paid — (a) to a worker who is undertaking service with the Australian Defence Force (for example, undertaking service in the Defence Force Reserves); and (b) by the worker's usual Employer while the worker is absent from his or her usual employment.

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12.	An amount of salary or wages paid to a worker who is employed to work not more than 30 hours per week and who is under 18 years of age.
13.	An amount of salary or wages paid to a worker by an employer who pays the worker less than \$450 by way of salary or wages in a calendar month.
14.	An amount which the Treasurer declares, by notice published in the <i>Gazette</i> , is an item in respect of which a contribution is required under this regulation.

12E. Exceptions

- (1) Regulations 12C and 12D do not apply to the following Employers —
 - (a) the Australian Health Practitioner Regulation Agency;
 - (b) Gold Corporation;
 - (c) the Inspector of Custodial Services;
 - (d) the Water Corporation;
 - (e) the Western Australian Greyhound Racing Association.
- (2) Regulations 12C and 12D do not apply in respect of a worker who —
 - (a) is a Gold State Super Member, other than a Member who is entitled to a preserved GSS withdrawal benefit (as defined in regulation 12); or
 - (b) is a Pension Scheme Member (other than a person who has determined his or her pension under the *Superannuation and Family Benefits*

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Act 1938 section 60AA) or a Provident Scheme Member; or

- (c) holds a pensionable office as defined in the *Judges' Salaries and Pensions Act 1950* section 2(4); or
- (d) works outside Australia and is not a resident of Australia (as defined in the SGA Act); or
- (e) is a person in respect of whom contributions are being made under the *Parliamentary Superannuation Act 1970* section 11 to the superannuation scheme provided for by that Act; or
- (f) is a non-participant, as defined in the *Parliamentary Superannuation Act 1970* section 29, in respect of whom contributions are being made in accordance with a determination made under that section to a superannuation fund other than the West State Super Scheme or the GESB Super Scheme.

12F. Payment of section 4C contributions

- (1) Subject to subregulation (2), an Employer must pay the section 4C contributions for each contribution period of an employee at the same time, and to the same fund, as the section 4B contributions for that contribution period for that employee.
- (2) If an Employer is unable to make a section 4C contribution to a fund because the fund is unable to receive it under the SIS Act, the Employer is to make the contribution to the Fund.

12G. Additional contributions

- (1) Subject to any instruction issued by the Treasurer under *Financial Management Act 2006* section 78, an

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Employer may make superannuation contributions for a worker in excess of the section 4B contributions and section 4C contributions required for that worker.

- (2) The Board may accept any contributions made under subregulation (1) which are offered to the Fund.

9. Regulation 17A inserted

After regulation 16 insert:

17A. Term used: remuneration

- (1) In this Part, subject to subregulations (6), (8), (9) and (10) —

remuneration means the monetary value, determined by the Employer, of all payments, benefits and allowances that —

- (a) a Gold State Super Member is entitled to in his or her capacity as a worker; and
- (b) the Employer, or a person authorised by the Employer, has certified that the Gold State Super Member —
- (i) is likely to continue to be entitled to while the Gold State Super Member continues to hold the job held at the time of the certification; or
- (ii) would be likely to continue to be entitled to if the Gold State Super Member were to continue to hold that job,

other than amounts excluded by subregulation (3).

- (2) The “payments, benefits and allowances” referred to in subregulation (1) include any payment, benefit or

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allowance that is payable only in particular circumstances if —

- (a) it will be paid to the Gold State Super Member whenever those circumstances arise; and
 - (b) the Employer reasonably expects those circumstances to arise in relation to the Gold State Super Member from time to time.
- (3) The remuneration of a Gold State Super Member does not include —
- (a) payments for overtime (but does include payments instead of overtime); or
 - (b) bonuses; or
 - (c) payments in lieu of leave; or
 - (d) payments in lieu of entitlement to the provision of a motor vehicle or the discharge or reimbursement of motor vehicle expenses incurred; or
 - (e) allowances for rent, accommodation, subsistence, travelling or expenses; or
 - (f) equipment allowances; or
 - (g) climatic allowances; or
 - (h) payments as a consequence of the termination of a job; or
 - (i) payments, benefits or allowances that the Board determines are to be regarded as not being part of the Gold State Super Member's remuneration because they are of a similar nature to those referred to in paragraphs (a) to (h); or
 - (j) special allowances; or
 - (k) annual leave loading; or

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- (l) compensation in lieu of the opportunity for private practice; or
 - (m) benefits under the Act; or
 - (n) contributions to the Fund (but does include contributions made under a salary sacrifice agreement); or
 - (o) payments, benefits or allowances that the Treasurer determines for the time being are not part of a Gold State Super Member's remuneration.
- (4) A certificate for the purposes of subregulation (1)(b) may —
- (a) express the payment, benefit or allowance as a monetary amount or as a percentage of all or part of the remuneration; and
 - (b) be given in relation to one Gold State Super Member or a class of Gold State Super Members.
- (5) A determination —
- (a) under subregulation (3)(o); or
 - (b) by an Employer as to the value of any non-money payment, benefit or allowance,

that would reduce the remuneration of a person who was a Gold State Super Member at the time the determination was made (an *existing member*) does not apply to the existing member unless the existing member gives notice to the Board consenting to its application.

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- (6) If a Gold State Super Member's remuneration is reduced and the Board is satisfied that the reduction is not attributable to —
- (a) the misconduct or inefficiency of the Gold State Super Member; or
 - (b) a reduction in the number of hours worked by the Gold State Super Member,
- the Board may determine the Gold State Super Member's remuneration to be —
- (c) the Gold State Super Member's remuneration before it was reduced; or
 - (d) an amount representing the notional remuneration from time to time attributable to the job held by the Gold State Super Member immediately before the reduction; or
 - (e) some other notional remuneration that the Board considers appropriate.
- (7) A determination under subregulation (6) ceases to be in force if the Gold State Super Member's actual remuneration increases to more than the amount of remuneration specified in the determination.
- (8) The remuneration of a Gold State Super Member who works on a part-time basis is the actual remuneration received by the Gold State Super Member, not the remuneration of a comparable full-time worker.
- (9) The remuneration of a Gold State Super Member who is seconded is, subject to regulation 16(4), the Gold State Super Member's remuneration for the job from which the Member is seconded.
- (10) If a Gold State Super Member does not receive remuneration on a regular basis throughout the year, the Board may treat the Gold State Super Member as

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having received that remuneration on a regular basis by —

- (a) averaging the remuneration received over all the contribution periods in the year; or
- (b) determining the Gold State Super Member's remuneration to be a notional regular remuneration equal to the remuneration that a notional person holding the job held by the Gold State Super Member would receive if he or she were paid on a regular basis; or
- (c) calculating a notional regular remuneration for the Gold State Super Member by some other means that the Board considers appropriate.

10. Regulation 57 deleted

Delete regulation 57.

11. Regulation 69G amended

- (1) In regulation 69G insert in alphabetical order:

reckonable earnings, for a West State Super Member, means the earnings of the West State Super Member taken into account in calculating the contributions due in respect of the Member under section 4B of the Act and regulation 12D.

- (2) In regulation 69G in the definition of *opt-in notice* delete "regulation 69K." and insert:

regulation 69K;

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In regulation 70(1) in the definition of the variable **R** paragraphs (i) and (ii) delete “remuneration” and insert:

reckonable earnings

13. Regulation 71 amended

In regulation 71(3):

- (a) in the definition of the variable **R** paragraphs (i) and (ii) delete “remuneration” and insert:

reckonable earnings

- (b) in the definition of the variable **E** delete “remuneration” and insert:

reckonable earnings

14. Regulation 91 deleted

Delete regulation 91.

15. Regulation 103 amended

Delete regulation 103(5) and (6).

16. Regulation 225A amended

- (1) In regulation 225A(2) delete “regulations 223 and 224 —” and insert:

regulations 223, 224 and 224A —

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- (2) In regulation 225A(3) delete “224A,”.

17. Regulation 248B replaced

Delete regulation 248B and insert:

248B. Overpayment by Employer

- (1) In this regulation —
overpayment means a payment by an Employer of an amount of superannuation contribution that is not required under —
- (a) these regulations; or
 - (b) any award, determination, order, enterprise agreement or similar industrial instrument; or
 - (c) any contract of employment.
- (2) If an Employer demonstrates to the satisfaction of the Board that it has made an overpayment to the Fund and seeks to recover the overpayment —
- (a) if the overpayment has not been credited to an accumulation account, the Board may —
 - (i) retain the overpayment and offset it against amounts that become payable to the Fund by the Employer in the future; or
 - (ii) refund the overpayment to the Employer;
 - or
 - (b) if the overpayment has been credited to an accumulation account but has not been paid as a benefit or transferred out of that account, the Board may —
 - (i) retain the overpayment in that accumulation account and offset it

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against contributions that become payable by the Employer in the future and are to be credited to that account; or

- (ii) deduct the overpayment from that accumulation account and deal with it in accordance with paragraph (a);

or

- (c) if the overpayment has been paid or transferred as part of a benefit, and if the overpayment was due to the fault of the Board, the Board may repay the overpayment from the Fund.

- (3) An Employer that has made an overpayment may, subject to any contrary instruction issued by the Treasurer under the *Financial Management Act 2006* section 78, elect not to seek to recover the overpayment.

18. Schedule 1 amended

- (1) In Schedule 1 Division 1:

- (a) delete item 8a;
- (b) before item 10 insert:

- 9. **Commissioner for Children and Young People** established under the *Commissioner for Children and Young People Act 2006*

- (c) delete item 12;
- (d) after item 14 insert:

- 15A. **Disability Services Commission** continued under the *Disability Services Act 1993*

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- (e) in item 17 after “**Commissioner**” insert:
appointed
 - (f) in item 18 after “**Services**” insert:
continued
 - (g) after item 18 insert:
19. **Law Reform Commission of Western Australia**
established under the *Law Reform Commission Act 1972*
- (h) delete items 24, 25 and 28.
- (2) In Schedule 1 Division 2:
- (a) after item 1 insert:
- 2A. **Agencies** established under the *Hospitals and Health Services Act 1927* section 7B(1)
- (b) after item 2 insert:
3. **Australian Health Practitioner Regulation Agency**
established under the *Health Practitioner Regulation National Law (WA) Act 2010*
- (c) delete items 12, 15 and 16;
 - (d) delete item 19 and insert:
19. **Fire and Emergency Services Commissioner** within the meaning of the *Fire and Emergency Services Act 1998*

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- (e) delete items 21 and 26;
- (f) delete item 33 and insert:

33. **Metropolitan Regional Development Authority**
established under the *Metropolitan Redevelopment Authority Act 2011*

- (g) delete items 35 and 36;
- (h) in item 41 delete “**Public Trust Office** established by” and insert:

Public Trustee within the meaning of

- (i) delete item 43;
- (j) after item 44 insert:

45A. **School Curriculum and Standards Authority** established
under the *School Curriculum and Standards Authority Act 1997*

- (k) delete items 46, 53, 55, 56 and 63;
- (l) in item 68 delete “constituted under” and insert:

continued by

By Command of the Lieutenant-Governor and deputy of the Governor,

N. HAGLEY, Clerk of the Executive Council.