



Western Australia

State Superannuation Act 2000

# **State Superannuation Regulations 2001**

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## State Superannuation Regulations 2001

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## State Superannuation Regulations 2001

### Part 1 — Preliminary

#### 1. Citation

These regulations may be cited as the *State Superannuation Regulations 2001* <sup>1</sup>.

#### 2. Commencement

These regulations come into operation on the day on which the *State Superannuation Act 2000* comes into operation <sup>1</sup>.

#### 3. Terms used

(1) In these regulations —

***accumulation account*** means —

- (a) for a West State Super Member, the Member's west state account (as defined in regulation 50); and
- (aa) for a GESB Super Member, the Member's GESB Super account (as defined in regulation 83); and
- (b) for a Retirement Income Member, the Member's retirement income account (as defined in regulation 171); and
- (c) for a Term Allocated Pension Member, the Member's term allocated pension account (as defined in regulation 196A); and

- (d) for a GESB Super (Retirement Access) Member, the Member's retirement access account (as defined in regulation 201);

**charge percentage** means the Employer's charge percentage for the relevant Member, calculated in accordance with section 19 of the SGA Act before applying any reduction under section 22 or 23 of that Act;

**commencement day** means the day on which these regulations come into operation;

**Commonwealth payment** means a payment from the Commonwealth Commissioner of Taxation of —

- (a) a shortfall component under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth; or
- (b) a Government co-contribution under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth; or
- (c) any other amount that the Commissioner may, under a law of the Commonwealth, pay to the Fund for a Member;

**condition of release** means a condition of release specified in the SIS Regulations Schedule 1;

**contribution period** means the period selected under regulation 4;

**contributions-split transfer** means a transfer to a scheme from another scheme or superannuation fund in accordance with Division 6.7 of the SIS Regulations, or that would be in accordance with that Division if the transferring scheme or fund were a regulated superannuation fund;

**contributions tax** means tax imposed by the *Superannuation Contributions Tax Imposition Act 1997* or *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;

**CPI rate** means, for a financial year, the greater of zero and the rate equal to CPI in the formula —

$$\text{CPI} = \frac{I_T - I_L}{I_L} \times 100$$

where —

$I_T$  is the Consumer Price Index number (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth for the quarter ending on the 31 March immediately preceding the start of that financial year; and

$I_L$  is that Index number for the quarter ending on the previous 31 March;

**Division 1 Employer** means an Employer listed or referred to in Division 1 of Schedule 1;

**Division 2 Employer** means an Employer listed or referred to in Division 2 of Schedule 1;

**earning rate**, in respect of a Member, means the earning rate determined by the Board for —

- (a) if the Member has selected a personalised investment plan, the Member; or
- (b) otherwise, the investment plan selected by the Member;

**eligible rollover fund** means an eligible rollover fund as defined in the SIS Act;

**eligible termination payment** has the same meaning as it has in section 27A(1) of the *Income Tax Assessment Act 1936* of the Commonwealth;

**Employer**, in relation to a worker, means the Employer for whom the worker works;

**Family Law Act** means the *Family Law Act 1975* (Commonwealth) Part VIIIB;

**former member** means a person who is not a Member nor a pensioner under the S&FB Act, but who has been —

**r. 3**

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- (a) a Member; or
- (b) a contributor or qualified contributor under the S&FB Act; or
- (c) a subscriber or contributor to the Provident Account under Part VA of the S&FB Act;

**GESB Super Member** means a member of the GESB Super Scheme;

**GESB Super (Retirement Access) Member** means a member of the GESB Super (Retirement Access) Scheme;

**GESB Super (Retirement Access) Scheme** means the superannuation scheme established by regulation 200;

**GESB Super Scheme** means the superannuation scheme established by regulation 82;

**Gold State Super Member** means a member of the Gold State Super Scheme;

**Gold State Super Scheme** means the superannuation scheme continued by section 29(1)(b) of the Act;

**Member** means, except in Part 7, a Gold State Super Member, a West State Super Member, a GESB Super Member, a Retirement Income Member, a Term Allocated Pension Member or a GESB Super (Retirement Access) Member;

**parliamentarian** means a Member of the Legislative Council or a Member of the Legislative Assembly;

**partial and permanent disablement** means physical or mental incapacity to an extent that the Board considers that a Member is, and until turning 60 will remain —

- (a) unable to perform the duties of the Member's job; but
- (b) able to perform the duties of another job (in either the public sector or the private sector) for which the Board considers the Member —
  - (i) is suited by reason of the Member's education, training or experience; or
  - (ii) would be suited if the Member was retrained;

**partner** means spouse or de facto partner;

**Pension Scheme** means the superannuation scheme continued by section 29(1)(c) of the Act;

**Pension Scheme Member** means a person who —

- (a) is contributing for units of pension under the Pension Scheme; or
- (b) has made an election under section 60AA of the S&FB Act and who is not in receipt of a pension under the Pension Scheme;

**phased retirement benefit** means a benefit from a superannuation fund that is payable only as a transition to retirement income stream as defined in the SIS Regulations regulation 6.01;

**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;

**preserved**, in relation to a benefit, means that the benefit is not yet payable to the Member who is entitled to it;

**Provident Scheme** means the superannuation scheme continued by section 29(1)(d) of the Act;

**Provident Scheme Member** means a person who is a subscriber or contributor to the Provident Account (within the meaning of the S&FB Act);

**quarter** means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October;

**regulated superannuation fund** has the same meaning as it has in section 19 of the SIS Act;

**remuneration** has the meaning given by regulations 5, 6 and 6A;

**restricted non-preserved benefit** means a benefit in a scheme that would be a restricted non-preserved benefit within the meaning of the SIS Regulations if that scheme were a regulated superannuation fund;

**Retirement Income Member** means a member of the Retirement Income Scheme;

**Retirement Income Scheme** means the superannuation scheme established by regulation 170;

**S&FB Act** includes the *Superannuation and Family Benefits Act 1938*<sup>2</sup> as continued in force by section 26 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* and as subsequently amended;

**salary sacrifice agreement** means an agreement under which an Employer agrees to pay, as part of a Member's remuneration, contributions to the Fund that would otherwise be payable by the Member or that the Member has agreed to pay;

**SGA Act** means the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

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

**suffers from a terminal medical condition**, in relation to a person, means that a terminal medical condition exists in relation to the person within the meaning given in the *Superannuation Industry (Supervision) Regulations 1994* (Commonwealth) regulation 6.01A;

**superannuation fund** means —

- (a) a regulated superannuation fund; or
- (b) an exempt public sector superannuation scheme (as defined in the SIS Act); or
- (c) a regulated approved deposit fund (as defined in the SIS Act); or
- (d) a retirement savings account (as defined in the *Retirement Savings Accounts Act 1997* of the Commonwealth); or
- (e) a life insurance company or registered organisation (both as defined in the SIS Act) for the purpose of providing of a benefit that is an annuity for the purposes of the SIS Act;

**tax saving amount** has the meaning given in section 295-485 of the *Income Tax Assessment Act 1997* (Commonwealth);

**Term Allocated Pension Member** means a member of the Term Allocated Pension Scheme;

**Term Allocated Pension Scheme** means the superannuation scheme established by regulation 196;

**unrestricted condition of release** means a condition of release in respect of which the cashing restriction specified in the SIS Regulations Schedule 1 is “Nil”;

**unrestricted non-preserved benefit** means a benefit in a scheme that would be an unrestricted non-preserved benefit within the meaning of the SIS Regulations if that scheme were a regulated superannuation fund;

**West State Super Member** means a member of the West State Super Scheme;

**West State Super Scheme** means the superannuation scheme continued by section 29(1)(a) of the Act;

**worker** means a person who is —

- (a) appointed under Part 3 of the *Public Sector Management Act 1994*; or

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- (b) the holder of an office or position established or continued under a written law, other than a parliamentarian; or
  - (ba) a parliamentarian; or
  - (c) appointed to an office or position by the Governor, a Minister, an Employer or another worker; or
  - (d) appointed under section 64(1) or 100(2) of the *Public Sector Management Act 1994*; or
  - (e) appointed under Part I of the *Police Act 1892*; or
  - (f) a member of the Governor's establishment (as defined in the *Governor's Establishment Act 1992*); or
  - (g) otherwise appointed by the Governor or a Minister as an officer, servant or member of staff of, for, or for the purposes of, an Employer; or
  - (h) otherwise employed under a contract of employment to work for, within, or for the purposes of an Employer; or
  - (i) engaged under a contract for services to provide services to, or for the purposes of, an Employer where at least 50% of the person's remuneration under the contract is for the person's labour; or
  - (j) employed or engaged by a person who is not an Employer but who is seconded to work for, within or for the purposes of an Employer under an agreement that requires the Employer to provide superannuation for the person.
- (2) In these regulations a reference to a benefit that is immediately payable to a person does not include —
  - (a) a phased retirement benefit; or
  - (b) a benefit that is payable —
    - (i) from another scheme in circumstances where, if the SIS Regulations applied, the benefit would be payable; or
    - (ii) from another superannuation fund,

because the person has satisfied a condition of release in respect of which there is a cashing restriction that precludes the transfer of that benefit to the Fund.

- (3) In these regulations a person is taken to have satisfied a condition of release if the event specified in the condition has occurred in relation to the person.

*[Regulation 3 amended in Gazette 29 Jun 2001 p. 3079-80; 28 Jun 2002 p. 3011-12, 3021 and 3031; 19 Mar 2003 p. 816 and 836; 13 Jun 2003 p. 2105; 25 Jun 2004 p. 2228; 1 Dec 2004 p. 5705-6; 10 Dec 2004 p. 5894-5; 26 May 2006 p. 1918 and 1929-30; 21 Jul 2006 p. 2651; 13 Apr 2007 p. 1586, 1597, 1609, 1618-20 and 1623-4; 18 Jan 2008 p. 150; 11 Apr 2008 p. 1376 and 1380; 8 Jul 2008 p. 3213-14; 24 Nov 2009 p. 4741; 8 Jan 2010 p. 29; 10 May 2011 p. 1668.]*

**3A. Trading name**

For the purposes of section 6(3) of the Act “GESB” is prescribed as a trading name that the Board may use and operate under in carrying out its functions.

*[Regulation 3A inserted in Gazette 26 Nov 2004 p. 5311.]*

**4. Selection of contribution period**

- (1) The Board is to select a period to be the contribution period for each Employer and its workers.
- (2) The Board may select different contribution periods for different classes of workers of an Employer.
- (3) The Board may change the contribution period or periods for an Employer provided the change is not detrimental to any Member.
- (4) The Board is to notify the Employer of the period or periods selected under this regulation and any change in the selection.
- (5) Until the Board selects otherwise the contribution periods for an Employer are —

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- (a) in respect of workers who are Gold State Super Members — the fortnight commencing on the commencement day and each subsequent fortnight; and
- (b) in respect of workers who are —
  - (i) West State Super Members or GESB Super Members; and
  - (ii) who are paid periodically at intervals of less than 3 months,the workers' pay periods; and
- (c) in respect of workers who —
  - (i) are West State Super Members or GESB Super Members; and
  - (ii) are not covered by paragraph (b),each quarter.

*[Regulation 4 amended in Gazette 13 Apr 2007 p. 1620-1.]*

**5. Term used: remuneration**

- (1) Subject to subregulation (6) and regulations 6 and 6A, in these regulations —

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

- (a) a 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 Member —
  - (i) is likely to continue to be entitled to while the 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 Member were to continue to hold that job,other than amounts excluded by subregulation (2) or (3).

- (1a) The “payments, benefits and allowances” referred to in the definition of **remuneration** include a payment, benefit or allowance that is payable only in particular circumstances if —
- (a) it will be paid to the Member whenever those circumstances arise; and
  - (b) the Employer reasonably expects those circumstances to arise in relation to the Member from time to time.
- (2) The remuneration of a Member does not include —
- (a) payments for overtime (but not payments instead of overtime); or
  - (b) bonuses; or
  - (c) payments in lieu of leave; or
  - (d) allowances for rent, accommodation, subsistence, travelling or expenses; or
  - (e) equipment allowances; or
  - (f) climatic allowances; or
  - (g) payments as a consequence of the termination of a job; or
  - (h) payments, benefits or allowances that the Board determines are to be regarded as not being part of the Member’s remuneration because they are of a similar nature to those referred to in paragraphs (a) to (g).
- (3) The remuneration of a Gold State Super Member also does not include —
- (a) special allowances (as defined in regulation 12); or
  - (b) annual leave loading; or
  - (c) compensation in lieu of the opportunity for private practice; or
  - (d) benefits under the Act; or
  - (e) contributions to the Fund, other than contributions made under a salary sacrifice agreement; or

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- (f) payments, benefits or allowances that the Treasurer determines for the time being are not part of a Member's remuneration.
- (4) A certificate for the purposes of paragraph (b) of the definition of **remuneration** 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 Member or a class of Members.
- (5) A determination —
  - (a) under subregulation (3)(f); 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 Member at the time the determination was made does not apply to the Member unless the Member gives notice to the Board consenting to its application to the Member.

- (6) If a Member's remuneration is reduced and the Board is satisfied that the reduction is not attributable to —
  - (a) the misconduct or inefficiency of the Member; or
  - (b) a reduction in the number of hours worked by the Member,

the Board may determine the Member's remuneration to be —

- (c) the 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 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 Member's actual remuneration increases to more than the amount of remuneration specified in the determination.

*[Regulation 5 amended in Gazette 29 Jun 2001 p. 3080;  
10 Dec 2004 p. 5895.]*

**6. Remuneration for part-time or seconded Members or Members with irregular pay**

- (1) The remuneration of a Member who works on a part-time basis is the actual remuneration received by the Member, not the remuneration of a comparable full-time worker.
- (2) For the purposes of these regulations the remuneration of a Member who is seconded is —
- (a) for a Gold State Super Member — subject to regulation 16(4), the Member's remuneration for the job from which the Member is seconded; or
  - (b) for a West State Super Member or a GESB Super Member who is seconded to a person who is an Employer — the Member's remuneration for the job to which the Member is seconded; or
  - (c) for a West State Super Member or a GESB Super Member who is seconded to a person who is not an Employer — the higher of —
    - (i) the Member's remuneration for the job from which the Member is seconded; and
    - (ii) the Member's remuneration for the job to which the Member is seconded.
- (3) If a Member does not receive his or her remuneration on a regular basis throughout the year, the Board may treat the Member as having received that remuneration on a regular basis by —
- (a) averaging the remuneration received over all the contribution periods in the year; or

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- (b) determining the Member's remuneration to be a notional regular remuneration equal to the remuneration that a notional person holding the job held by the Member would receive if he or she were paid on a regular basis; or
- (c) calculating a notional regular remuneration for the Member by some other means that the Board considers appropriate.

*[Regulation 6 amended in Gazette 13 Apr 2007 p. 1621.]*

**6A. Remuneration for certain parliamentarians**

- (1) This regulation applies if there is a Ministerial determination under section 29(4) of the *Parliamentary Superannuation Act 1970* in force that nominates the West State Super Scheme or the GESB Super Scheme as a superannuation fund to which section 29 contributions are to be, or may be, made.
- (2) When this regulation applies the remuneration of a relevant parliamentarian is the salary, allowances and benefits of the parliamentarian by reference to which the amount of section 29 contributions is calculated in accordance with the Salaries and Allowances Tribunal's determination under section 29(3)(a) of the *Parliamentary Superannuation Act 1970*.
- (3) In this regulation —  
**relevant parliamentarian** means a parliamentarian in respect of whom section 29 contributions are made to the West State Super Scheme or the GESB Super Scheme;  
**section 29 contributions** means contributions required to be made under section 29 of the *Parliamentary Superannuation Act 1970*.

*[Regulation 6A inserted in Gazette 29 Jun 2001 p. 3081;  
amended in Gazette 13 Apr 2007 p. 1621.]*

**7. Prescribed Employers**

For the purposes of paragraph (d) of the definition of *Employer* in section 3 of the Act, the authorities, bodies and persons listed in Schedule 1 are prescribed.

**8. Who does a worker work for**

- (1) A worker who is appointed under Part 3 of the *Public Sector Management Act 1994* and to whom subsections (2), (3) and (7) do not apply, is taken to work for the Employer for, within, or for the purposes of, which or whom the worker works.
- (2) A worker who is the holder of an office or position established or continued under a written law, other than a parliamentarian, is taken to work for the Government of Western Australia.
- (2a) A worker who is a parliamentarian is taken to work for the Government of Western Australia.
- (3) A worker who is appointed to an office or position by the Governor, a Minister, an Employer or another worker is taken to work for the Government of Western Australia.
- (4) A worker who is appointed under section 64(1) or 100(2) of the *Public Sector Management Act 1994* is taken to work for the Employer for, within, or for the purposes of, which or whom the worker works.
- (5) A worker who is appointed under Part I of the *Police Act 1892* is taken to work for —
  - (a) in the case of the Commissioner of Police, the Government of Western Australia; and
  - (b) otherwise, the Commissioner of Police.
- (6) A worker who is a member of the Governor's Establishment (as defined in the *Governor's Establishment Act 1992*) is taken to work for the Governor.

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- (7) A worker who is a member of a department of the staff of Parliament referred to in the *Parliamentary and Electorate Staff (Employment) Act 1992* is taken to work for whichever of —
- (a) the President of the Legislative Council; or
  - (b) the Speaker of the Legislative Assembly; or
  - (c) the President of the Legislative Council and the Speaker of the Legislative Assembly acting jointly,
- is specified in that Act as the worker's employer.
- (8) A worker who is otherwise appointed by the Governor or a Minister under an Act as an officer, servant or member of staff, of, for, or for the purposes of, an Employer and to whom subregulations (1) to (7) do not apply, is taken to work for that Employer.
- (9) A worker who is otherwise employed under a contract of employment to work for, within, or for the purposes of, an Employer, and to whom subregulations (1) to (8) do not apply, is taken to work for that Employer.
- (10) A worker who is engaged under a contract for services to provide services to, or for the purposes of, an Employer where at least 50% of the person's remuneration under the contract is for the person's labour, is taken to work for that Employer.
- (11) A worker who is employed or engaged by a person who is not an Employer but who is seconded to work for, within, or for the purpose of, an Employer under an agreement that requires the Employer to provide superannuation for the person is taken to work for that Employer.
- (12) If a worker is on secondment from one Employer to another, the worker is taken to work for the Employer to whom he or she is seconded.

*[Regulation 8 amended in Gazette 29 Jun 2001 p. 3081-2.]*

**9. The Government, departments and unincorporated entities as Employers**

- (1) Where, under these regulations, a worker, other than a parliamentarian, is taken to work for the Government of Western Australia, the obligations of the Government as the Employer of the worker are to be discharged by —
  - (a) the Minister having general responsibility for the office or position held by the worker; or
  - (b) a person, or the employing authority of a department or organisation, specified by the Treasurer by order published in the *Gazette*.
- (2) An order under subregulation (1)(b) may specify that, in relation to the worker to whom it relates, the Government is a Division 2 Employer.
- (3) The Treasurer may, by order published in the *Gazette*, amend or revoke an order made under subregulation (1)(b).
- (3a) The obligations of the Government of Western Australia as the Employer of a worker who is a parliamentarian are to be discharged by the Minister to whom the administration of the *Constitution Act 1889* is for the time being committed by the Governor.
- (4) Where, under these regulations, a worker is taken to work for a department or organisation that is not a corporate body, the obligations of the department or organisation as the Employer of the worker are to be discharged by the employing authority of the department or organisation.
- (5) In this regulation —  
***employing authority*** and ***organisation*** have the same meanings as they have in the *Public Sector Management Act 1994*.

*[Regulation 9 amended in Gazette 29 Jun 2001 p. 3082.]*

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**10. When does a person cease to be a worker**

For the purposes of these regulations a person ceases to be a worker on the day on which the Member's job actually terminates regardless of whether, or when, the Employer acted to terminate the job.

**11. Persons in more than one job**

- (1) Subject to regulation 45(5) and subregulation (3), if a person works in more than one job for one or more Employers, these regulations apply as if the person were, in respect of each job, a separate person.
- (2) Without limiting subregulation (1), the fact that a person is, in respect of one job, ineligible to be a Member does not prevent the person from being a Member in respect of another job.
- (3) If, in a particular case, the application of subregulation (1) in relation to a person produces a result that the Board considers to be inequitable, the Board may, to the extent necessary to avoid the inequality, apply these regulations in relation to that person as if all of the person's jobs were one combined job.

*[Regulation 11 amended in Gazette 8 Jul 2008 p. 3214.]*

## **Part 2 — Gold State Super Scheme**

### **Division 1 — Preliminary**

#### **12. Terms used**

In this Part —

*adjustment day* means the day selected under regulation 27;

*average contribution rate* has the meaning given by regulation 13;

*casual worker* means a worker who the Board considers works on an ad hoc basis as required by the Employer and not on a regular or continuing basis;

*contribution day* means the day selected under regulation 28;

*contributory membership period* has the meaning given by regulation 14;

*eligible Gold State worker* has the meaning given by regulation 15;

*employer contribution* means a contribution under regulation 29;

*final remuneration* has the meaning given by regulation 16;

*GSS withdrawal benefit* means a benefit under regulation 44;

*health condition* means a condition imposed on a Gold State Super Member that —

- (a) any benefit payable to or in respect of the Member under regulations 39, 40 or 41 will be limited to the extent determined by the Board; or
- (b) no benefit will be payable to or in respect of the Member under regulations 39, 40 or 41;

*member contribution* means a contribution under regulation 32;

*member contribution rate* means the rate selected under regulation 33;

***recognised unpaid leave*** means unpaid leave if —

- (a) during the period of unpaid leave, normal employee entitlements (such as annual and sick leave) continue to accrue to the Member; or
- (b) the leave is sick leave or parental leave; or
- (c) the Employer has, by notice to the Board, approved the leave for the purposes of this definition;

***selection day***, in respect of a Gold State Super Member, means —

- (a) if the Member's adjustment day is on or before the 15th day of the month — the first day; or
- (b) otherwise, the 16th day,

of the penultimate month before the month in which the Member's adjustment day occurs;

***special allowance*** means —

- (a) a higher duties allowance; or
- (b) a temporary special allowance; or
- (c) an increase in remuneration as a result of a Gold State Super Member being appointed to a different job for a fixed term on the expiry of which the Member will return to the Member's usual job; or
- (d) any other temporary allowance, by whatever name called —
  - (i) paid to a Gold State Super Member as a result of the Member carrying out duties different from, or additional to, those normally carried out by a person doing the Member's job; and
  - (ii) approved by the Board;

***total and permanent disablement*** means physical or mental incapacity to an extent that the Board considers that a Member is, and until turning 60 will remain, unable to perform the duties

of any job (in either the public sector or the private sector) for which the Board considers the Member —

- (a) is suited by reason of the Member's education, training or experience; or
- (b) would be suited if the Member was retrained;

***unpaid leave*** means leave taken for 3 months or more that is —

- (a) leave without pay; or
- (b) leave taken under an agreement between a Gold State Super Member and the Employer under which the Member is entitled to an additional period of paid leave in return for a proportionate reduction in the Member's pay over the period covered by the agreement;

***unrecognised unpaid leave*** means unpaid leave that is not recognised unpaid leave.

*[Regulation 12 amended in Gazette 13 Apr 2007 p. 1597;  
8 Jul 2008 p. 3214.]*

**13. Term used: average contribution rate**

- (1) Subject to subregulation (3), in this Part —  
***average contribution rate***, for a Gold State Super Member, means the lesser of 5% and ***C*** in the formula —

$$C = \frac{S}{D}$$

where —

***S*** is the sum of the member contribution rates applying for each day of the Member's contributory membership period; and

***D*** is the number of days in the Member's contributory membership period.

- (2) If, in order to comply with a condition imposed under regulation 14(4), a Gold State Super Member's member contribution rate for a day is greater than 5%, then for the purposes of the definition of ***average contribution rate*** the

Member's member contribution rate for that day is taken to be 5%.

- (3) If, in a particular case, the use of the formula in the definition of *average contribution rate* to calculate a Gold State Super Member's average contribution rate produces a result that the Board considers to be inequitable, the Board may, to the extent necessary to avoid the inequality, calculate the Member's average contribution rate in a different manner.

**14. Term used: contributory membership period**

- (1) Subject to subregulation (3) in this Part —  
*contributory membership period* means the period during which a person is both a Gold State Super Member and an eligible Gold State worker excluding —
- (a) any period of unrecognised unpaid leave; and
  - (b) any other period for which the Member did not make member contributions other than a period of recognised unpaid leave.
- (2) When determining the length of a Gold State Super Member's contributory membership period, any period during which the Member worked on a part-time basis is to be counted as the number of complete months or days (as the case requires) of full-time work that the Board considers is equivalent to number of months or days of part-time work actually completed.
- (3) If the Treasurer considers there are special circumstances, the Treasurer may direct the Board to treat a Gold State Super Member as having a longer contributory membership period than the Member would otherwise have, and the Board is to give effect to that direction.
- (4) A direction under subregulation (3) may be conditional on the Member contributing at a rate greater than that which would otherwise be permitted.

- (5) The cost to the Fund (if any) of an increase in a Gold State Super Member's contributory membership period as a result of a direction under subregulation (3) is to be assessed by an actuary and paid to the Fund by the Employer.

**15. Term used: eligible Gold State worker**

- (1) In this Part —

***eligible Gold State worker*** means a person who —

- (a) at all times on and from 30 December 1995 to the commencement day, was, or was taken to have been —
  - (i) a member of the 1987 scheme under the GES Act; or
  - (ii) eligible to be a member of that scheme;
- and
- (b) did not terminate his or her membership of the 1987 scheme under section 19A of the GES Act; and
- (c) subject to regulations 22 and 23, has been a worker continuously since the commencement day; and
- (d) is not excluded by subregulation (2); and
- (e) has not voluntarily withdrawn from the Gold State Super Scheme under regulation 24.

- (2) A person is excluded by this subregulation if the person —

- (a) is a judge or other person with an entitlement, or an expectation of an entitlement, to a benefit under the *Judges' Salaries and Pensions Act 1950*; or
- (b) is a Pension Scheme Member or a Provident Scheme Member, unless regulation 19(1)(b) or (c) applies to the person; or
- (c) is in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
- (d) works on a part-time basis for less than one hour a week;  
or

- (e) is a casual worker whose remuneration for that casual job is less than \$250 a month; or
  - (f) is a casual worker who has not worked in that casual job in the last 12 months and cannot reasonably expect to again work in that job; or
  - (g) is a worker by reason only of paragraph (i) or (j) of the definition of **worker** in regulation 3; or
  - (h) is a member of another superannuation fund under which the worker's benefits are wholly or partly funded by the Employer, unless —
    - (i) the Employer funding is provided under a salary sacrifice agreement; or
    - (ii) the worker is not for the time being accruing Employer funded benefits in that fund;
- or
- (i) is receiving remuneration from the Employer that includes a component in substitution for superannuation; or
  - (j) subject to subregulation (3), is receiving, or has received, invalid or disability benefits under a public sector (including local government) superannuation scheme in the State or elsewhere in Australia.
- (3) The Board may decide that subregulation (2)(j) does not apply to a particular person.

**16. Term used: final remuneration**

- (1) In this Part —

**final remuneration**, for a Gold State Super Member, means the amount of **FR** in the formula —

$$FR = \frac{[(R_1 \times D_1) + (R_2 \times D_2) + (R_3 \times D_3)]}{M} \times 365$$

where —

**R** is the Member's daily rate of remuneration as at —

for  $R_1$  the day on which the Member ceased to be an eligible Gold State worker; and

for  $R_2$  the Member's last selection day; and

for  $R_3$  the Member's second last selection day,

or if the Member's contributory membership period does not include that day, the day on which the Member became a Gold State Super Member;

**D** is the number of days on which the Member was a Gold State Super Member —

for  $D_1$  on and after the Member's last selection day; and

for  $D_2$  on and after the Member's second last selection day but before the Member's last selection day; and

for  $D_3$  on and after the first day of the last 2 years of the Member's contributory membership period but before the Member's second last selection day,

or if the Member's contributory membership period does not include the first day referred to in each case, the day on which the Member became a Gold State Super Member;

**M** is the lesser of —

(a) 730; and

(b) the number of days in the Member's contributory membership period.

(2) If a Gold State Super Member worked on a part-time basis on a day mentioned in the definition of ***final remuneration***, then for the purposes of that definition the Member's remuneration on that day is taken to be the amount that would have been the remuneration on that day of a comparable full-time worker.

(3) If a Gold State Super Member —

(a) receives a special allowance for a day mentioned in the definition of ***final remuneration***; and

- (b) receives that allowance continuously for at least 12 months including that day,

then for the purposes of the definition of *final remuneration* the Member's remuneration on that day is taken to include that allowance.

- (4) If a Gold State Super Member —

- (a) is on secondment on a day mentioned in the definition of *final remuneration*; and
- (b) that secondment continues for at least 12 months including that day,

then for the purposes of the definition of *final remuneration* the Member's remuneration on that day is taken to be the higher of —

- (c) the remuneration for the job from which the Member was seconded; and
- (d) the remuneration for the job to which the Member was seconded.

- (5) If a Gold State Super Member's remuneration on a particular day was —

- (a) nil; or
- (b) less than the Board considers was the Member's normal remuneration,

then for the purposes of the definition of *final remuneration* the Member's remuneration for that day is taken to have been the Member's normal remuneration.

## **17. Effect of changes to working hours**

- (1) If a Gold State Super Member who works on a part-time basis —
  - (a) has his or her hours of work increased; or
  - (b) starts working on a full-time basis,

and the Employer and Member reasonably expect that change is not of a temporary nature, then —

- (c) for the purpose of calculating the amount of contributions payable by or for the Member, the change of working hours is taken to have occurred on the Member's next adjustment day; and
- (d) for all other purposes, the change is taken to have occurred on the day it actually occurred.

(2) If a Gold State Super Member —

- (a) who was working on a full-time basis, starts working on a part-time basis; or
- (b) who works on a part-time basis, has his or her hours of work reduced,

and the Employer and Member reasonably expect that change is not of a temporary nature, then —

- (c) for the purpose of calculating the amount of contributions payable by or for the Member, the change in working hours is taken to have occurred on the first day of the next contribution period starting after the change occurred; and
- (d) for all other purposes, the change is taken to have occurred on the day it actually occurred.

**18. Limits on insurance cover — health conditions**

- (1) The Board may require a Gold State Super Member to provide medical information when —
  - (a) the Member first becomes a Gold State Super Member; or
  - (b) if the Member works on a part-time basis —
    - (i) his or her hours of work are increased; or
    - (ii) he or she starts working on a full-time basis,and the Employer and Member reasonably expect that change is not of a temporary nature; or

- (c) an application by the Member under regulation 22(2) is accepted; or
  - (d) an application by the Member under regulation 23(1) is accepted.
- (2) If a Member fails to provide medical information when required to do so under subregulation (1) the Board may impose a health condition on the Member.
- (3) If, after considering medical information provided by a Gold State Super Member, the Board is satisfied that the Member is suffering from a physical or mental condition that is likely to prevent the Member from satisfactorily performing his or her duties until the Member turns 60 the Board may impose a health condition on the Member.
- (4) If, in reliance on a statement made in medical information provided by a Gold State Super Member, the Board does not impose a health condition on the Member and the Board subsequently becomes aware that —
  - (a) the Member knew the statement was untrue; or
  - (b) the statement was misleading because it omitted material information of which the Member had knowledge,the Board may impose a health condition on the Member.
- (5) If a Member who is subject to a health condition satisfies the Board that his or her health has improved since the condition was imposed, the Board may —
  - (a) remove or vary the condition; or
  - (b) in the case of a condition of the kind described in paragraph (b) of the definition of **health condition** in regulation 12, replace it with one of the kind described in paragraph (a) of that definition.
- (6) If the Board imposes a health condition on a Member in circumstances described in subregulation (1)(b), the condition applies only in respect of the Member's membership relating to the increased working hours.

- (7) If the Board imposes a health condition on a Member in circumstances described in subregulation (1)(c) or (d), the condition applies only in respect of the Member's period of membership after the application is accepted.
- (8) In this regulation —  
***provide medical information*** means —
- (a) undergo one or more medical examinations as required by the Board and provide the resulting medical reports to the Board; or
  - (b) provide to the Board —
    - (i) information about —
      - (I) the Member's health and medical history; and
      - (II) any other matter the Board considers relevant,
    - and
    - (ii) medical reports,required by the Board to enable it to determine the Member's state of health and eligibility for benefits.

## **Division 2 — Membership**

### **19. Who may become a Gold State Super Member**

- (1) An eligible Gold State worker may apply to become a Gold State Super Member if —
- (a) the Board is satisfied that the worker —
    - (i) would have been eligible to become a member of the 1987 scheme under the GES Act immediately before 30 December 1995; and
    - (ii) was not, and could not reasonably be expected to have been, aware of the closure of that scheme before 30 December 1995 because he or she has been away from his or her usual place of work;
- or

(b) the worker —

- (i) is a Provident Scheme Member or a Pension Scheme Member; and
- (ii) ceases to be an employee within the meaning of the S&FB Act as a result of ceasing to be required to give his or her whole time to the duties of his or her employment; and
- (iii) makes the application within 6 months after the cessation referred to in paragraph (b);

or

(c) the worker —

- (i) is a Provident Scheme Member or Pension Scheme Member; and
- (ii) has been, or is to be, retrenched; and
- (iii) makes the application before being retrenched, or within such time afterwards as the Treasurer allows.

(2) For the purpose of subregulation (1)(c) a worker is **retrenched** if the worker ceases to be an employee within the meaning of the S&FB Act —

(a) in circumstances in which the worker —

- (i) becomes eligible to receive a payment under regulations made in accordance with section 94 of the *Public Sector Management Act 1994*; or
- (ii) would have become eligible for such a payment if the worker's service as an employee (within the meaning of the S&FB Act) had all been service in the Public Sector;

or

(b) on the expiry of the term of, or other termination of, the person's contract of employment; or

- (c) in any other circumstances approved by the Treasurer,  
unless the worker —
- (d) retires or is retired on the grounds of ill health; or
- (e) has his or her employment terminated because of  
misconduct or substandard or unsatisfactory  
performance; or
- (f) is dismissed under Division 3 of Part 5 of the *Public  
Sector Management Act 1994* or, if the worker is not  
subject to that Division, is dismissed on disciplinary  
grounds.

**20. Application to become a Gold State Super Member**

- (1) If a worker makes an application to become a Gold State Super Member in accordance with regulation 19, the Board is to accept the application.
- (2) A worker may revoke an application to become a Gold State Super Member by giving notice to the Board within 2 months after the application was received by the Board.
- (3) An application under regulation 19(1)(c) is deemed to have been lodged immediately before the retrenchment has effect.

**21. Minister may direct Board to accept ineligible worker as a Member**

- (1) If the Minister considers there are special circumstances the Minister may direct the Board to accept as a Gold State Super Member a worker who is not otherwise eligible, and the Board is to comply with that direction.
- (2) Where a person is accepted as a Gold State Super Member under a direction given under subregulation (1), the person is taken to be an eligible Gold State worker while he or she remains a worker.

- (3) The cost to the Fund of a worker becoming a Gold State Super Member as a result of a direction under subregulation (1) is to be assessed by an actuary and paid to the Fund by the Employer.

**22. Changing jobs**

- (1) A Gold State Super Member who ceases to be a worker and immediately again becomes a worker in a different job (whether with the same or a different Employer) without a break in service is taken not to have ceased to be an eligible Gold State worker.
- (2) A person who —
  - (a) ceases to be a worker; and
  - (b) within 12 months again becomes a worker (whether with the same or a different Employer) who is not excluded by regulation 15(2) from being an eligible Gold State worker,may apply to the Board to continue as a Gold State Super Member.
- (3) If the Board accepts an application under subregulation (2) —
  - (a) the Member is taken not to have ceased to be an eligible Gold State worker; and
  - (b) any benefit paid as a result of the cessation of work referred to in subregulation (2)(a) must be repaid together with interest at a rate, and calculated in a manner, determined by the Board; and
  - (c) any entitlement to a benefit that has not yet been paid arising from that cessation of work, terminates.
- (4) Despite subregulation (3)(a) no contributions may be paid by or in respect of the Member for the period from the cessation of work referred to in subregulation (2)(a) to the day on which the application under subregulation (2) is accepted.

**23. Member who becomes ineligible due to reduced working hours then becomes eligible again**

- (1) A Gold State Super Member who —
  - (a) ceases to be an eligible Gold State worker because the Member's hours of work are reduced to less than one hour a week; and
  - (b) within 12 months of that cessation again becomes a worker who is not excluded by regulation 15(2) from being an eligible Gold State worker,may apply to the Board to continue as a Gold State Super Member.
- (2) If the Board accepts an application under subregulation (1) —
  - (a) the Member is taken not to have ceased to be an eligible Gold State worker; and
  - (b) the Member's entitlement to a GSS withdrawal benefit arising from the cessation referred to in subregulation (1)(a) terminates.
- (3) Despite subregulation (2)(a) no contributions may be paid by or in respect of the Member for the period from the cessation referred to in subregulation (1)(a) to the day on which the application under subregulation (1) is accepted.

*[Regulation 23 amended in Gazette 13 Apr 2007 p. 1597.]*

**24. Voluntary withdrawal from the Gold State Super Scheme**

- (1) A Gold State Super Member may apply to the Board to withdraw from the Gold State Super Scheme.
- (2) A Gold State Super Member who makes an application under subregulation (1) ceases to be an eligible Gold State worker on the day on which the application is received by the Board.

**25. Cessation of membership**

A person ceases to be a Gold State Super Member when —

- (a) all benefits that are or may be payable to or in respect of the person from the Gold State Super Scheme have been paid; or
- (b) a transfer is made to another scheme or to another superannuation fund in satisfaction of all of the person's entitlements to benefits from the Gold State Super Scheme.

*[Regulation 25 amended in Gazette 28 Jun 2002 p. 3012.]*

**Division 3 — Contributions**

**Subdivision 1 — Preliminary**

**26. Term used: superannuation salary in respect of a contribution period**

- (1) Subject to this regulation, in this Division —  
*superannuation salary in respect of a contribution period*  
means a Gold State Super Member's remuneration on the Member's last selection day before the Member's last adjustment day before the start of the contribution period.
- (2) A Gold State Super Member's superannuation salary in respect of a contribution period before the Member's first adjustment day is the Member's remuneration on the day on which he or she became a Member.
- (3) If a Gold State Super Member's remuneration is increased after the selection day referred to in subregulation (1) but before the adjustment day referred to in that subregulation as a result of —
  - (a) the basis of the Member's work changing from part-time to full-time; or
  - (b) the Member's hours of part-time work increasing,the Member's superannuation salary in respect of that contribution period is the increased remuneration.

- (4) If a Gold State Super Member's remuneration is reduced (for any reason) after the Member's selection day and before the start of a contribution period, the Member's superannuation salary in respect of that contribution period is the decreased remuneration.

**27. Selection of adjustment day**

- (1) For each Gold State Super Member the Board is to select a day to be the Member's annual adjustment day.
- (2) The Board may change a Member's adjustment day provided the change is not detrimental to the Member.
- (3) The Board is to notify the Member of the day selected under this regulation and any change in the selection.
- (4) Until the Board selects otherwise a Gold State Super Member's adjustment day is the Member's birthday, but if a Gold State Super Member has a birthday within 6 months of becoming a Member that birthday is to be ignored and the Member's first adjustment day is the Member's next birthday.

**28. Selection of Employer's contribution day**

- (1) For each Employer and its eligible Gold State workers the Board is to select a day to be the Employer's contribution day.
- (2) The Board may select different contribution periods for different classes of workers of an Employer.
- (3) The Board may change an Employer's contribution day provided the change is not detrimental to Members who work for the Employer.
- (4) The Board is to notify the Employer of the day selected under this regulation and any change in the selection.
- (5) Until the Board selects otherwise an Employer's contribution day is the last day of each quarter.

**Subdivision 2 — Employer contributions**

**29. Employer contributions**

- (1) A Division 2 Employer is to contribute to the Fund for a Gold State Super Member —
  - (a) if the Member works for the Employer — for each contribution period during the Member's contributory membership period; or
  - (b) if the Member is seconded to the Employer from another Employer — for each contribution period during the secondment; or
  - (c) if the Member is seconded from the Employer to a person who is not an Employer — for each contribution period during the secondment.

- (2) A Division 1 Employer is to contribute to the Fund for a Gold State Super Member who works for the Employer and is seconded to a person who is not an Employer, for each contribution period during the secondment.

- (3) The amount of each contribution under this regulation is equal to **E** in the formula —

$$E = T \times M \times R$$

where —

**T** is 2.4 or such other rate as is determined by the Treasurer with the advice of an actuary; and

**M** is the Member's member contribution rate; and

**R** is the Member's superannuation salary in respect of the contribution period.

- (4) A determination under subregulation (3) of a different rate for **T** —
  - (a) is to be given to the Board; and
  - (b) may specify different rates for different Employers.

**30. Payment of employer contributions**

- (1) As soon as practicable after an Employer's contribution day the Board is to notify the Employer of the amount (if any) it is required to contribute under regulation 29 in respect of the period since the Employer's last contribution day.
- (2) An Employer must pay the amount notified under subregulation (1) within 7 days of receiving the notice.
- (3) The Treasurer may, by notice to the Employer, allow an Employer to defer payment of employer contributions on terms determined by the Treasurer and set out in the notice.
- (4) Section 43(7) and (8) of the *Interpretation Act 1984* apply to a notice under subregulation (3) as if it were subsidiary legislation.
- (5) The Treasurer is to give to the Board a copy of a notice given under subregulation (3).

**31. Contributions by the Crown for unfunded benefits**

- (1) The Crown is to contribute to the Fund for a Gold State Super Member who —
  - (a) at any time during the Member's contributory membership period worked for an Employer who was, at that time, a Division 1 Employer; or
  - (b) if the Member was a member of the 1987 scheme under the GES Act, at any time during the Member's contributory period under that Act, was an employee of an employer who was, at that time, listed, or deemed by or under that Act to be listed, in Part A of Schedule 1 to that Act.
- (2) The amount of the contribution required to be made by the Crown in respect of a Member is the amount, determined by the Board on the advice of an actuary, to be equal to so much of the Member's benefit as is not attributable to contributions made to the Fund by or in respect of the Member.

- (3) A contribution required to be made by the Crown in respect of a Member is to be paid —
  - (a) from the Consolidated Account; and
  - (b) as soon as possible after the Treasurer receives a notice under subregulation (4) that includes the contribution required for the Member.
- (4) As soon as practicable after an Employer's contribution day the Board is to notify the Treasurer of the amounts of the contributions required to be made by the Crown for people to whom benefits have become payable since the Employer's last contribution day and who worked for the Employer immediately before becoming entitled to the benefit.

*[Regulation 31 amended in Gazette 19 Mar 2003 p. 836;  
18 Jan 2008 p. 149.]*

### **Subdivision 3 — Member contributions**

#### **32. Member contributions**

Subject to regulations 35 and 36 a Gold State Super Member is to contribute to the Fund for each complete contribution period during which the Member is an eligible Gold State worker an amount equal to —

- (a) the Member's member contribution rate; multiplied by
- (b) the Member's superannuation salary in respect of the contribution period,

rounded up or down to the nearest whole dollar.

#### **33. Selection of member contribution rate**

- (1) A Gold State Super Member is to select a rate to be the Member's member contribution rate and give notice of that selection to the Board.

- (2) Subject to this regulation a Gold State Super Member may select a member contribution rate of 3%, 4%, 5%, 6% or 7%.
- (3) A Member's selection takes effect from the beginning of the next contribution period after the Board receives the notice of the selection.

[(4) *deleted*]

- (5) A Gold State Super Member whose average contribution rate is 5% may not select a contribution rate of 6% or 7%.
- (6) If a Gold State Super Member has selected a contribution rate of 6% or 7% and his or her average contribution rate becomes 5%, the Member's member contribution rate is reduced to 5% with effect from the next contribution period.
- (7) If the Treasurer has given a direction under regulation 14 that is conditional on the Member contributing at a rate set out in the notice —
  - (a) during the period set out in the direction, the Member's member contribution rate is the rate set out in the direction; and
  - (b) subregulation (6) does not apply while the Member is contributing in accordance with that direction.

*[Regulation 33 amended in Gazette 26 May 2006 p. 1926.]*

#### **34. Payment of member contributions**

- (1) A Gold State Super Member's member contributions are —
  - (a) payable by the Member; and
  - (b) to be deducted from the Member's pay by the Employer,unless they are paid by the Employer under a salary sacrifice agreement or the Member has made some other arrangement with the Board for payment of those contributions.

- (2) An Employer who has —
- (a) deducted member contributions from a Member's pay;  
or
  - (b) agreed to pay member contributions under a salary  
sacrifice agreement,

must pay those contributions to the Board within 7 days of the end of the contribution period to which they relate.

**35. Recognised unpaid leave — options for member contributions**

- (1) When the Board is notified that a Gold State Super Member is, or will be, on recognised unpaid leave the Board is to inform the Member of his or her rights under this regulation.
- (2) A Gold State Super Member who is on recognised unpaid leave may —
- (a) continue paying member contributions as if the Member were not on leave (*continued contributions option*); or
  - (b) continue the Member's obligation to make member contributions for the period of the leave but defer the time for payment of those contributions until the Member returns to work (*deferred contributions option*); or
  - (c) subject to subregulation (4), make no member contribution for the period of the recognised unpaid leave (*reduced benefit option*).
- (3) A Member is taken to have chosen the deferred contributions option unless, not later than one month after the Board gives the information under subregulation (1), the Member gives notice to the Board that the Member has chosen the continued contributions option or the reduced benefit option.

- (4) A Gold State Super Member who is on approved leave while on active duty with the Armed Forces cannot choose the reduced benefit option.
- (5) A notice under subregulation (3) cannot be revoked.
- (6) A Gold State Super Member who chooses the deferred contributions option —
  - (a) cannot make member contributions for the period of the recognised unpaid leave while the Member is on leave; and
  - (b) must, when the Member returns to work, pay the deferred contributions, together with interest at a rate (which may be zero), and calculated in a manner, determined by the Board, over a period not exceeding the length of the recognised unpaid leave, or any longer period allowed by the Board on the grounds of financial hardship.

*[Regulation 35 amended in Gazette 26 May 2006 p. 1926;  
18 Jan 2008 p. 150.]*

#### **Subdivision 4 — General**

#### **36. Unrecognised unpaid leave — no contributions**

- (1) Contributions cannot be made by or for a Gold State Super Member who is on unrecognised unpaid leave.
- (2) A Gold State Super Member who is on unrecognised unpaid leave may continue his or her entitlement to benefits under regulations 39, 40 and 41 while he or she is on unrecognised unpaid leave by paying to the Board, on or before the dates specified by the Board, the amounts determined by the Board to be the cost of continuing that entitlement.

**37. Additional contributions if final remuneration includes special allowance or remuneration on secondment**

If, under regulation 16(3) or 16(4), the remuneration used to determine a Gold State Super Member's final remuneration —

- (a) includes a special allowance; or
- (b) because the Member is on secondment, is higher than the remuneration used to determine contributions for the period of the secondment,

then the Member and Employer are each to make an additional contribution of an amount equal to the amount by which their respective contributions would have been increased if the Member's remuneration for the purpose of calculating contributions for each contribution period during which the Member was entitled to the special allowance or was on secondment (as the case requires) had been the remuneration used to calculate the Member's final remuneration.

**Division 4 — Benefits**

**38. Retirement benefit**

If a Gold State Super Member who is 55 or over ceases to be a worker and no benefit is payable under regulations 39 to 43 the Board is to pay the Member a benefit of an amount equal to **B** in the formula —

$$B = R \times \frac{M}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where —

**R** is the Member's final remuneration; and

**M** is the number of complete months in the Member's contributory membership period; and

**C** is the Member's average contribution rate.

*[Regulation 38 amended in Gazette 6 Jun 2007 p. 2617.]*

**39. Death benefit**

Subject to regulation 42, if a Gold State Super Member dies while still an eligible Gold State worker the Board is to pay a benefit of an amount equal to ***B*** in the formula —

$$B = R \times \frac{M + (F \times P)}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where —

***R*** is the Member's final remuneration; and

***M*** is the number of complete months in the Member's contributory membership period; and

***F*** is —

- (i) if the Member died while under 60, the number of complete months from that day to the day when the Member would have turned 60; or
- (ii) otherwise, zero;

and

***P*** is —

- (i) if the Member was working on a part-time basis at the time the Member died, the number of hours customarily worked in a week by the Member divided by the number of hours customarily worked in a week by a comparable full-time employee (excluding overtime); or
- (ii) otherwise, one;

and

***C*** is the Member's average contribution rate.

**40. Total and permanent disablement benefit**

Subject to regulations 42 and 49, if a Gold State Super Member who is under 60 ceases to be an eligible Gold State worker because of total and permanent disablement the Board is to pay the Member a benefit equal to the benefit that would have been payable under regulation 39 if the Member had died on the day the Member ceased to be an eligible Gold State worker.

**41. Partial and permanent disablement benefit**

- (1) Subject to regulations 42 and 49, if a Gold State Super Member who is under 60 ceases to be an eligible Gold State worker because of partial and permanent disablement the Board is to pay the Member a benefit of an amount equal to **B** in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{5} \times \frac{20}{100} \right] + \left[ (R - E) \times \frac{F}{12} \times \frac{C}{5} \times \frac{20}{100} \right]$$

where —

**R** is the Member's final remuneration; and

**M** is the number of complete months in the Member's contributory membership period; and

**C** is the Member's average contribution rate; and

**E** is the annual amount of the remuneration that the Board considers the Member has the capacity to earn after becoming disabled; and

**F** is the number of complete months from the day the Member ceased to be an eligible Gold State worker to the day when the Member will turn 60.

- (2) For the purpose of determining the value of E in the formula in subregulation (1) the Board —
- (a) may obtain and have regard to advice from any person the Board considers appropriate; and
  - (b) is to take into account the possibility of work in either the public sector or the private sector.

**42. Restriction of death and disablement benefits**

- (1) If a Gold State Super Member who is subject to a health condition dies while still an eligible Gold State worker or ceases to be an eligible Gold State worker because of total and permanent disablement or partial and permanent disablement —
- (a) if the condition is of the kind described in paragraph (a) of the definition of **health condition** in regulation 12 —

a benefit is payable under regulation 39, 40 or 41 only if the Board is satisfied that the Member's death or disablement was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the condition; or

- (b) if the condition is of the kind described in paragraph (b) of the definition of **health condition** in regulation 12 — no benefit is payable under regulation 39, 40 or 41.
- (2) If a health condition applies only in respect of part of the Member's period of membership, subregulation (1) applies only in respect of that part of the period of membership.
- (3) If a Gold State Super Member dies while still an eligible Gold State worker or ceases to be an eligible Gold State worker because of total and permanent disablement or partial and permanent disablement while on unrecognised unpaid leave a benefit is payable under regulation 39, 40 or 41 only if the Member chose, under regulation 36(2), to continue the Member's benefit entitlements and has paid the amounts required under that regulation.

**43. Benefit on death or disablement in other circumstances**

If a Gold State Super Member —

- (a) dies while still an eligible Gold State worker; or
- (b) in the Board's opinion —
  - (i) ceases to be an eligible Gold State worker on the ground of physical or mental incapacity to perform the Member's duties; and
  - (ii) if the Member is under 60, will continue to have that incapacity until the Member turns 60,

and no benefit is payable under regulation 39, 40 or 41, the Board is to pay a benefit of an amount equal to **B** in the formula —

$$B = R \times \left[ \left( \frac{M}{12} \times \frac{C}{5} \times \frac{20}{100} \right) + \left( \frac{F}{12} \times \frac{G}{100} \right) \right]$$

where —

**R** is the Member's final remuneration; and

**M** is the number of complete months in the Member's contributory membership period; and

**C** is the Member's average contribution rate; and

**F** is —

- (i) if the Member was under 60 when the Member ceased to be an eligible Gold State worker or died, the number of complete months from that day to the day when the Member will turn, or would have turned, 60; or
- (ii) otherwise, zero;

and

**G** is the number that would have been the employer's charge percentage for the Member for the quarter during which the Member ceased to be a worker or died.

**44. Benefit on other termination of work**

- (1) A Gold State Super Member who ceases to be an eligible Gold State worker in circumstances where no other benefit is payable under this Part is entitled to a benefit of an amount equal to **B** in the formula —

$$B = R \times \frac{M}{12} \times \frac{C}{5} \times \frac{20}{100}$$

where —

**R** is the Member's final remuneration;

**M** is the number of complete months in the Member's contributory membership period;

**C** is the Member's average contribution rate.

- (2) A benefit under this regulation is preserved until the criteria for payment of a benefit under regulation 45 are satisfied.

*[Regulation 44 amended in Gazette 13 Apr 2007 p. 1597-8.]*

**44A.     Reduction of benefit if early payment made**

- (1) The amount of a benefit under this Division is reduced, if the Member has been paid a benefit under regulation 47A, by the amount, or in the manner, determined by the Board under regulation 47A(6).
- (2) Subregulation (1) does not reduce a transfer benefit as defined in regulation 44B except as a result of that subregulation reducing the amount, referred to in the definition of ***scheme entitlement amount*** in regulation 44D(4), of a benefit to which a person could become entitled under regulation 44.

*[Regulation 44A inserted in Gazette 25 Jun 2004 p. 2228;  
amended in Gazette 6 Jun 2007 p. 2617-18.]*

**44B.     Application for transfer benefit**

- (1) A Gold State Super Member may apply to the Board for a benefit under this regulation (a ***transfer benefit***) the amount of which is for transfer in accordance with this regulation.
- (2) A Member can take a transfer benefit on or after 1 July 2007 only if —
  - (a) the Member is at least 55 years of age when the transfer benefit is taken; and
  - (b) the transfer is to provide a phased retirement benefit.
- (3) A Member can take a transfer benefit before 1 July 2007 whatever the age of the Member but only if the application is made before 23 June 2007 and if —
  - (a) the transfer benefit is to be transferred to the GESB Super Scheme; or
  - (b) in the case of a Member who is at least 55 years of age when the transfer benefit is taken —
    - (i) the transfer benefit is to be transferred to the GESB Super Scheme; or
    - (ii) the transfer is to provide a phased retirement benefit; or

- (iii) the transfer benefit is to be dealt with partly under subparagraph (i) and partly under subparagraph (ii).
- (4) The transfer of a transfer benefit, or part of it, to provide a phased retirement benefit may be to another scheme or to another superannuation fund.
- (5A) A transfer to the West State Scheme of an amount that is to be then transferred from that scheme under regulation 79B is to be regarded for the purposes of subregulation (2) as a transfer to provide a phased retirement benefit.
- (5) On receiving an application the Board, acting on the advice of an actuary, is to determine and inform the applicant of —
  - (a) an amount of transfer benefit that the applicant may elect to take for transfer in accordance with this regulation; and
  - (b) the reduction that would, in consequence of taking the transfer benefit, be made to the amount of any benefit, other than a transfer benefit under this regulation, subsequently arising in respect of the applicant under this Division.
- (6) If the applicant, in writing given to the Board, elects to take the transfer benefit in accordance with the information given under subregulation (5) —
  - (a) the applicant becomes, when the election is made, entitled to the transfer benefit; and
  - (b) the Board is to arrange the transfer accordingly; and
  - (c) the amount of any benefit, other than a transfer benefit under this regulation, arising in respect of the applicant under this Division after the election is reduced accordingly.

*[Regulation 44B inserted in Gazette 6 Jun 2007 p. 2618-20; amended in Gazette 8 Jul 2011 p. 2899.]*

**44C.      Reduction of benefits because of transfer benefit**

A reduction under regulation 44B(6)(c) to the amount of a benefit may be —

- (a) the deduction of a monetary amount, with or without interest; or
- (b) the reduction by a specified amount of the multiple of final remuneration used to calculate the benefit; or
- (c) calculated in any other manner agreed to by the actuary.

*[Regulation 44C inserted in Gazette 6 Jun 2007 p. 2620.]*

**44D.      Limited extent of transfer benefits**

- (1) A person cannot, except in accordance with the Treasurer's approval under subregulation (2), elect to take a transfer benefit the amount of which would result in the scheme entitlement amount becoming less than the notional unfunded amount.
- (2) The Treasurer may approve of a person specified, or of a class specified, in the approval electing to take a transfer benefit other than in accordance with subregulation (1) but in accordance with other limitations, if any, specified in the approval.
- (3) A person cannot elect to take a transfer benefit the amount of which would be less than \$10 000.
- (4) In this regulation —

***notional funded amount*** means the amount that is, at the time of the transfer, the specified percentage of the notional unreduced amount;

***notional unfunded amount*** means the amount resulting when the notional funded amount is deducted from the notional unreduced amount;

***notional unreduced amount*** means the amount of the benefit to which the person would have become entitled under regulation 44 if —

- (a) at the time of the transfer, the person had, instead of taking the transfer benefit, ceased to be an eligible Gold State worker in circumstances in which that regulation applied; and
- (b) the person had not previously taken any transfer benefit;

***scheme entitlement amount*** means the amount of the benefit to which the person would become entitled under regulation 44 if, immediately after taking the transfer benefit, the person ceased to be an eligible Gold State worker in circumstances in which that regulation applied;

***specified percentage*** means the percentage for the time being fixed by the Board, on the advice of an actuary, at a level designed to ensure that the amounts of all transfer benefits can be met from the portion of the Fund attributable to the Gold State Super Scheme;

***transfer benefit*** means a transfer benefit under regulation 44B.

*[Regulation 44D inserted in Gazette 6 Jun 2007 p. 2620-1.]*

### **Division 5 — Payment of benefits**

#### **45. Restriction on payment of GSS withdrawal benefit**

- (1) Subject to subregulation (4) and regulations 47 and 47A the Board must not pay a Gold State Super Member's GSS withdrawal benefit until the Member —
  - (a) is both —
    - (i) at least 55 years of age; and
    - (ii) no longer a worker or works for less than 10 hours a week;
  - or
  - (b) is totally and permanently disabled or partially and permanently disabled; or
  - (c) suffers from a terminal medical condition; or
  - (d) dies.

- (2) If a Gold State Super Member's GSS withdrawal benefit becomes payable under subregulation (1)(a), (b) or (c) the Board is to pay the benefit plus interest under regulation 46 to the Member.
- (3) If a Gold State Super Member's GSS withdrawal benefit becomes payable under subregulation (1)(d), the Board is to pay the benefit plus interest under regulation 46 in accordance with regulation 48.
- (4) If a Gold State Super Member's GSS withdrawal benefit is less than \$200 the Board is to pay the benefit to the Member when the Member becomes entitled to the benefit.
- (5) If a Gold State Super Member works in more than one job the reference in subregulation (1)(a)(ii) to the number of hours a week worked is taken to be a reference to the total number of hours worked by that Member in all of those jobs.

*[Regulation 45 amended in Gazette 25 Jun 2004 p. 2229;  
13 Apr 2007 p. 1597; 10 May 2011 p. 1668-9.]*

**46. Interest on GSS withdrawal benefit**

Interest accrues on a Gold State Super Member's GSS withdrawal benefit —

- (a) at a rate equal to —
  - (i) if the Member is under 55 years of age, the CPI rate plus 1%; or
  - (ii) if the Member is 55 years of age or older, the CPI rate plus 2%;
- and
- (b) from the day on which the Member became entitled to the benefit up to, but not including, the day on which it becomes payable; and
- (c) in a manner determined by the Board.

*[Regulation 46 amended in Gazette 26 May 2006 p. 1926-7;  
13 Apr 2007 p. 1598.]*

**46A. Reduction of GSS withdrawal benefit if early payment made**

The amount of a Member's GSS withdrawal benefit is reduced, if the Member has been paid a benefit under regulation 47A, by the amount, or in the manner, determined by the Board under regulation 47A(6).

*[Regulation 46A inserted in Gazette 25 Jun 2004 p. 2229;  
amended in Gazette 13 Apr 2007 p. 1597.]*

**47. Transfer of benefit to another superannuation fund**

- (1) A Gold State Super Member who is entitled to —

- (a) payment of a benefit; or
- (b) a preserved GSS withdrawal benefit,

may request the Board to transfer the benefit to another scheme or to another superannuation fund.

- (2) The Board is to comply with a request under subregulation (1)(a).
- (3) The Board is to comply with a request under subregulation (1)(b) if the Treasurer has approved the transfer.
- (4) If a request under subregulation (1) relates to a preserved GSS withdrawal benefit the amount to be transferred is the amount of the benefit plus interest under regulation 46, discounted to the extent that the Board, on the advice of an actuary, considers appropriate.
- (5) In this regulation —  
***benefit*** includes part of a benefit.

*[Regulation 47 amended in Gazette 28 Jun 2002 p. 3012;  
13 Apr 2007 p. 1598; 6 Jun 2007 p. 2622.]*

**47A. Early release of benefit — severe financial hardship or a compassionate ground**

- (1) A Gold State Super Member may apply to the Board for the early release of all or part of the Member's benefit —
  - (a) if the Member is in severe financial hardship; or
  - (b) on a compassionate ground.
- (2) On receipt of an application under subregulation (1) the Board is to determine whether, in the Board's opinion, if the SIS Regulations applied, the Member would be taken for the purposes of those regulations —
  - (a) to be in severe financial hardship; or
  - (b) to satisfy a condition of release on a compassionate ground.
- (3) If the Board determines that subregulation (2)(a) or (b) applies to the Member, the Board is also to determine the maximum amount that the SIS Regulations would permit to be paid to the Member in those circumstances.
- (4) When the Board has made a determination under subregulation (3), it is to pay the Member a benefit of an amount equal to the least of the following —
  - (a) the amount applied for by the Member;
  - (b) the amount determined by the Board under subregulation (3);
  - (c) the Member's discounted benefit.
- (5) A Member making an application under subregulation (1) must give to the Board all the information required to enable it to make the determinations required under this regulation.
- (6) When a benefit is paid under this regulation the Board is to determine, on the advice of an actuary, the consequent reduction that is to be made to —
  - (a) any benefit subsequently arising in respect of the Member under this Division; or

- (b) if the Member is entitled to a preserved GSS withdrawal benefit, that benefit.
- (7) A reduction under subregulation (6) may be —
  - (a) the deduction of a monetary amount, with or without interest; or
  - (b) the reduction by a specified amount of the multiple of final remuneration used to calculate the benefit; or
  - (c) calculated in any other manner agreed to by the actuary.
- (8) In this regulation —
  - compassionate ground* and *severe financial hardship* have the same meanings as they have in Part 6 of the SIS Regulations;
  - discounted benefit* means the amount, as at the day on which the Board made its determination under subregulation (3) —
    - (a) if the Member is an eligible Gold State worker, of the benefit to which the Member would have been entitled under regulation 44 if the Member ceased to be an eligible Gold State worker on that day; or
    - (b) if the Member is entitled to a preserved GSS withdrawal benefit, of that benefit,

discounted to the extent that the Board, on the advice of an actuary, considers appropriate to reflect the early payment of the benefit.

*[Regulation 47A inserted in Gazette 25 Jun 2004 p. 2229-30; amended in Gazette 26 May 2006 p. 1930; 13 Apr 2007 p. 1599; 18 Jan 2008 p. 150.]*

#### **48. Payment of death benefits**

- (1) Subject to subregulation (3), the Board is to pay a Gold State Super Member's death benefit to the executor or administrator of the Member's estate.
- (2) A benefit paid under subregulation (1) to the executor or administrator of a Member's estate —
  - (a) forms part of the Member's estate; but

- (b) is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3) The Board may pay up to \$25 000 of a death benefit in accordance with subregulation (3a) if —
  - (a) 3 months have elapsed since the Member's death and the Board has not been notified of —
    - (i) the grant of probate of the Member's will or letters of administration of the Member's estate;  
or
    - (ii) a person's intention to apply for a grant of probate or letters of administration;
  - or
  - (b) the Board considers it desirable to do so in order to relieve or avoid hardship.
- (3a) If the Board decides to pay an amount in accordance with subregulation (3) the Board may —
  - (a) pay the amount to a person who was a partner, relative or dependant of the Member immediately before the Member's death, or to 2 or more of those people in proportions determined by the Board; or
  - (b) use the amount to pay the Member's funeral expenses or reimburse a person who has paid those expenses, and pay the balance in accordance with paragraph (c); or
  - (c) in special circumstances, pay the amount, or the balance referred to in paragraph (b), to some other person.
- (4) In this regulation —  
**death benefit** means —
  - (a) a benefit payable under regulation 39 or 43(a); or
  - (b) a Gold State Super Member's GSS withdrawal benefit that has become payable because the Member has died;  
or

- (c) a benefit that became payable to a Gold State Super Member but which was not paid or transferred under regulation 47 before the Member died.

*[Regulation 48 amended in Gazette 28 Jun 2002 p. 3031-2; 13 Jun 2003 p. 2113; 1 Dec 2004 p. 5706; 13 Apr 2007 p. 1597.]*

**49. Application for disablement benefits or for payment of a GSS withdrawal benefit on disablement**

- (1) A Gold State Super Member's disablement benefit is not payable unless the Member —
  - (a) applies for it within 12 months of ceasing to be an eligible Gold State worker; and
  - (b) complies with subregulation (3).
- (2) For the purpose of assessing an application —
  - (a) under subregulation (1)(a) for a disablement benefit; or
  - (b) for payment of a GSS withdrawal benefit under regulation 45(1)(b),

the Board may obtain and have regard to such medical or other information as it considers appropriate.

- (3) A Gold State Super Member who applies for a disablement benefit or for payment of a GSS withdrawal benefit under regulation 45(1)(b) must —
  - (a) give to the Board all the information required by the Board to enable it to determine the Member's entitlement to the benefit; and
  - (b) undertake any medical examinations required by the Board; and
  - (c) authorise the Board to obtain any medical, personal and other information about the Member that the Board considers relevant to the application; and
  - (d) in the case of an application for a disablement benefit —

- (i) undertake any assessment for job retraining required by the Board; and
  - (ii) assist any investigation by the Board into the Member's ability to undertake work or work of a particular kind.
- (4) A Gold State Super Member may withdraw an application for a disablement benefit by giving notice to the Board at any time before the benefit is paid.
- (5) In this regulation —  
***disablement benefit*** means a benefit under regulation 40, 41 or 43(b).

*[Regulation 49 amended in Gazette 13 Apr 2007 p. 1597.]*

**49A. Member liable to pay contributions tax**

- (1) A Gold State Super Member who will become liable to pay contributions tax as a result of a benefit becoming payable to the Member from the Gold State Super Scheme may, at any time before the benefit is paid, apply to the Board —
  - (a) to receive part of the benefit in the form of a commutable pension; and
  - (b) to fully commute that pension.
- (2) Subject to subregulation (5) when a benefit becomes payable to a Member who has made an application under subregulation (1) the Board is to —
  - (a) estimate the amount of contributions tax the Member will become liable to pay (the ***estimated tax amount***); and
  - (b) withhold from the Member's benefit an amount equal to the estimated tax amount; and
  - (c) pay the balance of the benefit to the Member.
- (3) Interest accrues on an amount withheld under subregulation (2)(b) —

- (a) at a rate equal to the CPI rate plus 2%; and
  - (b) from the day on which the benefit became payable to the day on which the withheld amount is paid under subregulation (4)(c); and
  - (c) in a manner determined by the Board.
- (4) On receipt of a copy of the Member's assessment notice the Board is to —
  - (a) convert into a pension —
    - (i) if the actual tax amount is less than the withheld amount — a portion of the withheld amount equal to the actual tax amount; or
    - (ii) otherwise — the whole of the withheld amount;
  - and
  - (b) commute that pension; and
  - (c) pay to the Member —
    - (i) the lump sum resulting from the commutation of the pension; and
    - (ii) the balance (if any) of the withheld amount.
- (5) The Board may reject an application made under subregulation (1) if it is not satisfied that, if the application were accepted, the lump sum benefit that would become payable under subregulation (4)(c)(i) will be used to pay the contributions tax.
- (6) In this regulation —

***actual tax amount*** means the amount stated in the Member's assessment notice as the amount of contributions tax payable by the Member;

***assessment notice*** means a notice given by the Commissioner of Taxation to a Member under section 15(7) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;

***withheld amount*** means the amount withheld under subregulation (2)(b) plus interest on that amount accrued under subregulation (3).

*[Regulation 49A inserted in Gazette 28 Jun 2002 p. 3023-4; amended in Gazette 26 May 2006 p. 1930.]*

## **Part 3 — West State Super Scheme**

### **Division 1 — Preliminary**

#### **50. Terms used**

(1) In this Part —

**eligible statutory WSS Member** means a statutory WSS Member other than a person who has become excluded by regulation 51(2), (3) or (4) from being a statutory WSS Member;

**gainfully employed** has the meaning given in the SIS Regulations;

**health condition** means a condition imposed on an eligible statutory WSS Member that any benefit payable to or in respect of the Member under regulation 70, 71 or 72 will be limited to the extent determined by the Board;

**member contribution** means a contribution under regulation 63;

**partner WSS Member** means a person —

- (a) who was, immediately before 16 April 2007, a partner Member within the meaning of that term at that time; or
- (b) who became a partner WSS Member under regulation 50A(3) on or after that date,

and who has not subsequently become a statutory WSS Member or a voluntary WSS Member or ceased to be a West State Super Member;

**protected amount** in relation to a West State Super Member means, subject to regulation 80B —

- (a) if the Member was a West State Super Member on 30 June 2001, an amount equal to —
  - (i) the balance of the Member's west state account at the end of 30 June 2001; plus

- (ii) interest on that amount at the rate equal to the CPI rate plus 2% from 1 July 2001 to the day as at which the protected amount is being calculated;

or

- (b) otherwise — zero;

***splittable contribution*** means a contribution to the West State Super Scheme that would be a splittable contribution (within the meaning given in the SIS Regulations regulation 6.42) if the West State Super Scheme were a regulated superannuation fund;

***statutory WSS Member*** means a person —

- (a) who was, immediately before 16 April 2007, a statutory Member within the meaning of that term at that time; or
- (b) who became a statutory WSS Member under regulation 50A(3) or 52 on or after that date,

and who has not subsequently ceased to be a West State Super Member;

***voluntary WSS Member*** means a person —

- (a) who was, immediately before 16 April 2007, a voluntary Member within the meaning of that term at that time; or
- (b) who became a voluntary WSS Member under regulation 50A(3) or 52 on or after that date,

and who has not subsequently become a statutory WSS Member or ceased to be a West State Super Member;

***west state account*** means an account kept under regulation 66(1);

***WSS withdrawal benefit*** means —

- (a) a benefit under regulation 74; or
- (b) a benefit to which a Member became entitled under regulation 73, 74(2)(a) or 74B(2) before 1 December 2004.

- (2) For the purposes of this Part a person is to be regarded as retiring upon the occurrence of circumstances because of which a person's retirement would be taken to occur according to regulation 6.01(7) of the SIS Regulations.

*[Regulation 50 amended in Gazette 29 Jun 2001 p. 3082; 13 Jun 2003 p. 2106 and 2108-9; 25 Jun 2004 p. 2230; 1 Dec 2004 p. 5707; 26 May 2006 p. 1918; 13 Apr 2007 p. 1599, 1621-3 and 1623-4; 8 Jul 2008 p. 3214-15; 24 Nov 2009 p. 4741; 8 Jul 2011 p. 2900.]*

### **Division 2 — Membership**

#### **50A. West State Super Scheme closed to new Members**

- (1) Subject to this regulation, no person can become a West State Super Member on or after 16 April 2007.
- (2) A worker who is not a West State Super Member and who is, or is in a class of workers who are, approved by the Minister may apply to become a statutory, voluntary or partner WSS Member on or after 16 April 2007.
- (3) The Board is to accept an application made under subregulation (2) and the worker becomes a statutory, voluntary or partner WSS Member when the application is accepted.

*[Regulation 50A inserted in Gazette 13 Apr 2007 p. 1624-5.]*

#### **51. Statutory WSS Members**

*[(1) deleted]*

- (2) A worker is excluded by this subregulation from being a statutory WSS Member if the worker —
- (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 section 60AA

- of the *Superannuation and Family Benefits Act 1938*) or a Provident Scheme Member; or
- (c) holds a pensionable office as defined in section 2(4) of the *Judges' Salaries and Pensions Act 1950*; or
  - (d) works outside Australia and is not a resident of Australia (as defined in the SGA Act).
- (3) A worker is excluded by this subregulation from being a statutory WSS Member if —
- (a) the Employer —
    - (i) has established a superannuation scheme or fund in accordance with section 30(1) of the Act; or
    - (ii) has approval under section 30(2) of the Act to contribute to a superannuation scheme or fund other than one described in section 30(2)(a), (b) or (c) of the Act; or
    - (iii) is a participating employer in a scheme or fund that was established before 28 December 1989;and
  - (b) the worker is a member of that scheme or fund; and
  - (c) the Employer contributes to that scheme or fund for the worker not less than the amount that is necessary for the Employer to avoid incurring an individual superannuation guarantee shortfall (within the meaning of the SGA Act) in respect of the worker.
- (4) A worker who is a parliamentarian is excluded by this subregulation from being a statutory WSS Member if the worker —
- (a) is a person in respect of whom contributions are being made under section 11 of the *Parliamentary Superannuation Act 1970* to the superannuation scheme provided for by that Act; or
  - (b) is a non-participant, as defined in section 29 of the *Parliamentary Superannuation Act 1970*, 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.

*[Regulation 51 amended in Gazette 29 Jun 2001 p. 3083; 28 Jun 2002 p. 3027; 26 May 2006 p. 1928-9; 13 Apr 2007 p. 1599, 1623 and 1625.]*

**52. Voluntary and partner WSS Members may change category**

- (1) A voluntary WSS Member or a partner WSS Member who —
  - (a) becomes a worker and is not excluded by regulation 51(2), (3) or (4) from being a statutory WSS Member; or
  - (b) being a worker who was excluded by regulation 51(2), (3) or (4) from being a statutory WSS Member, ceases to be so excluded,

becomes a statutory WSS Member when he or she becomes a worker or ceases to be excluded.

- (2) A partner WSS Member who contributes to the West State Super Scheme under regulation 63 becomes a voluntary WSS Member when the first such contribution is received by the Board.

*[Regulation 52 inserted in Gazette 13 Apr 2007 p. 1625.]*

**52B. Certain Members may elect to withdraw**

- (1) A partner WSS Member may withdraw from the West State Super Scheme by giving notice to that effect to the Board.
- (2) A statutory WSS Member or a voluntary WSS Member who is, or is in a class of persons who are, approved by the Minister, may withdraw from the West State Super Scheme by giving notice to that effect to the Board.

*[Regulation 52B inserted in Gazette 13 Apr 2007 p. 1626.]*

**53. Cessation of membership**

A person ceases to be a West State Super Member when —

- (a) all benefits that are or may be payable to or in respect of the person from the West State Super Scheme have been paid; or
- (b) a transfer is made to another scheme or to another superannuation fund in satisfaction of all of the person's entitlements to benefits from the West State Super Scheme.

*[Regulation 53 amended in Gazette 28 Jun 2002 p. 3012.]*

**Division 3 — Contributions**

**Subdivision 1A — Restriction on contributions**

*[Heading inserted in Gazette 6 Jun 2007 p. 2622.]*

**53A. No contributions by or for GESB Super Member**

A contribution or transfer cannot be made to the West State Super Scheme by or for a person who is a GESB Super Member.

*[Regulation 53A inserted in Gazette 6 Jun 2007 p. 2622.]*

**54A. Restriction on contributions and transfers**

Despite anything else in this Part the Board must not accept a contribution or transfer for a person if the trustee of a regulated superannuation fund would be prevented by the SIS Regulations from accepting such a contribution or transfer.

*[Regulation 54A inserted in Gazette 8 Jul 2008 p. 3215-16.]*

**Subdivision 1 — Employer contributions**

**54. Employers to make minimum SG contributions**

- (1) In this regulation —

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

*individual superannuation guarantee shortfall* has the meaning given in the SGA Act section 19;

*superannuation guarantee charge* means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Commonwealth).

- (2) An Employer must make contributions to the Fund for each of its employees who is an eligible statutory WSS Member such that the Employer will avoid incurring an individual superannuation guarantee shortfall for the Member.
- (3) The Employer must make a contribution for each of the Member's contribution periods.
- (4) The amount of the contribution for a contribution period must be equal to the amount that the Employer would be required under subregulation (2) to contribute for the Member if —
  - (a) that contribution period were the only period during which the Member was an employee of the Employer; and
  - (b) the Employer had not previously made any contributions for the Member.
- (5) A contribution for a contribution period must be paid to the Fund —
  - (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or
  - (b) otherwise — within 28 days after the end of the contribution period.
- (6) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for a Member for a period, the Employer's obligation under this regulation to contribute for that Member for that period ceases.

*[Regulation 54 inserted in Gazette 8 Jul 2008 p. 3216-17.]*

**55. Compulsory contributions for over-OTE items**

- (1) In this regulation —

**over-OTE item**, for a Member, means a payment, benefit or allowance that —

- (a) is part of the Member's remuneration; but
- (b) is not part of the Member's ordinary time earnings within the meaning given in the SGA Act section 6(1);

**SG-exempt Member** means an eligible statutory WSS Member who is not an SG-Member because of the SGA Act sections 26 to 29;

**SG-Member** means a Member for whom an Employer is required by regulation 54 to make contributions.

- (2) For each contribution period of an SG-Member in which the Member receives an over-OTE item the Employer must make a contribution to the Fund for the Member of an amount equal to 9% of the monetary value, determined by the Employer, of that over-OTE item.
- (3) For each contribution period of an SG-exempt Member the Employer must make a contribution to the Fund for the Member of an amount equal to the contributions that the Employer would have been required under regulation 54 and subregulation (2) to make for that Member for that contribution period had the SGA Act sections 26 to 29 not been in force.
- (4) A contribution required under this regulation to be made for a contribution period must be paid to the Fund —
- (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or
  - (b) otherwise — within 28 days after the end of the contribution period.
- (5) A determination by an Employer as to the value of a non-monetary over-OTE item that would reduce the value of the item for a person who was an eligible statutory WSS Member at

the time the determination was made, does not apply to the person unless he or she gives notice to the Employer consenting to its application to him or her.

*[Regulation 55 inserted in Gazette 8 Jul 2008 p. 3217-18.]*

**[56.** Deleted in Gazette 8 Jul 2008 p. 3216.]

**57. Voluntary employer contributions**

- (1) The Board may, with the Treasurer's approval, permit an Employer to make —
  - (a) additional contributions for an eligible statutory WSS Member; or
  - (b) contributions for a statutory WSS Member who is not an eligible statutory WSS Member; or
  - (c) contributions for a voluntary WSS Member,who works for the Employer.
- (2) Contributions under this regulation are to be of the amount, and paid at the time and in the manner, agreed between the Employer and the Board.

*[Regulation 57 amended in Gazette 13 Apr 2007 p. 1623.]*

**58. Acceptance of Commonwealth payments**

The Board may accept a Commonwealth payment in respect of a West State Super Member.

*[Regulation 58 inserted in Gazette 13 Apr 2007 p. 1587.]*

**59. Contribution of insurance payments**

If —

- (a) there is in force a policy of insurance entered into with an insurer under regulation 75 to provide for a supplementary salary continuance benefit for a West State Super Member; and

- (b) an amount becomes payable under that policy in respect of the Member,

the Board may accept payment of all or part of that amount from the insurer as a contribution for the Member.

*[Regulation 59 inserted in Gazette 24 Nov 2009 p. 4741;  
amended in Gazette 30 Jun 2010 p. 3133.]*

**60. Employer's contribution returns**

- (1) When making any contributions to the Fund, or paying any amounts under regulation 62, an Employer must give to the Board a contribution return for the contribution period to which those contributions or payments relate.
- (2) A contribution return is to be in a form approved by the Board.

*[61. Deleted in Gazette 13 Apr 2007 p. 1626.]*

**62. Treasurer may require additional amounts to be paid**

- (1) The Treasurer may, on the advice of an actuary, give a direction to the Fund requiring Employers who are required to make contributions under regulation 54 or 55 to pay additional amounts to the Fund, and Employers to whom the direction applies must comply with it.
- (2) A direction under subregulation (1) may specify —
  - (a) the time when, and the manner in which, the additional amounts are to be paid; and
  - (b) different provisions for different Employers.
- (3) Amounts paid under this regulation are not to be credited to Members' west state accounts.
- (4) The Treasurer may, by notice to the Employer, allow an Employer to defer payment of amounts payable under this regulation on terms determined by the Treasurer and set out in the notice.

- (5) Section 43(7) and (8) of the *Interpretation Act 1984* apply to a notice under subregulation (4) as if it were subsidiary legislation.
- (6) The Treasurer is to give to the Board a copy of a notice given under subregulation (4).

*[Regulation 62 amended in Gazette 29 Jun 2001 p. 3085; 13 Apr 2007 p. 1623-4 and 1626; 8 Jul 2008 p. 3218.]*

#### **Subdivision 2 — Member contributions**

#### **63. Member contributions**

- (1) A West State Super Member may contribute to the Fund the amount, and at the times, agreed between the Member and the Board.
- (2) A Gold State Super Member, Pension Scheme Member or Provident Scheme Member who is not a worker may contribute to the Fund the amount, and at the times, agreed between the Member and the Board.

*[Regulation 63 amended in Gazette 13 Jun 2003 p. 2112.]*

#### **64. Payment of member contributions**

- (1) A West State Super Member's member contributions are payable by the Member and —
  - (a) if the Member is a worker, are to be deducted from the Member's pay by the Employer unless —
    - (i) they are paid by the Employer under a salary sacrifice agreement; or
    - (ii) the Member has made some other arrangement with the Board for payment of those contributions;
  - or
  - (b) if the Member is not a worker, are to be paid in the manner agreed between the Member and the Board.

- (2) An Employer who has —
- (a) deducted member contributions from a West State Super Member's pay; or
  - (b) agreed to pay member contributions under a salary sacrifice agreement,

must pay those contributions to the Board within 7 days of the end of the contribution period to which they relate.

*[Regulation 64 amended in Gazette 13 Jun 2003 p. 2112-13.]*

**64A. Member may contribute for partner**

- (1) A person who is —
- (a) a Member; or
  - (b) a Pension Scheme Member or a Provident Scheme Member; or
  - (c) a person who is in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (d) a person who is entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable,
- (the **contributor**) may contribute to the Fund for a partner of the contributor.
- (2) The contributor is to contribute the amounts, and at the times, and make the contributions in the manner, agreed between the contributor and the Board.
- (3) When making a contribution under this regulation the contributor must give to the Board whatever information the Board reasonably requires to satisfy itself that the contributor and the person for whom the contribution is made are partners.

*[Regulation 64A inserted in Gazette 13 Jun 2003 p. 2106-7; amended in Gazette 1 Dec 2004 p. 5706; 26 May 2006 p. 1930.]*

### **Subdivision 3 — Transfers**

#### **65. Member may transfer benefits from other funds**

A West State Super Member may transfer to the West State Super Scheme —

- (a) a benefit accrued in respect of the Member in —
  - (i) another superannuation fund; or
  - (ii) an eligible non-resident non-complying superannuation fund (as defined in section 27A of the *Income Tax Assessment Act 1936* of the Commonwealth);

or

- (b) any other eligible termination payment to which the Member is entitled,

by paying, or arranging the payment of, the amount of that benefit or payment to the Fund.

*[Regulation 65 inserted in Gazette 13 Apr 2007 p. 1626-7.]*

*[65A. Deleted in Gazette 8 Jul 2008 p. 3219.]*

### **Subdivision 4 — Contribution splitting for partner**

*[Heading inserted in Gazette 13 Apr 2007 p. 1627.]*

#### **65BA. Term used: partner**

Despite the definition of *partner* in regulation 3, in this Subdivision —

*partner* has the meaning given to the term *spouse* in the SIS Act section 10.

*[Regulation 65BA inserted in Gazette 8 Jul 2008 p. 3219.]*

#### **65BB. Member may split contributions with partner**

- (1) A West State Super Member for whom splittable contributions have been made to the West State Super Scheme may apply to

the Board to transfer some or all of those contributions for the benefit of the Member's partner, and subject to this regulation the Board is to accept the application.

- (2) The Member may apply to transfer those contributions —
  - (a) if the partner is a West State Super Member, to the partner's west state account; or
  - (b) to the partner's GESB Super account (within the meaning given in regulation 83); or
  - (c) if the Member's partner is a member of another scheme or superannuation fund that is able to accept the transfer, to that other scheme or fund.
- (3) A Member cannot apply to transfer contributions under subregulation (2)(b) if the Member's partner is a West State Super Member, other than a partner for whom a transfer to the West State Super Scheme cannot be made because of regulation 53A.
- (4) The Board must not accept an application under this regulation unless the Board is satisfied that, if the West State Super Scheme were a regulated superannuation fund, the Board would be entitled under the SIS Regulations Division 6.7 to accept the application.
- (5) If it accepts an application under subregulation (1) the Board must transfer the contributions to which the application relates within 90 days of accepting the application.

*[Regulation 65BB inserted in Gazette 8 Jul 2008 p. 3219-20.]*

**65B. Acceptance of partner contributions-splits from other schemes or funds**

The Board may accept a contributions-split transfer to the West State Super Scheme for a West State Super Member from another scheme or other superannuation fund.

*[Regulation 65B inserted in Gazette 13 Apr 2007 p. 1627.]*

**Division 4 — West state accounts**

*[Heading amended in Gazette 13 Apr 2007 p. 1624.]*

**66.      West state accounts**

- (1) The Board is to establish and maintain in the Fund a west state account for each West State Super Member.
- (2) The Board may divide a west state account into 2 or more sub-accounts.

*[Regulation 66 amended in Gazette 13 Apr 2007 p. 1623-4.]*

**67.      Amounts to be credited to west state accounts**

- (1) The Board is to credit to a West State Super Member's west state account —
  - (a) contributions made for the Member; and
  - (b) any Commonwealth payments for the Member accepted under regulation 58; and
  - (c) any benefits or other eligible termination payments transferred to the Fund for the Member; and
  - (ca) any interest paid to the Board under section 25 of the Act in respect of the late payment of contributions payable under this Part for the Member; and
  - (da) any splittable contributions transferred for the benefit of the Member under regulation 65BB(2)(a) or 65B; and
  - (db) any amounts received from an insurer in respect of the Member under insurance provided under regulation 75 (including any amounts paid under regulation 59); and
  - (d) earnings in accordance with regulation 69.
- (2) The Board may temporarily keep contributions made for a West State Super Member, together with contributions made for other West State Super Members, in an account maintained for that purpose until the contributions are credited to the appropriate west state accounts.

*[Regulation 67 amended in Gazette 29 Jun 2001 p. 3086; 28 Jun 2002 p. 3022; 19 Mar 2003 p. 836; 13 Jun 2003 p. 2107; 1 Dec 2004 p. 5708; 13 Apr 2007 p. 1587, 1623-4 and 1628; 8 Jul 2008 p. 3220; 24 Nov 2009 p. 4742; 30 Jun 2010 p. 3134.]*

**68. Amounts to be debited to west state accounts**

- (1) The Board is to debit to a West State Super Member's west state account —
  - (a) any amounts withheld under regulation 81A(2); and
  - (b) any amounts paid as benefits to, or in respect of, the Member; and
  - (c) any amounts transferred to other schemes or to other superannuation funds in satisfaction of the Member's entitlement to a benefit from the West State Super Scheme; and
  - (d) any overpaid amounts deducted under regulation 248B(5)(d); and
  - (e) any splittable contributions transferred by the Member under regulation 65BB.
- (2) The Board may debit to a West State Super Member's west state account —
  - (a) the cost of any benefits provided in respect of the Member under regulations 70, 71 and 72; and
  - (b) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 69F; and
  - (c) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member; and
  - (d) the amount of any fees payable by the Member for, or in relation to, any product or service provided to the Member in accordance with section 6(1)(e) of the Act.

- (3) The Board may only debit an amount to a west state account —
- (a) under subregulation (2)(a) or (b), if an actuary has advised that it is appropriate for that amount to be debited to that account; or
  - (b) under subregulation (2)(d), if the Member has given the Board written consent to the debiting of that amount to the account.
- (4) If the Board debits an amount to a west state account under subregulation (2)(d) in respect of a fee payable to a person other than the Board, the Board must pay the amount deducted to that other person.

*[Regulation 68 inserted in Gazette 19 Mar 2003 p. 836-7; amended in Gazette 1 Dec 2004 p. 5708; 13 Apr 2007 p. 1588, 1623-4 and 1628; 8 Jul 2008 p. 3220-1; 30 Jun 2010 p. 3134.]*

**69. Earnings**

- (1) The Board is to credit earnings to each Member's west state account at a rate equal to the Member's earning rate on the balance of the account —
- (a) at least once every year; and
  - (b) when the Member becomes entitled to payment of a benefit.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.

*[Regulation 69 amended in Gazette 29 Jun 2001 p. 3086; 28 Jun 2002 p. 3012 and 3027; 19 Mar 2003 p. 837; 13 Apr 2007 p. 1623-4.]*

**Division 4A — Member investment choice**

*[Heading inserted in Gazette 29 Jun 2001 p. 3086.]*

**69A. Terms used**

In this Division —

**default plan** means the readymade investment plan selected by the Board under regulation 69C as the default plan for West State Super Members;

**personalised investment plan** means an investment plan established under regulation 69B(3);

**readymade investment plan** means an investment plan established under regulation 69B(1).

*[Regulation 69A inserted in Gazette 29 Jun 2001 p. 3086;  
amended in Gazette 28 Jun 2002 p. 3012.]*

**69B. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for West State Super Members with asset allocations determined by the Board.
- (2) The Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (3) The Board may establish an investment plan under which a West State Super Member who selects that plan may select the Member's own asset allocation subject to any conditions determined by the Board.
- (4) The Board must notify all West State Super Members of —
  - (a) the establishment of a new investment plan for West State Super Members including, in the case of a readymade investment plan, the asset allocation for that plan; and
  - (b) any material change in the asset allocation of a readymade investment plan; and
  - (c) any material change in the conditions applying to a personalised investment plan,

before, or as soon as practicable after, the establishment or change occurs.

*[Regulation 69B inserted in Gazette 29 Jun 2001 p. 3087;  
amended in Gazette 28 Jun 2002 p. 3013.]*

**69C. Default plan**

- (1) The Board is to select one of the readymade investment plans as the default plan for West State Super Members.
- (2) The Board may change the plan selected as the default plan whenever the Board considers it appropriate to do so.
- (3) The Board must notify all West State Super Members of any change made under subregulation (2) before, or as soon as practicable after, the change occurs.

*[Regulation 69C inserted in Gazette 29 Jun 2001 p. 3087;  
amended in Gazette 28 Jun 2002 p. 3013; 13 Apr 2007  
p. 1589.]*

**69D. Member to select investment plan**

- (1) A West State Super Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (1a) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (2) A Member may change his or her selection under subregulation (1) or (1a) at any time by giving notice to the Board.
- (2a) As soon as practicable after receiving a notice under this regulation the Board must give effect to it by investing the Member's assets in accordance with regulation 69E.
- (3) Until a West State Super Member selects otherwise the Member is taken to have selected —

- (a) in the case of a person who was a West State Super Member on 1 July 2001, the plan that was the default plan on that day; and
- (b) otherwise, the plan that was the default plan at the time the person became a West State Super Member.

*[Regulation 69D inserted in Gazette 29 Jun 2001 p. 3088; amended in Gazette 19 Mar 2003 p. 837-8; 13 Apr 2007 p. 1589.]*

**69E. Board to invest assets to reflect Member's choice**

- (1) For each West State Super Member who selects a readymade investment plan the Board must, as far as is practicable —
  - (a) invest the Member's assets in accordance with the asset allocation determined under regulation 69B for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a West State Super Member who selects a personalised investment plan the Board must invest —
  - (a) the Member's assets as at the time the Board gives effect to the selection (*selection day*); and
  - (b) contributions made, and any benefits or other eligible termination payments transferred to the Fund, by or in respect of the Member after the selection day,

in accordance with the asset allocation selected by the Member but, unless the Board and the Member agree otherwise, the Board is not required to ensure that the investment of the Member's assets remains in accordance with that asset allocation.

- (3) In this regulation —

***Member's assets*** means the assets of the Fund that represent the west state account of a West State Super Member.

*[Regulation 69E inserted in Gazette 29 Jun 2001 p. 3088-9;  
amended in Gazette 28 Jun 2002 p. 3013 and 3022;  
13 Apr 2007 p. 1589-90 and 1623-4.]*

**69F. Determination of earning rates**

- (1) At the end of each financial year and at any other time when the Board considers it desirable to do so, an earning rate is to be determined for —
  - (a) each readymade investment plan; and
  - (b) each West State Super Member who has selected a personalised investment plan.
- (2) The earning rates are to be determined —
  - (a) by the Board; or
  - (b) on behalf of the Board in accordance with procedures or formulae determined by the Board.
- (3) In determining an earning rate, or the procedures or formulae to be used to determine an earning rate, the Board must have regard to —
  - (a) the nett rate of return achieved by the investment of the assets of the Fund that represent the west state accounts of the Members to whom the earning rate will apply; and
  - (aa) administrative costs; and
  - (b) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

*[Regulation 69F inserted in Gazette 29 Jun 2001 p. 3089-90;  
amended in Gazette 28 Jun 2002 p. 3013; 19 Mar 2003 p. 838;  
13 Apr 2007 p. 1623-4.]*

*[Division 4B and Division 5A deleted in Gazette 30 Jun 2010 p. 3134.]*

## **Division 5 — Benefits**

*[Heading inserted in Gazette 30 Jun 2010 p. 3134.]*

### **Subdivision 1 — Preliminary**

*[Heading inserted in Gazette 30 Jun 2010 p. 3134.]*

#### **69G. Terms used**

In this Division —

***covered risk benefits Member*** means a West State Super Member —

- (a) on whose death or disability immediately before the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* any benefit (other than payment of the balance of the Member's West State account or the Member's protected amount) would have been payable; or
- (b) who has since the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* become a covered risk benefits Member under regulation 69H, 69I or 69K,

and who in either case has not subsequently ceased to be a covered risk benefits Member under regulation 69J or 69M;

***eligible risk benefits Member*** means a member who is —

- (a) a West State Super Member who under the terms on which the Board provides a supplementary risk benefit under regulation 70A is or may be eligible for the supplementary risk benefit; or
- (b) an eligible statutory WSS Member who is under 60 years of age;

***opt-in notice*** means a notice given under regulation 69K.

*[Regulation 69G inserted in Gazette 30 Jun 2010 p. 3134-5.]*

**Subdivision 2 — Covered risk benefits Members**

*[Heading inserted in Gazette 30 Jun 2010 p. 3135.]*

**69H. Automatically becoming a covered risk benefits Member**

Subject to regulation 69I(1), every person who is or becomes an eligible risk benefits Member on or after the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* is a covered risk benefits Member.

*[Regulation 69H inserted in Gazette 30 Jun 2010 p. 3135.]*

**69I. Initial option to become a covered risk benefits Member**

- (1) The Board may determine that any person, or any member of a specified class of persons, who becomes an eligible risk benefits Member after the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* is not a covered risk benefits Member unless, within such time of becoming an eligible risk benefits Member as the Board may specify, that person opts to become a covered risk benefits Member.
- (2) An option under subregulation (1) is to be exercised by notice in writing to the Board, received by the Board before the expiry of the specified time.
- (3) When a notice under subregulation (2) is received by the Board before the expiry of the specified time, the person exercising the option becomes a covered risk benefits Member.

*[Regulation 69I inserted in Gazette 30 Jun 2010 p. 3136.]*

**69J. Ceasing to be a covered risk benefits Member**

- (1) A covered risk benefits Member may opt at any time to cease to be a covered risk benefits Member.
- (2) An option under subregulation (1) is to be exercised by notice in writing, received by the Board.

- (3) When a notice under subregulation (2) is received by the Board, the Member exercising the option ceases to be a covered risk benefits Member.
- (4) The Board may determine that a covered risk benefits Member who, as a result of options exercised by the Member under regulation 70B(3), is not eligible for any supplementary risk benefit ceases to be a covered risk benefits Member.

*[Regulation 69J inserted in Gazette 30 Jun 2010 p. 3136.]*

**69K. Subsequent option to become a covered risk benefits Member**

- (1) An eligible risk benefits Member who is not a covered risk benefits Member and who is not entitled to become a covered risk benefits Member under regulation 69H may at any time opt to become a covered risk benefits Member, subject to the provisions of this regulation and of regulation 69L.
- (2) An option under subregulation (1) is to be exercised by notice in writing —
  - (a) received by the Board; and
  - (b) accepted by the Board under regulation 69L.

*[Regulation 69K inserted in Gazette 30 Jun 2010 p. 3137.]*

**69L. Considering and accepting opt-in notice**

- (1) On receiving an opt-in notice, the Board may require the Member giving the notice to do all or any of the following —
  - (a) undergo one or more medical examinations and provide the resulting medical reports to the Board;
  - (b) provide to the Board —
    - (i) any other medical reports; and
    - (ii) information about the Member's health and medical history; and

- (iii) any other information the Board considers relevant.
- (2) If the Board imposes a requirement under subregulation (1) the Member —
  - (a) must comply with the requirement within the time specified by the Board; and
  - (b) is responsible for payment of any costs involved in complying with the requirement.
- (3) The Board may decline to accept an opt-in notice if under the terms of insurance provided under regulation 70A an application for cover for the Member under that insurance may be refused.
- (4) The Board may decline to accept an opt-in notice or accept it subject to a health condition if —
  - (a) after considering the notice and any further medical information provided by the Member, the Board is of the opinion that the Member is suffering from a physical or mental condition that is likely to prevent him or her from satisfactorily performing his or her duties until he or she turns 60 years of age; or
  - (b) the Member fails to comply with a requirement under subregulation (1).
- (5) When an opt-in notice is accepted by the Board, the person giving the notice becomes a covered risk benefits Member.

*[Regulation 69L inserted in Gazette 30 Jun 2010 p. 3137-8.]*

**69M. Altering or cancelling acceptance of opt-in notice**

- (1) If, in reliance on a statement made in medical information provided by a Member, the Board has accepted an opt-in notice without imposing a health condition and the Board subsequently becomes aware that —
  - (a) the Member knew the statement was untrue; or

- (b) the statement was misleading because it omitted material information of which the Member had knowledge,
- the Board may —
- (c) impose a health condition on the Member; or
  - (d) cancel its acceptance of the notice, in which event the Member ceases to be a covered risk benefits Member with retrospective effect to the time when the notice was accepted.
- (2) The Board may take action under subregulation (1)(c) or (d) even if the Member has ceased to be a worker or has died.
  - (3) If a covered risk benefits Member who is subject to a health condition satisfies the Board that his or her health has improved since the condition was imposed, the Board may remove or vary the condition.

*[Regulation 69M inserted in Gazette 30 Jun 2010 p. 3138-9.]*

**Subdivision 3 — Provision of supplementary risk benefits**

*[Heading inserted in Gazette 30 Jun 2010 p. 3139.]*

**70A. Board may provide supplementary risk benefits**

The Board may provide all or any of the following kinds of supplementary risk benefits for all covered risk benefits Members who are West State Super Members, or for such classes of those Members, as the Board considers appropriate —

- (a) supplementary death benefits;
- (b) supplementary incapacity benefits;
- (c) supplementary salary continuance benefits.

*[Regulation 70A inserted in Gazette 30 Jun 2010 p. 3139.]*

**70B. Terms of supplementary risk benefits**

- (1) The Board must decide the terms of any supplementary risk benefits provided for covered risk benefits Members under regulation 70A.
- (2) The Board may decide on different terms for different classes of covered risk benefits Members.
- (3) The terms of supplementary risk benefits may include terms in relation to all or any of the following —
  - (a) eligibility for a benefit, and options in relation to eligibility;
  - (b) levels or amounts of benefits, and options in relation to levels and amounts;
  - (c) requirements for changing the level or amount of benefits;
  - (d) form of benefits (whether lump sum, periodic payment or otherwise);
  - (e) information and documents to be given to and by the Board;
  - (f) amounts to be debited to Members' accounts in respect of benefits for which they are eligible;
  - (g) claims procedures and evidentiary requirements;
  - (h) cessation, termination or cancellation of entitlement to benefits;
  - (i) procedural and administrative matters relating to the provision of benefits.
- (4) The terms of supplementary risk benefits must include a term to the effect that no entitlement to benefit arises in respect of any event occurring on or after the separation time (within the meaning given in section 75B of the Act).

*[Regulation 70B inserted in Gazette 30 Jun 2010 p. 3139-40.]*

**Subdivision 4 — Benefits**

*[Heading inserted in Gazette 30 Jun 2010 p. 3140.]*

**70. Death benefits for covered risk benefits Members**

- (1) If a covered risk benefits Member who —
- (a) is an eligible statutory WSS Member; and
  - (b) is under 60 years of age,

dies while still a worker, subject to subregulations (3) and (4) the Board is to pay a basic death benefit of an amount equal to **B** in the formula —

$$B = A + \left[ \frac{R}{2} \times \frac{G}{100} \times \frac{F}{12} \right]$$

where —

**A** is the greater of —

- (i) the balance of the Member's west state account; and
- (ii) the Member's protected amount;

**R** is —

- (i) if the Member has been a statutory WSS Member for all of the 2 years prior to the Member's death — the total of the Member's remuneration for those 2 years; or
- (ii) otherwise, the amount of remuneration the Board considers the Member would have received for those 2 years if the circumstances existing immediately before the Member died had existed for all of those 2 years;

**G** is the number that would have been the Employer's charge percentage for the quarter during which the Member died;

**F** is the number of complete months from the day the Member died to the day when the Member would have turned 60 years of age.

- (2) If a covered risk benefits Member for whom a supplementary death benefit is provided under regulation 70A dies, subject to

subregulation (3) and to the terms on which the supplementary death benefit is provided the Board is to pay the supplementary death benefit.

- (3) If a covered risk benefits Member is subject to a health condition no basic death benefit or supplementary death benefit is payable unless the Board is satisfied that the Member's death was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the health condition.
- (4) If a covered risk benefits Member is, as a result of options exercised by the Member under regulation 70B(3), not eligible for a supplementary death benefit, no basic death benefit is payable.

*[Regulation 70 inserted in Gazette 30 Jun 2010 p. 3140-2.]*

**71. Incapacity benefits for covered risk benefits Members**

- (1) In this regulation —  
*permanent incapacity* has the meaning given in the SIS Regulations regulation 6.01(2).
- (2) Subject to regulation 81 and subregulations (5), (7) and (8), if a covered risk benefits Member who —
  - (a) is an eligible statutory WSS Member; and
  - (b) is under 60 years of age,ceases to be a worker because of permanent incapacity, the Board is to pay the Member a basic incapacity benefit equal to the basic death benefit that would have been payable under regulation 70 if the Member had died on the day the Member ceased to be a worker.
- (3) Subject to subregulations (5), (7) and (8), if a covered risk benefits Member who —
  - (a) is an eligible statutory WSS Member; and
  - (b) is under 60 years of age,

ceases to be a worker because of partial and permanent disablement the Board is to pay the Member a basic incapacity benefit of an amount equal to **B** in the formula —

$$B = A + \left[ \left( \frac{R}{2} - E \right) \times \frac{G}{100} \times \frac{F}{12} \right]$$

where —

**A** is the greater of —

- (i) the balance of the Member's west state account; and
- (ii) the Member's protected amount;

**R** is —

- (i) if the Member has been a statutory WSS Member for all of the 2 years prior to the Member ceasing to be a worker — the total of the Member's remuneration for those 2 years; or
- (ii) otherwise, the amount of remuneration the Board considers the Member would have received for those 2 years if the circumstances existing immediately before the Member ceased to be a worker had existed for all of those 2 years;

**E** is the annual amount of the remuneration that the Board considers the Member has the capacity to earn after becoming disabled, having regard to subregulation (4);

**G** is the number that would have been the Employer's charge percentage for the quarter during which the Member ceased to be a worker;

**F** is the number of complete months from the day the Member ceased to be a worker to the day when the Member will turn 60 years of age.

- (4) For the purpose of determining the value of **E** in the formula in subregulation (3) the Board is to take into account the possibility of work in either the public sector or the private sector.

- (5) If a covered risk benefits Member entitled to a basic incapacity benefit under subregulation (2) or (3) has received, or is entitled to receive, another benefit from any of the superannuation schemes established or continued under the Act in respect of the same incapacity, the Board may reduce the basic incapacity benefit to the extent it considers appropriate (but not to an amount less than the amount of A in the formula in regulation 70).
- (6) If a covered risk benefits Member for whom a supplementary incapacity benefit is provided under regulation 70A suffers incapacity, subject to subregulation (7) and to the terms on which the supplementary incapacity benefit is provided the Board is to pay the supplementary incapacity benefit.
- (7) If a covered risk benefits Member is subject to a health condition no basic incapacity benefit or supplementary incapacity benefit is payable unless the Board is satisfied that the Member's incapacity was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the health condition.
- (8) If a covered risk benefits Member is, as a result of options exercised by the Member under regulation 70B(3), not eligible for a supplementary incapacity benefit, no basic incapacity benefit is payable.

*[Regulation 71 inserted in Gazette 30 Jun 2010 p. 3142-4.]*

**72. Supplementary salary continuance benefits for covered risk benefits Members**

- (1) In this regulation —  
**SIS amount** means the amount that, if the West State Super Scheme were a regulated superannuation fund, the Board could pay to the Member without contravening the cashing restriction set out in the SIS Regulations Schedule 1 item 109 column 3;

***temporarily incapacitated*** means that the Member is suffering temporary incapacity within the meaning given in the SIS Regulations regulation 6.01.

- (2) If a covered risk benefits Member for whom a supplementary salary continuance benefit is provided under regulation 70A(c) is temporarily incapacitated, subject to subregulation (3) and to the terms on which the supplementary salary continuance benefit is provided the Board is to pay the Member the supplementary salary continuance benefit or, if less, the SIS amount.
- (3) If a covered risk benefits Member is subject to a health condition no supplementary salary continuance benefit is payable unless the Board is satisfied that the Member's incapacity was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the health condition.

*[Regulation 72 inserted in Gazette 30 Jun 2010 p. 3145.]*

**73A. Treasurer may increase basic risk benefits for covered risk benefits Members**

- (1) The Treasurer may, by giving notice to the Board, increase the amount of a basic death benefit under regulation 70 or a basic incapacity benefit under regulation 71 to, or in respect of, a covered risk benefits Member or a class of covered risk benefits Members.
- (2) The Treasurer may revoke a notice given under subregulation (1) by giving notice to the Board.

*[Regulation 73A inserted in Gazette 30 Jun 2010 p. 3145-6.]*

**73. Death benefit — other West State Super Members**

- (1) This regulation applies if any of the following events occur —
- (a) a statutory WSS Member dies without having become entitled to a benefit under regulation 74 and no benefit is payable under regulation 70;
  - (b) a voluntary WSS Member dies without having become entitled to a benefit under regulation 74;
  - (c) a partner WSS Member dies while there is still an amount in the Member's west state account.
- (2) If this regulation applies the Board is to pay a benefit in respect of the Member of an amount equal to the greater of —
- (a) the balance of the Member's west state account; and
  - (b) the Member's protected amount.

*[Regulation 73 inserted in Gazette 30 Jun 2010 p. 3146;  
amended in Gazette 8 Jul 2011 p. 2900.]*

**74. General benefit**

- (1) This regulation applies if any of the following events occur and no other benefit is payable under this Part —
- (a) a statutory WSS Member or voluntary WSS Member —
    - (i) ceases to be a worker; or
    - (iia) retires; or
    - (ii) withdraws from the West State Super Scheme under regulation 52B(2); or
  - (b) an eligible statutory WSS Member otherwise ceases to be an eligible statutory WSS Member; or
  - (c) a partner WSS Member —
    - (i) satisfies the criteria for payment of a benefit under regulation 76; or
    - (ii) withdraws from the West State Super Scheme under regulation 52B(1); or

- (da) a West State Super Member suffers from a terminal medical condition; or
  - (d) a West State Super Member reaches 65 years of age.
- (2) If this regulation applies the Member is entitled to a benefit of an amount equal to the greater of —
- (a) the balance of the Member's west state account; and
  - (b) the Member's protected amount.
- (3) If the Member satisfies the criteria for payment of a benefit under regulation 76, the Board is to pay the benefit to the Member when requested by the Member to do so.
- (4) If the Member does not satisfy the criteria for payment of a benefit under regulation 76, the benefit is preserved until those criteria are satisfied.
- (5) If a Member is entitled to a benefit under this regulation and regulation 72, the benefit under regulation 72 is to be paid first.

*[Regulation 74 inserted in Gazette 30 Jun 2010 p. 3146-7;  
amended in Gazette 10 May 2011 p. 1669; 8 Jul 2011 p. 2900.]*

#### **Subdivision 5 — External insurance**

*[Heading inserted in Gazette 30 Jun 2010 p. 3147.]*

#### **75. Insurance policies**

The Board may enter into one or more policies of insurance, including policies of group life assurance, to provide for any of the benefits that may become payable under regulations 70, 71 and 72.

*[Regulation 75 inserted in Gazette 30 Jun 2010 p. 3147.]*

#### **Division 6 — Payment of benefits**

#### **76A. Term used: earnings**

In this Division other than regulation 79AA —

*earnings*, in relation to a benefit, means so much of the earnings that have been credited to the Member's west state account since the Member became entitled to the benefit as are attributable to that benefit.

*[Regulation 76A inserted in Gazette 8 Jul 2008 p. 3226.]*

**76. Payment of WSS withdrawal benefit**

- (1) Unless permitted to do so by another provision of this Division the Board must not pay a West State Super Member's WSS withdrawal benefit unless the Member —
  - (a) is retired; or
  - (b) is suffering permanent incapacity; or
  - (c) is partially and permanently disabled; or
  - (da) suffers from a terminal medical condition; or
  - (d) is at least 65 years of age; or
  - (e) has died.
- (1A) If a West State Super Member —
  - (a) satisfies the Board that he or she is retired; and
  - (b) subsequently ceases to be retired,the benefit to which the Member was entitled immediately before he or she ceased to be retired remains payable notwithstanding that the Member is no longer retired.
- (2) A West State Super Member who is entitled to a WSS withdrawal benefit may request payment of the benefit if —
  - (a) the benefit has become payable under subregulation (1)(a), (b), (c), (da) or (d) or subregulation (1A); or
  - (b) all of the following apply —
    - (i) the Member is a statutory WSS Member or a voluntary WSS Member;

- (ii) the benefit is less than \$200;
  - (iii) the Member has ceased to work for the Employer for whom he or she worked immediately before he or she became entitled to the benefit.
- (2a) On receipt of a request under subregulation (2) the Board is to pay the benefit and earnings to the Member.
- (3) If a West State Super Member's WSS withdrawal benefit becomes payable under subregulation (1)(e), the Board is to pay the benefit and earnings in accordance with regulation 80.
- (4) For the purposes of subregulation (1)(b) a Member is *suffering permanent incapacity* if —
  - (a) the Member is not gainfully employed; and
  - (b) the Board is reasonably satisfied that the Member is unlikely, because of ill-health (whether physical or mental), ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

*[Regulation 76 amended in Gazette 19 Mar 2003 p. 839; 13 Jun 2003 p. 2108 and 2111; 25 Jun 2004 p. 2231; 26 May 2006 p. 1919 and 1927; 13 Apr 2007 p. 1600, 1607-8 and 1629; 8 Jul 2008 p. 3227-8; 10 May 2011 p. 1669.]*

**77. Member with preserved WSS withdrawal benefit who again becomes a worker**

If a West State Super Member who is entitled to a preserved WSS withdrawal benefit again becomes a worker the Member's entitlement to the preserved benefit ceases.

*[Regulation 77 inserted in Gazette 13 Jun 2003 p. 2113; amended in Gazette 13 Apr 2007 p. 1600.]*

*[78. Deleted in Gazette 8 Jul 2008 p. 3228.]*

**79. Transfer of benefit to another superannuation fund**

- (1) A West State Super Member who is entitled to —
- (a) payment of a benefit; or
  - (b) a preserved WSS withdrawal benefit,
- may request the Board to transfer the benefit to another scheme or to another superannuation fund and the Board is to comply with that request.
- (2) If a request under subregulation (1) relates to a preserved WSS withdrawal benefit, the amount to be transferred is the amount of the benefit and earnings, discounted to the extent that the Board, on the advice of an actuary, considers appropriate.
- (3) The Board may transfer a West State Super Member's benefit to an eligible rollover fund if that fund is permitted by the SIS Act to accept the benefit, whether or not the Member has requested the transfer.

*[Regulation 79 amended in Gazette 29 Jun 2001 p. 3092; 28 Jun 2002 p. 3013; 26 May 2006 p. 1928; 13 Apr 2007 p. 1601 and 1629; 8 Jul 2008 p. 3229.]*

**79AA. Payment or transfer out of transferred in benefits or ETPs**

- (1) A West State Super Member who has a transferred benefit may request the Board to —
- (a) pay the benefit and earnings to the Member; or
  - (b) transfer the benefit and earnings to another scheme or another superannuation fund.
- (2) The Board must comply with a request under subregulation (1)(a) unless the Board is satisfied that, if the West State Super Scheme were a regulated superannuation fund, the Board would be prevented by the SIS Regulations from paying the benefit as requested.
- (3) The Board must comply with a request under subregulation (1)(b).

- (4) In this regulation —

**earnings**, in relation to a transferred benefit, means so much of the earnings that have been credited to the Member's west state account since the benefit was transferred as are attributable to that benefit;

**transferred benefit** means a benefit or other eligible termination payment that has been transferred to the West State Super Scheme under regulation 65.

*[Regulation 79AA inserted in Gazette 8 Jul 2008 p. 3229.]*

**79AB. Payment or transfer of all or part of benefit**

- (1) A request under regulation 74(3), 76(2), 79 or 79AA for payment or transfer of a benefit may be made in relation to all or part of the benefit.
- (2) A request cannot be made for the payment or transfer of an amount —
- (a) that is less than \$1 000; or
  - (b) the payment or transfer of which will reduce the balance in the Member's west state account to less than \$1 000,

unless the amount requested is the whole of the balance in the account or the Board otherwise agrees.

*[Regulation 79AB inserted in Gazette 8 Jul 2008 p. 3230.]*

**79A. Early release of benefit — severe financial hardship or a compassionate ground**

- (1) A West State Super Member may apply to the Board for the early release of all or part of the balance in the Member's west state account —
- (a) if the Member is in severe financial hardship; or
  - (b) on a compassionate ground.
- (2) On receipt of an application under subregulation (1) the Board is to determine whether, in the Board's opinion, if the SIS

Regulations applied, the Member would be taken for the purposes of those regulations —

- (a) to be in severe financial hardship; or
  - (b) to satisfy a condition of release on a compassionate ground.
- (3) If the Board determines that subregulation (2)(a) or (b) applies to the Member, the Board is also to determine the maximum amount that the SIS Regulations would permit to be paid to the Member in those circumstances.
- (4) When the Board has made a determination under subregulation (3), it is to pay the Member a benefit of an amount equal to the least of the following —
  - (a) the amount applied for by the Member;
  - (b) the amount determined by the Board under subregulation (3);
  - (c) the greater of —
    - (i) the balance in the Member's west state account; and
    - (ii) the Member's protected amount.
- (5) A Member making an application under subregulation (1) must give to the Board all the information required to enable it to make the determinations required under this regulation.

[(6) *deleted*]

- (7) In this regulation —  
***compassionate ground*** and ***severe financial hardship*** have the same meanings as they have in Part 6 of the SIS Regulations.

*[Regulation 79A inserted in Gazette 25 Jun 2004 p. 2231-2; amended in Gazette 26 May 2006 p. 1930; 13 Apr 2007 p. 1623-4; 24 Nov 2009 p. 4742.]*

**79B. Early release of benefit — phased retirement**

- (1) Subject to subregulation (1b), a West State Super Member who has reached the preservation age may request the Board to transfer —
- (a) the balance of the Member's west state account; or
  - (b) part of the balance of the Member's west state account,
- to another scheme or superannuation fund for the purpose of providing a phased retirement benefit for the Member and the Board is to comply with that request.

*[(1a) deleted]*

- (1b) If a Member makes a request under subregulation (1)(b), the Board may refuse the request if transferring the amount requested would reduce the balance in the Member's west state account to less than \$5 000.
- (2) If a West State Super Member requests a transfer under subregulation (1), and the amount of the transfer requested is equal to an amount transferred to the West State Super Scheme from the Gold State Super Scheme for the Member under regulation 44B —
- (a) the requirement in subregulation (1) that the Member has reached the preservation age does not apply; and
  - (b) subregulation (1b) does not apply.

*[Regulation 79B inserted in Gazette 26 May 2006 p. 1919; amended in Gazette 13 Apr 2007 p. 1608, 1623-4 and 1629; 8 Jul 2008 p. 3230; 24 Nov 2009 p. 4742; 8 Jul 2011 p. 2900.]*

**80A. Early release of benefits — temporary resident departing Australia**

- (1) A West State Super Member who —
- (a) was the holder of an eligible temporary resident visa (within the meaning given in the SIS Regulations regulation 6.01) that has expired or been cancelled; and

- (b) has permanently departed from Australia,
- may apply to the Board for the early release of the balance of the Member's west state account and subject to this regulation the Board is to accept the application.
- (2) The Board must not accept an application under this regulation unless the Board is satisfied that, if the West State Super Scheme were a regulated superannuation fund, the Board would be required under the SIS Regulations regulation 6.20A to cash the Member's benefit.
- (3) If the Board accepts an application under this regulation, the Board must pay the Member a benefit of an amount equal to the balance of the Member's west state account within 28 days of receiving the application.

*[Regulation 80A inserted in Gazette 8 Jul 2008 p. 3230-1.]*

**80B. Effect of part payment on protected amount**

- (1) In this regulation —
- part payment***, in respect of a West State Super Member, means —
- (a) the payment of a benefit to or in respect of the Member; or
  - (b) the transfer of an amount to another scheme or superannuation fund in partial satisfaction of the Member's entitlement to a benefit from the West State Super Scheme; or
  - (c) the reduction of the balance of the Member's west state account under regulation 219F,
- if the amount of the benefit, transfer or reduction is less than the whole of the balance of the Member's west state account.
- (2) If a part payment is made in respect of a West State Super Member who was a West State Super Member on 30 June 2001 —

- (a) if the amount of the part payment is less than the Member's protected amount —
  - (i) on the day on which the part payment is made the Member's protected amount is reduced by the amount of the part payment; and
  - (ii) on and after that day, the interest under paragraph (a)(ii) of the definition of **protected amount** in regulation 50(1) is to be calculated on the basis of that reduced amount;
- or
- (b) if the amount of the part payment is equal to or greater than the Member's protected amount — on the day on which the part payment is made the Member's protected amount is reduced to zero.

*[Regulation 80B inserted in Gazette 24 Nov 2009 p. 4742-3.]*

**80. Payment of death benefits**

- (1) Subject to subregulation (3), the Board is to pay a West State Super Member's death benefit to the executor or administrator of the Member's estate.
- (2) A benefit paid under subregulation (1) to the executor or administrator of a Member's estate —
  - (a) forms part of the Member's estate; but
  - (b) is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3) If the Board —
  - (a) has been unable, after making reasonable enquires, to find an administrator or executor of the Member's estate; or
  - (b) considers it desirable to do so in order to relieve or avoid hardship,

the Board may pay up to \$25 000 of a death benefit —

- (c) to one or more of the Member's dependants in proportions determined by the Board; or
- (d) if, after making reasonable enquiries, the Board has been unable to find any dependant of the Member, to one or more other individuals in proportions determined by the Board.

(4) In this regulation —

***death benefit*** means —

- (a) a benefit payable because the Member has died; or
- (b) a West State Super Member's WSS withdrawal benefit that has become payable because the Member has died; or
- (c) a benefit that became payable to a West State Super Member but which, at the time of the Member's death, had not been paid or transferred under regulation 79;

***dependant*** has the meaning given in the SIS Act section 10.

*[Regulation 80 amended in Gazette 28 Jun 2002 p. 3032-3; 19 Mar 2003 p. 839; 13 Jun 2003 p. 2113; 1 Dec 2004 p. 5706; 13 Apr 2007 p. 1601; 8 Jul 2008 p. 3231-2.]*

**81. Application for disablement benefits or payment of WSS withdrawal benefit on disablement**

- (1) A West State Super Member's disablement benefit is not payable unless the Member —
  - (a) applies for it within 12 months of ceasing to be a worker; and
  - (b) complies with subregulation (3).
- (2) For the purpose of assessing an application —
  - (a) under subregulation (1)(a) for a disablement benefit; or
  - (b) for payment of a WSS withdrawal benefit under regulation 76(1)(b) or (c),

the Board may obtain and have regard to such medical or other information as it considers appropriate.

- (3) A West State Super Member who applies for a disablement benefit or payment of a WSS withdrawal benefit under regulation 76(1)(b) or (c) must —
- (a) give to the Board all the information required by the Board to enable it to determine the Member's entitlement to the benefit;
  - (b) undertake any medical examinations required by the Board;
  - (c) authorise the Board to obtain any medical, personal and other information about the Member that the Board considers relevant to the application;
  - (d) in the case of an application for a disablement benefit —
    - (i) undertake any assessment for job retraining required by the Board; and
    - (ii) assist any investigation by the Board into the Member's ability to undertake work or work of a particular kind.
- (4) A West State Super Member may withdraw an application for a disablement benefit by giving notice to the Board at any time before the benefit is paid.
- (5) In this regulation —

***disablement benefit*** means a benefit under regulation 71 or 72.

*[Regulation 81 amended in Gazette 13 Apr 2007 p. 1601;  
8 Jul 2008 p. 3232.]*

**81A. Member liable to pay contributions tax**

- (1) A West State Super Member who will become liable to pay contributions tax as a result of a benefit becoming payable to the Member from the West State Super Scheme may, at any time before the benefit is paid, apply to the Board —

- (a) to receive part of the benefit in the form of a commutable pension; and
  - (b) to fully commute that pension.
- (2) Subject to subregulation (5) when a benefit becomes payable to a Member who has made an application under subregulation (1) the Board is to —
  - (a) estimate the amount of contributions tax the Member will become liable to pay (the *estimated tax amount*); and
  - (b) withhold from the Member's benefit an amount equal to the estimated tax amount; and
  - (c) pay the balance of the benefit to the Member.
- (3) Interest accrues on an amount withheld under subregulation (2)(b) —
  - (a) at a rate equal to the CPI rate plus 2%; and
  - (b) from the day on which the benefit became payable to the day on which the withheld amount is paid under subregulation (4)(c); and
  - (c) in a manner determined by the Board.
- (4) On receipt of a copy of the Member's assessment notice the Board is to —
  - (a) convert into a pension —
    - (i) if the actual tax amount is less than the withheld amount — a portion of the withheld amount equal to the actual tax amount; or
    - (ii) otherwise — the whole of the withheld amount; and
  - (b) commute that pension; and
  - (c) pay to the Member —
    - (i) the lump sum resulting from the commutation of the pension; and

- (ii) the balance (if any) of the withheld amount.
- (5) The Board may reject an application made under subregulation (1) if it is not satisfied that, if the application were accepted, the lump sum benefit that would become payable under subregulation (4)(c)(i) will be used to pay the contributions tax.
- (6) In this regulation —
- actual tax amount** means the amount stated in the Member's assessment notice as the amount of contributions tax payable by the Member;
- assessment notice** means a notice given by the Commissioner of Taxation to a Member under section 15(7) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;
- withheld amount** means the amount withheld under subregulation (2)(b) plus interest on that amount accrued under subregulation (3).
- [Regulation 81A inserted in Gazette 28 Jun 2002 p. 3024-6; amended in Gazette 26 May 2006 p. 1930.]*

## **Part 3A — GESB Super Scheme**

*[Heading inserted in Gazette 13 Apr 2007 p. 1630.]*

### **Division 1 — Establishment and preliminary**

*[Heading inserted in Gazette 13 Apr 2007 p. 1630.]*

#### **82. Establishment of GESB Super Scheme**

The GESB Super Scheme is established as a superannuation scheme under section 28 of the Act.

*[Regulation 82 inserted in Gazette 13 Apr 2007 p. 1630.]*

#### **83. Terms used**

(1) In this Part —

***eligible statutory GESB Super Member*** means a statutory GESB Super Member, other than a person who has become excluded by regulation 84(2), (3) or (4) from being a statutory GESB Super Member;

***gainfully employed*** has the same meaning as it has in the SIS Regulations;

***GESB Super account*** means an account kept under regulation 101;

***GESB withdrawal benefit*** means a benefit under regulation 114;

***partner GESB Super Member*** means a person who became a partner GESB Super Member under regulation 86 and who has not subsequently become a statutory GESB Super Member or a voluntary GESB Super Member or ceased to be a GESB Super Member;

***splittable contribution*** means a contribution to the GESB Super Scheme that would be a splittable contribution (as defined in regulation 6.42 of the SIS Regulations) if the GESB Super Scheme were a regulated superannuation fund;

**statutory GESB Super Member** means a person who became a statutory GESB Super Member under regulation 84 and who has not subsequently ceased to be a GESB Super Member;

**voluntary GESB Super Member** means a person who became a voluntary GESB Super Member under regulation 85 and who has not subsequently become a statutory GESB Super Member or ceased to be a GESB Super Member.

- (2) For the purposes of this Part a person is taken to retire upon the occurrence of circumstances because of which a person's retirement would be taken to occur according to regulation 6.01(7) of the SIS Regulations.

*[Regulation 83 inserted in Gazette 13 Apr 2007 p. 1630-1; amended in Gazette 8 Jul 2008 p. 3232; 8 Jul 2011 p. 2901.]*

## **Division 2 — Membership**

*[Heading inserted in Gazette 13 Apr 2007 p. 1632.]*

### **84. Statutory GESB Super Members**

- (1) Every person who becomes a worker on or after 16 April 2007 and who is not excluded by subregulation (2), (3) or (4) becomes a statutory GESB Super Member on the day on which he or she becomes a worker.
- (2) A worker is excluded by this subregulation from being a statutory GESB Super Member if the worker —
- (a) is a West State Super Member, other than a Member for whom a contribution to the West State Super Scheme cannot be made because of regulation 53A; or
  - (b) 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
  - (c) is a Pension Scheme Member or a Provident Scheme Member (other than a person who has determined his or her pension under section 60AA of the *Superannuation and Family Benefits Act 1938*); or

- (d) holds a pensionable office as defined in section 2(4) of the *Judges' Salaries and Pensions Act 1950*; or
  - (e) works outside Australia and is not a resident of Australia (as defined in the SGA Act).
- (3) A worker is excluded by this subregulation from being a statutory GESB Super Member if —
  - (a) the Employer —
    - (i) has established a superannuation scheme or fund in accordance with section 30(1) of the Act; or
    - (ii) has approval under section 30(2) of the Act to contribute to a superannuation scheme or fund other than one described in section 30(2)(a), (b) or (c) of the Act; or
    - (iii) is a participating employer in a scheme or fund that was established before 28 December 1989;
  - and
  - (b) the worker is a member of that scheme or fund; and
  - (c) the Employer contributes to that scheme or fund for the worker not less than the amount that is necessary for the Employer to avoid incurring an individual superannuation guarantee shortfall (within the meaning of the SGA Act) in respect of the worker.
- (4) A worker who is a parliamentarian is excluded by this subregulation from being a statutory GESB Super Member if the worker —
  - (a) is a person in respect of whom contributions are being made under section 11 of the *Parliamentary Superannuation Act 1970* to the superannuation scheme provided for by that Act; or
  - (b) is a non-participant, as defined in section 29 of the *Parliamentary Superannuation Act 1970*, in respect of whom contributions are being made in accordance with a determination made under that section to a

superannuation fund other than the GESB Super Scheme.

- (5) If a worker was excluded by subregulation (2), (3) or (4) from being a statutory GESB Super Member and that exclusion ceases to apply to the worker, he or she becomes a statutory GESB Super Member on the day that exclusion ceases to so apply.

*[Regulation 84 inserted in Gazette 13 Apr 2007 p. 1632-4; amended in Gazette 6 Jun 2007 p. 2622.]*

## **85. Voluntary GESB Super Members**

- (1) A person —
- (a) who contributes to the Fund under regulation 94; or
  - (b) who transfers an amount to the Fund under regulation 96; or
  - (c) for whom contributions are made to the Fund under regulation 91; or
  - (d) for whom Commonwealth payments are accepted under regulation 93,

becomes a voluntary GESB Super Member when the first such contribution, transfer or payment is accepted by the Board.

- (2) A worker who is not a GESB Super Member may apply to become a voluntary GESB Super Member unless he or she is a West State Super Member.

- (2a) Subregulation (2) does not prevent —
- (a) all or part of a transfer benefit under regulation 44B from being transferred to the GESB Super Scheme for a Gold State Super Member who is also a West State Super Member; or
  - (b) a West State Super Member making a transfer under regulation 96 in circumstances described in regulation 96(2)(b).

- (3) If a voluntary GESB Super Member becomes a statutory GESB Super Member, the person ceases to be a voluntary GESB Super Member.

*[Regulation 85 inserted in Gazette 13 Apr 2007 p. 1634;  
amended in Gazette 6 Jun 2007 p. 2623; 1 Apr 2008 p. 1284.]*

**86. Partner GESB Super Members**

- (1) A person —
- (a) for whom contributions are made to the Fund under regulation 95; or
  - (b) for whom splittable contributions are transferred under regulation 65BB(2)(b), 98(2)(a) or 99,
- becomes a partner GESB Super Member when the first such contribution or transfer is accepted by the Board.
- (2) If a partner GESB Super Member becomes a statutory GESB Super Member or a voluntary GESB Super Member, the person ceases to be a partner GESB Super Member.
- (3) A partner GESB Super Member may elect to withdraw from the GESB Super Scheme by giving notice to that effect to the Board.

*[Regulation 86 inserted in Gazette 13 Apr 2007 p. 1634-5;  
amended in Gazette 8 Jul 2008 p. 3232.]*

**87. Cessation of membership**

A person ceases to be a GESB Super Member when —

- (a) all benefits that are or may be payable to or in respect of the person from the GESB Super Scheme have been paid; or
- (b) a transfer is made to another scheme or to another superannuation fund in satisfaction of all of the person's entitlements to benefits from the GESB Super Scheme.

*[Regulation 87 inserted in Gazette 13 Apr 2007 p. 1635.]*

### Division 3 — Contributions

*[Heading inserted in Gazette 13 Apr 2007 p. 1635.]*

#### Subdivision 1 — Employer contributions

*[Heading inserted in Gazette 13 Apr 2007 p. 1635.]*

#### 88. Employers to make minimum SG contributions

- (1) In this regulation —  
*employee* has the meaning given in the SGA Act section 12;  
*individual superannuation guarantee shortfall* has the meaning given in the SGA Act section 19;  
*superannuation guarantee charge* means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Commonwealth).
- (2) An Employer must make contributions to the Fund for each of its employees who is an eligible statutory GESB Super Member such that the Employer will avoid incurring an individual superannuation guarantee shortfall for the Member.
- (3) The Employer must make a contribution for each of the Member's contribution periods.
- (4) The amount of the contribution for a contribution period must be equal to the amount that the Employer would be required under subregulation (2) to contribute for the Member if —
  - (a) that contribution period were the only period during which the Member was an employee of the Employer; and
  - (b) the Employer had not previously made any contributions for the Member.
- (5) A contribution for a contribution period must be paid to the Fund —
  - (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or

(b) otherwise — within 28 days after the end of the contribution period.

- (6) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for a Member for a period, the Employer's obligation under this regulation to contribute for that Member for that period ceases.

*[Regulation 88 inserted in Gazette 8 Jul 2008 p. 3233-4.]*

**89. Compulsory contributions for over-OTE items**

- (1) In this regulation —

**over-OTE item**, for a Member, means a payment, benefit or allowance that —

- (a) is part of the Member's remuneration; but  
(b) is not part of the Member's ordinary time earnings within the meaning given in the SGA Act section 6(1);

**SG-exempt Member** means an eligible statutory GESB Super Member who is not an SG-Member because of the SGA Act sections 26 to 29;

**SG-Member** means a Member for whom an Employer is required by regulation 88 to make contributions.

- (2) For each contribution period of an SG-Member in which the Member receives an over-OTE item the Employer must make a contribution to the Fund for the Member of an amount equal to 9% of the monetary value, determined by the Employer, of that over-OTE item.
- (3) For each contribution period of an SG-exempt Member the Employer must make a contribution to the Fund for the Member of an amount equal to the contributions that the Employer would have been required under regulation 88 and subregulation (2) to make for that Member for that contribution period had the SGA Act sections 26 to 29 not been in force.

- (4) A contribution required under this regulation to be made for a contribution period must be paid to the Fund —
  - (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or
  - (b) otherwise — within 28 days after the end of the contribution period.
- (5) A determination by an Employer as to the value of a non-monetary over-OTE item that would reduce the value of the item for a person who was an eligible statutory GESB Super Member at the time the determination was made, does not apply to the person unless he or she gives notice to the Employer consenting to its application to him or her.

*[Regulation 89 inserted in Gazette 8 Jul 2008 p. 3234-5.]*

*[90. Deleted in Gazette 8 Jul 2008 p. 3233.]*

**91. Voluntary employer contributions**

- (1) Subject to regulation 100, an Employer may contribute to the Fund for a worker who works for the Employer, other than a worker who is a West State Super Member and not already a GESB Super Member.
- (2) Contributions under this regulation are to be of the amount, and paid at the time and in the manner, agreed between the Employer and the Board.
- (3) Any contributions made under this regulation for an eligible statutory GESB Super Member are in addition to contributions required to be made under regulation 88 or 89.

*[Regulation 91 inserted in Gazette 13 Apr 2007 p. 1638;  
amended in Gazette 6 Jun 2007 p. 2623; 8 Jul 2008 p. 3235.]*

**92.       Employer's contribution returns**

- (1) When making any contributions to the Fund an Employer must give to the Board a contribution return for the contribution period to which those contributions or payments relate.
- (2) A contribution return is to be in a form approved by the Board.  
*[Regulation 92 inserted in Gazette 13 Apr 2007 p. 1638.]*

**93.       Acceptance of Commonwealth payments**

- (1) Subject to subregulation (2), the Board may accept a Commonwealth payment for a person who is —
  - (a) a Member; or
  - (b) a Pension Scheme Member or a Provident Scheme Member; or
  - (c) in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (d) entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.
- (2) A Commonwealth payment cannot be accepted under this regulation for a person who is a West State Super Member and not already a GESB Super Member.

*[Regulation 93 inserted in Gazette 13 Apr 2007 p. 1639;  
amended in Gazette 6 Jun 2007 p. 2623; 11 Apr 2008 p. 1377.]*

**94A.     Contribution of insurance payments**

If —

- (a) there is in force a policy of insurance entered into with an insurer under regulation 113(5) to provide salary continuance insurance for a GESB Super Member; and
- (b) an amount becomes payable under that policy in respect of the Member,

the Board may accept payment of all or part of that amount from the insurer as a contribution for the Member.

*[Regulation 94A inserted in Gazette 24 Nov 2009 p. 4743.]*

**Subdivision 2 — Member contributions**

*[Heading inserted in Gazette 13 Apr 2007 p. 1639.]*

**94. Member contributions**

- (1) Subject to regulation 100 and subregulation (2), a person may contribute to the Fund for himself or herself if he or she is —
  - (a) a worker; or
  - (b) a Member; or
  - (c) a Pension Scheme Member or a Provident Scheme Member; or
  - (d) in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (e) entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.
- (2) A West State Super Member who is not already a GESB Super Member cannot make contributions under this regulation.
- (3) A person contributing under this regulation (a **contributor**) is to contribute the amounts, and at the times, agreed between the contributor and the Board.
- (4) Contributions under this regulation are to be —
  - (a) if the contributor is a worker, deducted from the contributor's pay by the Employer unless —
    - (i) they are paid by the Employer under a salary sacrifice agreement; or
    - (ii) the contributor has made some other arrangement with the Board for payment of those contributions;
  - or
  - (b) if the contributor is not a worker, paid in the manner agreed between the contributor and the Board.

- (5) An Employer who has —
- (a) deducted contributions from a contributor's pay; or
  - (b) agreed to pay contributions under a salary sacrifice agreement,

must pay those contributions to the Board within 7 days of the end of the contribution period to which they relate.

*[Regulation 94 inserted in Gazette 13 Apr 2007 p. 1639-40; amended in Gazette 6 Jun 2007 p. 2623.]*

**95. Contributions for partners**

- (1) Subject to regulation 100 and subregulation (2), a person (a **contributor**) may contribute to the Fund for the contributor's partner if the contributor is —
- (a) a Member; or
  - (b) a Pension Scheme Member or a Provident Scheme Member; or
  - (c) a person who is in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (d) a person who is entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.
- (2) Contributions cannot be made under this regulation for a partner who is a West State Super Member and not already a GESB Super Member.
- (3) A contributor is to contribute the amounts, at the times and in the manner, agreed between the contributor and the Board.
- (4) When making a contribution under this regulation a contributor must give to the Board whatever information the Board reasonably requires to satisfy itself that the contributor and the person for whom the contribution is made are partners.

*[Regulation 95 inserted in Gazette 13 Apr 2007 p. 1640-1; amended in Gazette 6 Jun 2007 p. 2623.]*

**Subdivision 3 — Transfers**

*[Heading inserted in Gazette 13 Apr 2007 p. 1641.]*

**96. Transfer of benefits from other funds and ETPs**

- (1) Subject to subregulation (2) a person may make a transfer under this regulation if he or she is —
  - (a) a worker; or
  - (b) a Member; or
  - (c) a Pension Scheme Member or a Provident Scheme Member; or
  - (d) in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (e) entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.
- (2) A West State Super Member cannot make a transfer under this regulation unless —
  - (a) the person is already a GESB Super Member; or
  - (b) the transfer will result in the person ceasing to be a West State Super Member.
- (3) A person may transfer to the GESB Super Scheme for himself or herself —
  - (a) a benefit accrued in respect of the person in —
    - (i) another scheme or superannuation fund; or
    - (ii) an eligible non-resident non-complying superannuation fund (as defined in section 27A of the *Income Tax Assessment Act 1936* of the Commonwealth);
  - or
  - (aa) an amount of a transfer benefit available for transfer under regulation 44B; or

- (b) any other eligible termination payment to which the person is entitled,

by paying, or arranging the payment of, the amount of that benefit or payment to the Fund.

*[Regulation 96 inserted in Gazette 13 Apr 2007 p. 1641-2; amended in Gazette 6 Jun 2007 p. 2624; 1 Apr 2008 p. 1284.]*

**Subdivision 4 — Contributions-splitting for partner**

*[Heading inserted in Gazette 13 Apr 2007 p. 1642.]*

**97. Term used: partner**

Despite the definition of **partner** in regulation 3, in this Subdivision —

**partner** has the same meaning as the term **spouse** has in section 10 of the SIS Act.

*[Regulation 97 inserted in Gazette 13 Apr 2007 p. 1642.]*

**98. Member may split contributions with partner**

- (1) A GESB Super Member for whom splittable contributions have been made to the GESB Super Scheme may apply to the Board to transfer some or all of those contributions for the benefit of the Member's partner, and subject to this regulation the Board is to accept the application.
- (2) The Member may apply to transfer those contributions —
  - (a) to the partner's GESB Super account; or
  - (b) if the Member's partner is a member of another scheme or superannuation fund that is able to accept the transfer, to that other scheme or fund.
- (3) A Member cannot apply to transfer contributions under subregulation (2)(a) if the Member's partner is a West State Super Member, other than a partner for whom a transfer to the

West State Super Scheme cannot be made because of regulation 53A.

- (4) The Board must not accept an application under this regulation unless the Board is satisfied that, if the GESB Super Scheme were a regulated superannuation fund, the Board would be entitled under Division 6.7 of the SIS Regulations to accept the application.
- (5) If it accepts an application under subregulation (1) the Board must transfer the contributions to which the application relates within 90 days of accepting the application.

*[Regulation 98 inserted in Gazette 13 Apr 2007 p. 1642-3; amended in Gazette 6 Jun 2007 p. 2624.]*

**99. Acceptance of partner contributions-splits from other funds**

- (1) Subject to subregulation (2) the Board may accept a contributions-split transfer to the GESB Super Scheme for a person who is —
  - (a) a worker; or
  - (b) a Member; or
  - (c) a Pension Scheme Member or a Provident Scheme Member; or
  - (d) in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (e) entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.
- (2) A contributions-split transfer cannot be accepted under this regulation for a West State Super Member, other than a Member for whom a transfer to the West State Super Scheme cannot be made because of regulation 53A.

*[Regulation 99 inserted in Gazette 13 Apr 2007 p. 1643; amended in Gazette 6 Jun 2007 p. 2624.]*

**Subdivision 5 — Contributions generally**

*[Heading inserted in Gazette 13 Apr 2007 p. 1644.]*

**100.     Restriction on contributions and transfers**

Despite anything else in this Part the Board must not accept a contribution or transfer for a person if the trustee of a regulated superannuation fund would be prevented by the SIS Regulations from accepting such a contribution or transfer.

*[Regulation 100 inserted in Gazette 8 Jul 2008 p. 3236.]*

**Division 4 — GESB Super accounts**

*[Heading inserted in Gazette 13 Apr 2007 p. 1644.]*

**101.     GESB Super accounts**

- (1) The Board is to establish and maintain in the Fund a GESB Super account for each GESB Super Member.
- (2) The Board may divide a GESB Super account into 2 or more sub-accounts.

*[Regulation 101 inserted in Gazette 13 Apr 2007 p. 1644.]*

**102.     Amounts to be credited to GESB Super accounts**

- (1) The Board is to credit to a GESB Super Member's GESB Super account —
  - (a) contributions made for the Member; and
  - (b) any Commonwealth payments accepted for the Member under regulation 93; and
  - (c) any benefits or other eligible termination payments transferred to the Fund for the Member; and
  - (d) any splittable contributions transferred for the benefit of the Member under regulation 98 or 99; and
  - (e) any amounts received from an insurer in respect of the Member under insurance provided under regulation 111

or 112 (including any amounts paid under regulation 94A); and

- (f) any interest paid to the Board under section 25 of the Act in respect of the late payment of contributions payable under this Part for the Member; and
- (g) earnings in accordance with regulation 104.

(2A) If —

- (a) a benefit becomes payable on the death on or after 1 January 2010 of a GESB Super Member; and
- (b) the Board would be entitled to a deduction under the *Income Tax Assessment Act 1997* (Commonwealth) section 295-485 if it were to increase the amount of the benefit,

then the Board may, if it considers it appropriate to do so, credit to the Member's GESB Super account an amount determined by the Board, not exceeding the tax saving amount in respect of the benefit.

- (2) The Board may temporarily keep contributions made for a GESB Super Member, together with contributions made for other GESB Super Members, in an account maintained for that purpose until the contributions are credited to the appropriate GESB Super accounts.

*[Regulation 102 inserted in Gazette 13 Apr 2007 p. 1644-5; amended in Gazette 24 Nov 2009 p. 4743; 8 Jan 2010 p. 29-30.]*

### **103. Amounts to be debited to GESB Super accounts**

- (1) The Board is to debit to a GESB Super Member's GESB Super account —
  - (a) any amounts paid as benefits to, or in respect of, the Member; and
  - (b) any amounts transferred to other schemes or to other superannuation funds in satisfaction of the Member's entitlement to a benefit from the GESB Super Scheme; and

- (c) any overpaid amounts deducted under regulation 248B(5)(d); and
  - (d) any splittable contributions transferred by the Member under regulation 98.
- (2) The Board may debit to a GESB Super Member's GESB Super account —
  - (a) the costs of insurance provided in respect of the Member under regulations 111 and 112; and
  - (b) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 110; and
  - (c) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member; and
  - (d) the amount of any fees payable by the Member for, or in relation to, any product or service provided to the Member in accordance with section 6(1)(e) of the Act.
- (3) The Board may only debit an amount to a GESB Super account —
  - (a) under subregulation (2)(b), if an actuary has advised that it is appropriate for that amount to be debited to that account; or
  - (b) under subregulation (2)(d), if the Member has given the Board written consent to the debiting of that amount to the account.
- (4) If the Board debits an amount to a GESB Super account under subregulation (2)(d) in respect of a fee payable to a person other than the Board, the Board must pay the amount deducted to that other person.
- (5) If a GESB Super Member is a protected member the Board must not debit to the Member's GESB Super account any amount that the Board would be prohibited by regulation 5.17 or 5.18 of the

SIS Regulations from debiting to that account if the GESB Super Scheme were a regulated fund.

- (6) In this regulation —

***protected member*** means a GESB Super Member who would be a protected member (as defined in regulation 1.03B of the SIS Regulations) if the GESB Super Scheme were a regulated superannuation fund.

*[Regulation 103 inserted in Gazette 13 Apr 2007 p. 1645-6; amended in Gazette 30 Jun 2010 p. 3148.]*

#### **104. Earnings**

- (1) The Board is to credit earnings to each Member's GESB Super account at a rate equal to the Member's earning rate on the balance of the account —
- (a) at least once every year; and
  - (b) when the Member becomes entitled to payment of a benefit.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.

*[Regulation 104 inserted in Gazette 13 Apr 2007 p. 1647.]*

#### **Division 5 — Member investment choice**

*[Heading inserted in Gazette 13 Apr 2007 p. 1647.]*

#### **105. Terms used**

In this Division —

***default plan*** means the readymade investment plan selected by the Board under regulation 107 as the default plan for GESB Super Members;

***personalised investment plan*** means an investment plan established under regulation 106(3);

*readymade investment plan* means an investment plan established under regulation 106(1).

*[Regulation 105 inserted in Gazette 13 Apr 2007 p. 1647.]*

**106. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for GESB Super Members with asset allocations determined by the Board.
- (2) The Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (3) The Board may establish an investment plan under which a GESB Super Member who selects that plan may select the Member's own asset allocation subject to any conditions determined by the Board.
- (4) The Board must notify all GESB Super Members of —
  - (a) the establishment of a new investment plan for GESB Super Members including, in the case of a readymade investment plan, the asset allocation for that plan; and
  - (b) any material change in the asset allocation of a readymade investment plan; and
  - (c) any material change in the conditions applying to a personalised investment plan,

before, or as soon as practicable after, the establishment or change occurs.

*[Regulation 106 inserted in Gazette 13 Apr 2007 p. 1647-8.]*

**107. Default plan**

- (1) The Board is to select one of the readymade investment plans as the default plan for GESB Super Members.
- (2) The Board may change the plan selected as the default plan whenever the Board considers it appropriate to do so.

- (3) The Board must notify all GESB Super Members of any change of the selected default plan before, or as soon as practicable after, the change occurs.

*[Regulation 107 inserted in Gazette 13 Apr 2007 p. 1648.]*

**108. Member to select investment plan**

- (1) A GESB Super Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (2) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (3) A Member may change his or her selection under subregulation (1) or (2) at any time by giving notice to the Board.
- (4) As soon as practicable after receiving a notice under this regulation the Board must give effect to it by investing the Member's assets in accordance with regulation 109.
- (5) Until a GESB Super Member selects otherwise the Member is taken to have selected the plan that was the default plan at the time the person became a GESB Super Member.

*[Regulation 108 inserted in Gazette 13 Apr 2007 p. 1648-9.]*

**109. Board to invest assets to reflect Member's choice**

- (1) For each GESB Super Member who selects a readymade investment plan the Board must, as far as is practicable —
- (a) invest the Member's assets in accordance with the asset allocation determined under regulation 106 for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.

- (2) For a GESB Super Member who selects a personalised investment plan the Board must invest —
- (a) the Member's assets as at the time the Board gives effect to the selection (*selection day*); and
  - (b) contributions made or transferred for the Member, and any benefits or other eligible termination payments transferred to the Fund for the Member, after the selection day,

in accordance with the asset allocation selected by the Member, but, unless the Board and the Member agree otherwise, the Board is not required to ensure that the investment of the Member's assets remains in accordance with that asset allocation.

- (3) In this regulation —

*Member's assets* means the assets of the Fund that represent the GESB Super account of a GESB Super Member.

*[Regulation 109 inserted in Gazette 13 Apr 2007 p. 1649-50.]*

**110. Determination of earning rates**

- (1) At the end of each financial year and at any other time when the Board considers it desirable to do so, an earning rate is to be determined for —
- (a) each readymade investment plan; and
  - (b) each GESB Super Member who has selected a personalised investment plan.
- (2) The earning rates are to be determined —
- (a) by the Board; or
  - (b) on behalf of the Board in accordance with procedures or formulae determined by the Board.

- (3) In determining an earning rate, or the procedures or formulae to be used to determine an earning rate, the Board must have regard to —
- (a) the nett rate of return achieved by the investment of the assets of the Fund that represent the GESB Super accounts of the Members to whom the earning rate will apply; and
  - (b) administrative costs; and
  - (c) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

*[Regulation 110 inserted in Gazette 13 Apr 2007 p. 1650-1.]*

### **Division 6 — Benefits**

*[Heading inserted in Gazette 30 Jun 2010 p. 3148.]*

#### **Subdivision 1 — Preliminary**

*[Heading inserted in Gazette 30 Jun 2010 p. 3148.]*

#### **111A. Terms used**

In this Division —

***covered GESB Super Member*** means a GESB Super Member —

- (a) on whose death or disability immediately before the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* any benefit (other than payment of the balance of the Member's GESB Super account) would have been payable; or
- (b) who has since the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* become a covered GESB Super Member under regulation 111B, 111C or 111E,

and who in either case has not subsequently ceased to be a covered GESB Super Member under regulation 111D or 111G;

**health condition** means a condition imposed on a covered GESB Super Member that any insurance provided to or in respect of the Member under regulation 112 will be limited to the extent determined by the Board;

**opt-in notice** means a notice given under regulation 111E.

*[Regulation 111A inserted in Gazette 30 Jun 2010 p. 3148-9.]*

**Subdivision 2 — Covered GESB Super Members**

*[Heading inserted in Gazette 30 Jun 2010 p. 3149.]*

**111B. Automatically becoming a covered GESB Super Member**

Subject to regulation 111C(1), every person who becomes a GESB Super Member on or after the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* is a covered GESB Super Member.

*[Regulation 111B inserted in Gazette 30 Jun 2010 p. 3149.]*

**111C. Initial option to become a covered GESB Super Member**

- (1) The Board may determine that any person, or any member of a specified class of persons, who becomes a GESB Super Member on or after the coming into operation of the *State Superannuation Amendment Regulations (No. 2) 2010* is not a covered GESB Super Member unless, within such time of becoming a GESB Super Member as the Board may specify, that person opts to become a covered GESB Super Member.
- (2) An option under subregulation (1) is to be exercised by notice in writing to the Board, received by the Board before the expiry of the specified time.
- (3) When a notice under subregulation (2) is received by the Board before the expiry of the specified time, the person exercising the option becomes a covered GESB Super Member.

*[Regulation 111C inserted in Gazette 30 Jun 2010 p. 3149-50.]*

**111D. Ceasing to be a covered GESB Super Member**

- (1) A covered GESB Super Member may opt at any time to cease to be a covered GESB Super Member.
- (2) An option under subregulation (1) is to be exercised by notice in writing, received by the Board.
- (3) When a notice under subregulation (2) is received by the Board, the Member exercising the option ceases to be a covered GESB Super Member.
- (4) The Board may determine that a covered GESB Super Member who, as a result of options exercised by the Member under regulation 113(4), is not eligible for any insurance provided under regulation 111 or 112 ceases to be a covered GESB Super Member.

*[Regulation 111D inserted in Gazette 30 Jun 2010 p. 3150.]*

**111E. Subsequent option to become a covered GESB Super Member**

- (1) A GESB Super Member who is not a covered GESB Super Member and who is not entitled to become a covered GESB Super Member under regulation 111B may at any time opt to become a covered GESB Super Member, subject to the provisions of this regulation and of regulation 111F.
- (2) An option under subregulation (1) is to be exercised by notice in writing —
  - (a) received by the Board; and
  - (b) accepted by the Board under regulation 111F.

*[Regulation 111E inserted in Gazette 30 Jun 2010 p. 3150.]*

**111F. Considering and accepting opt-in notice**

- (1) On receiving an opt-in notice, the Board may require the Member giving the notice to do all or any of the following —
  - (a) undergo one or more medical examinations and provide the resulting medical reports to the Board;

- (b) provide to the Board —
    - (i) any other medical reports; and
    - (ii) information about the Member's health and medical history; and
    - (iii) any other information the Board considers relevant.
- (2) If the Board imposes a requirement under subregulation (1) the Member —
  - (a) must comply with the requirement within the time specified by the Board; and
  - (b) is responsible for payment of any costs involved in complying with the requirement.
- (3) The Board may decline to accept an opt-in notice if under the terms of insurance provided under regulation 111 or 112 an application for cover for the Member under that insurance may be refused.
- (4) The Board may decline to accept an opt-in notice or accept it subject to a health condition if —
  - (a) after considering the notice and any further medical information provided by the Member, the Board is of the opinion that the Member is suffering from a physical or mental condition that is likely to prevent him or her from satisfactorily performing his or her duties until he or she turns 60 years of age; or
  - (b) the Member fails to comply with a requirement under subregulation (1).
- (5) When an opt-in notice is accepted by the Board, the person giving the notice becomes a covered GESB Super Member.  
*[Regulation 111F inserted in Gazette 30 Jun 2010 p. 3151-2.]*

**111G. Altering or cancelling acceptance of opt-in notice**

- (1) If, in reliance on a statement made in medical information provided by a Member, the Board has accepted an opt-in notice

without imposing a health condition and the Board subsequently becomes aware that —

- (a) the Member knew the statement was untrue; or
- (b) the statement was misleading because it omitted material information of which the Member had knowledge,

the Board may —

- (c) impose a health condition on the Member; or
  - (d) cancel its acceptance of the notice, in which event the Member ceases to be a covered GESB Super Member with retrospective effect to the time when the notice was accepted.
- (2) The Board may take action under subregulation (1)(c) or (d) even if the Member has ceased to be a worker or has died.
- (3) If a covered GESB Super Member who is subject to a health condition satisfies the Board that his or her health has improved since the condition was imposed, the Board may remove or vary the condition.

*[Regulation 111G inserted in Gazette 30 Jun 2010 p. 3152.]*

### **Subdivision 3 — Insurance**

*[Heading inserted in Gazette 30 Jun 2010 p. 3153.]*

#### **111. Board to provide life insurance**

- (1) Subject to subregulation (2) the Board must provide life insurance for each covered GESB Super Member —
- (a) who is an eligible statutory GESB Super Member; or
  - (b) who applies to have life insurance cover.
- (2) The Board is not required to provide life insurance for a covered GESB Super Member if —
- (a) under the terms of the life insurance the Member is not eligible to be covered; or

- (b) the Member has cancelled his or her life insurance cover; or
  - (c) the Member's cover has ceased or been terminated in accordance with the terms of the life insurance.
- (3) An application by a covered GESB Super Member —
  - (a) to be covered by the life insurance; or
  - (b) to cancel his or her life insurance cover,is to be made to the Board in accordance with the terms of the life insurance.

*[Regulation 111 inserted in Gazette 13 Apr 2007 p. 1651;  
amended in Gazette 30 Jun 2010 p. 3153.]*

**112. Board may provide disability insurance**

The Board may provide either or both —

- (a) total and permanent disability insurance; and
- (b) salary continuance insurance,

for all covered GESB Super Members or such classes of those Members as the Board considers appropriate.

*[Regulation 112 inserted in Gazette 13 Apr 2007 p. 1651-2;  
amended in Gazette 30 Jun 2010 p. 3153.]*

**113. Terms of insurance**

- (1) The Board must decide the terms of the life insurance provided under regulation 111 and any insurance provided under regulation 112.
- (2) The Board may decide on different terms for different classes of covered GESB Super Members.
- (3) The terms of the insurance may include terms in relation to all or any of the following —
  - (a) eligibility to be insured;

- (b) levels of cover;
  - (c) requirements for changing the level of cover;
  - (d) benefits;
  - (e) information and documents to be given to and by the Board;
  - (f) premiums to be paid by Members;
  - (g) claims procedures and evidentiary requirements;
  - (h) cessation, termination or cancellation of cover;
  - (i) procedural and administrative matters relating to the provision of the insurance.
- (4) The terms of the insurance must include terms to the effect that a covered GESB Super Member may choose not to be covered by the insurance.
- (5) The Board may enter into one or more policies of insurance, including policies of group life assurance, to provide some or all of the insurance.

*[Regulation 113 inserted in Gazette 13 Apr 2007 p. 1652;  
amended in Gazette 30 Jun 2010 p. 3153.]*

*[Heading (Div. 7) deleted in Gazette 30 Jun 2010 p. 3154.]*

#### **Subdivision 4 — Benefits**

*[Heading inserted in Gazette 30 Jun 2010 p. 3154.]*

#### **114. Withdrawal benefit**

- (1) Subject to subregulation (4), if —
- (a) a statutory GESB Super Member or voluntary GESB Super Member retires or ceases to be a worker; or
  - (b) an eligible statutory GESB Super Member otherwise ceases to be an eligible statutory GESB Super Member;
- or

- (c) a partner GESB Super Member —
    - (i) satisfies the criteria for payment of a benefit under regulation 118; or
    - (ii) elects to withdraw from the GESB Super Scheme under regulation 86(3);or
  - (da) a GESB Super Member suffers from a terminal medical condition; or
  - (d) a GESB Super Member reaches 65 years of age,  
and no benefit is payable under regulation 115, the Member is entitled to a benefit of an amount equal to the balance of the Member's GESB Super account.
- (2) If the Member satisfies the criteria for payment of a benefit under regulation 118, the Board is to pay the benefit to the Member when requested by the Member to do so.
  - (3) If the Member does not satisfy the criteria for payment of a benefit under regulation 118, the benefit is preserved until those criteria are satisfied.
  - (4) If a Member is entitled to a benefit under this regulation and a benefit under regulation 116, the benefit under regulation 116 is to be paid first.

*[Regulation 114 inserted in Gazette 13 Apr 2007 p. 1653;  
amended in Gazette 1 Apr 2008 p. 1284; 8 Jul 2008 p. 3236;  
10 May 2011 p. 1669; 8 Jul 2011 p. 2901.]*

**115.     Death benefit**

If —

- (a) a statutory GESB Super Member or voluntary GESB Super Member dies while still a worker; or
- (b) a partner GESB Super Member dies while there is still an amount in the Member's GESB Super account,

the Board is to pay a benefit in respect of the Member of an amount equal to the balance of the Member's GESB Super account.

*[Regulation 115 inserted in Gazette 13 Apr 2007 p. 1653-4.]*

**116. Insured benefits for covered GESB Super Members**

- (1) In this regulation —

**SIS amount** means the amount that, if the GESB Super Scheme were a regulated superannuation fund, the Board could pay to the Member without contravening the cashing restriction set out in the SIS Regulations Schedule 1 item 109 column 3;

**temporarily incapacitated** means that the Member is suffering temporary incapacity within the meaning given in the SIS Regulations regulation 6.01.

- (2) If a covered GESB Super Member for whom life insurance is provided under regulation 111 dies, subject to the terms on which the life insurance is provided the Board is to pay the proceeds of the life insurance.
- (3) If a covered GESB Super Member for whom total and permanent disability insurance is provided under regulation 112(a) ceases to be a worker by reason of incapacity, subject to subregulation (5) and to the terms on which the insurance is provided the Member is entitled to the proceeds of the total and permanent disability insurance.
- (4) If a covered GESB Super Member for whom salary continuance insurance is provided under regulation 112(b) is temporarily incapacitated, subject to subregulation (5) and to the terms on which the salary continuance insurance is provided the Board is to pay the Member the proceeds of the salary continuance insurance or, if less, the SIS amount.
- (5) If a covered GESB Super Member is subject to a health condition no insurance proceeds are payable under subregulation (3) or (4) unless the Board is satisfied that the

insured event was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the health condition.

*[Regulation 116 inserted in Gazette 30 Jun 2010 p. 3154-5.]*

### **Division 8 — Payment of benefits**

*[Heading inserted in Gazette 13 Apr 2007 p. 1655.]*

#### **117. Term used: earnings**

In this Division, other than regulation 122 —

**earnings**, in relation to a benefit, means so much of the earnings that have been credited to the Member's GESB Super account since the Member became entitled to the benefit as are attributable to that benefit.

*[Regulation 117 inserted in Gazette 13 Apr 2007 p. 1655.]*

#### **118. Payment of GESB withdrawal benefit**

- (1) Unless permitted to do so by another provision of this Division the Board must not pay a GESB withdrawal benefit unless the Member —

- (a) is retired; or
- (b) is suffering permanent incapacity; or
- (ca) suffers from a terminal medical condition; or
- (c) is at least 65 years of age; or
- (d) has died.

- (1a) If a GESB Super Member —

- (a) satisfies the Board that he or she is retired; and
- (b) subsequently ceases to be retired,

the benefit to which the Member was entitled immediately before he or she ceased to be retired remains payable notwithstanding that the Member is no longer retired.

- (2) A GESB Super Member who is entitled to a GESB withdrawal benefit may request payment of the benefit if —
- (a) the benefit is payable under subregulation (1)(a), (b), (ca) or (c) or subregulation (1a); or
  - (b) all of the following apply —
    - (i) the Member is a statutory GESB Super Member or a voluntary GESB Super Member;
    - (ii) the benefit is less than \$200;
    - (iii) the Member has ceased to work for the Employer for whom he or she worked immediately before he or she became entitled to the benefit.
- (3) On receipt of a request under subregulation (2) the Board is to pay the benefit and earnings to the Member.
- (4) If a GESB withdrawal benefit becomes payable under subregulation (1)(d), the Board is to pay the benefit and earnings in accordance with regulation 121.
- (5) For the purposes of subregulation (1)(b) a Member is *suffering permanent incapacity* if —
- (a) the Member is not gainfully employed; and
  - (b) the Board is reasonably satisfied that the Member is unlikely, because of ill-health (whether physical or mental), ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

*[Regulation 118 inserted in Gazette 13 Apr 2007 p. 1655-6; amended in Gazette 1 Apr 2008 p. 1284-5; 8 Jul 2008 p. 3236; 10 May 2011 p. 1669.]*

**119. Member with preserved benefit who again becomes a worker**

If a GESB Super Member who is entitled to a preserved GESB withdrawal benefit that is not yet payable again becomes a worker the Member's entitlement to that benefit ceases.

*[Regulation 119 inserted in Gazette 13 Apr 2007 p. 1656.]*

**120.     Transfer of benefit to another scheme or superannuation fund**

A GESB Super Member who is entitled to —

- (a)   payment of a benefit; or
- (b)   a preserved GESB withdrawal benefit,

may request the Board to transfer the benefit or payment, and earnings, to another scheme or to another superannuation fund and the Board is to comply with that request.

*[Regulation 120 inserted in Gazette 13 Apr 2007 p. 1656.]*

**121.     Payment of death benefits**

- (1)   Subject to subregulation (3) the Board is to pay a GESB Super Member's death benefit to the executor or administrator of the Member's estate.
- (2)   A benefit paid under subregulation (1) to the executor or administrator of a Member's estate —
  - (a)   forms part of the Member's estate; but
  - (b)   is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3)   If the Board —
  - (a)   has been unable, after making reasonable enquires, to find an administrator or executor of the Member's estate; or
  - (b)   considers it desirable to do so in order to relieve or avoid hardship,

the Board may pay up to \$25 000 of a death benefit —

- (c)   to one or more of the Member's dependants in proportions determined by the Board; or

- (d) if, after making reasonable enquiries, the Board has been unable to find any dependant of the Member, to one or more other individuals in proportions determined by the Board.

- (4) In this regulation —

***death benefit*** means —

- (a) a benefit under regulation 115; or
- (b) any other benefit or amount that becomes payable on the death of a Member; or
- (c) a benefit that became payable to a GESB Super Member but which, at the time of the Member's death, had not been paid or transferred under regulation 120;

***dependant*** has the same meaning as it has in section 10 of the SIS Act.

*[Regulation 121 inserted in Gazette 13 Apr 2007 p. 1657-8.]*

**122. Payment or transfer out of transferred in benefits or ETPs**

- (1) A GESB Super Member who has a transferred benefit may request the Board to —
  - (a) pay the benefit and earnings to the Member; or
  - (b) transfer the benefit and earnings to another scheme or another superannuation fund.
- (2) The Board must comply with a request under subregulation (1)(a) unless the Board is satisfied that, if the West State Super Scheme were a regulated superannuation fund, the Board would be prevented by the SIS Regulations from paying the benefit as requested.
- (3) The Board must comply with a request under subregulation (1)(b).

*[(4)-(6) deleted]*

- (7) In this regulation —

*earnings*, in relation to a transferred benefit, means so much of the earnings that have been credited to the Member's GESB Super account since the benefit was transferred as are attributable to that benefit;

*transferred benefit* means a benefit or other eligible termination payment that has been transferred to the GESB Super Scheme under regulation 96.

*[Regulation 122 inserted in Gazette 13 Apr 2007 p. 1658-9; amended in Gazette 1 Apr 2008 p. 1285; 8 Jul 2008 p. 3237.]*

**122A. Payment or transfer of all or part of benefit**

- (1) A request under regulation 114(2), 118(2), 120 or 122(1) for payment or transfer of a benefit may be made in relation to all or part of the benefit.
- (2) A request cannot be made for the payment or transfer of an amount —
  - (a) that is less than \$1 000; or
  - (b) the payment or transfer of which will reduce the balance in the Member's GESB Super account to less than \$1 000,

unless the amount requested is the whole of the balance in the account or the Board otherwise agrees.

*[Regulation 122A inserted in Gazette 1 Apr 2008 p. 1286.]*

**123. Early release of benefit — severe financial hardship or compassionate grounds**

- (1) A GESB Super Member may apply to the Board for the early release of all or part of the balance of the Member's GESB Super account —
  - (a) if the Member is in severe financial hardship; or
  - (b) on a compassionate ground.

- (2) On receipt of an application under subregulation (1) the Board is to determine whether, in the Board's opinion, if the SIS Regulations applied, the Member would be taken for the purposes of those regulations —
- (a) to be in severe financial hardship; or
  - (b) to satisfy a condition of release on a compassionate ground.
- (3) If the Board determines that subregulation (2)(a) or (b) applies to the Member, the Board is to determine the maximum amount that the SIS Regulations would permit to be paid to the Member in those circumstances.
- (4) When the Board has made a determination under subregulation (3), it is to pay the Member a benefit of an amount equal to the least of the following —
- (a) the amount applied for by the Member;
  - (b) the amount determined by the Board under subregulation (3);
  - (c) the balance in the Member's GESB Super account.
- (5) A Member making an application under subregulation (1) must give to the Board all the information required to enable it to make the determinations required under this regulation.
- (6) If a benefit paid under this regulation is or includes all or part of a benefit to which the Member was already entitled the amount of that other benefit is reduced accordingly.
- (7) In this regulation —
- compassionate ground*** and ***severe financial hardship*** have the same meanings as they have in Part 6 of the SIS Regulations.

*[Regulation 123 inserted in Gazette 13 Apr 2007 p. 1659-60.]*

**124.     Early release of benefit — phased retirement**

- (1) Subject to subregulations (2) and (3), a GESB Super Member who has reached the preservation age may request the Board to transfer —
  - (a) the balance of the Member's GESB Super account; or
  - (b) part of the balance of the Member's GESB Super account,to another scheme or superannuation fund for the purpose of providing a phased retirement benefit for the Member and the Board is to comply with that request.
- (2) An eligible statutory GESB Super Member cannot make a request under subregulation (1)(a).
- (3) If a Member makes a request under subregulation (1)(b), the Board may refuse the request if transferring the amount requested would reduce the balance in the Member's GESB Super account to less than \$5 000.
- (4) If an amount transferred under this regulation is or includes all or part of a benefit to which the Member was already entitled the amount of that other benefit is reduced accordingly.

*[Regulation 124 inserted in Gazette 13 Apr 2007 p. 1661.]*

**125.     Early release of benefits — temporary resident departing Australia**

- (1) A GESB Super Member who —
  - (a) was the holder of an eligible temporary resident visa (as defined in regulation 6.01 of the SIS Regulations) that has expired or been cancelled; and
  - (b) has permanently departed from Australia,

may apply to the Board for the early release of the balance of the Member's GESB Super account and subject to this regulation the Board is to accept the application.

- (2) The Board must not accept an application under this regulation unless the Board is satisfied that, if the GESB Super Scheme were a regulated superannuation fund, the Board would be required under regulation 6.20A of the SIS Regulations to cash the Member's benefit.
- (3) If the Board accepts an application under this regulation, the Board must pay the Member a benefit of an amount equal to the balance of the Member's GESB Super account within 28 days of receiving the application.

*[Regulation 125 inserted in Gazette 13 Apr 2007 p. 1661-2.]*

**126. Transfer to eligible rollover fund**

The Board may transfer the balance of a Member's GESB Super account to an eligible rollover fund if that fund is permitted by the SIS Act to accept the benefit, whether or not the Member has requested the transfer.

*[Regulation 126 inserted in Gazette 13 Apr 2007 p. 1662.]*

*[127 to 169. Reserved.]*

## **Part 4 — Retirement Income Scheme**

*[Heading inserted in Gazette 19 Mar 2003 p. 817.]*

### **Division 1 — Establishment and preliminary**

*[Heading inserted in Gazette 19 Mar 2003 p. 817.]*

#### **170. Establishment of Retirement Income Scheme**

The Retirement Income Scheme is established as a superannuation scheme under section 28 of the Act.

*[Regulation 170 inserted in Gazette 19 Mar 2003 p. 817.]*

#### **171. Terms used**

In this Part —

***allocated pension fund*** means a superannuation fund the rules of which provide for the payment of a pension but —

- (a) do not provide for the pension to be paid throughout the lifetime of the pensioner; and
- (b) do not fix the annual amount of the pension;

***Commonwealth maximum*** means the amount prescribed under the SIS Act as the annual maximum amount that must be imposed by the rules of an allocated pension fund in relation to an allocated pension in order for it to be taken to be a pension for the purposes of the SIS Act;

***Commonwealth minimum*** means the amount prescribed under the SIS Act as the annual minimum amount that must be imposed by the rules of an allocated pension fund in relation to an allocated pension in order for it to be taken to be a pension for the purposes of the SIS Act;

***pension day*** means —

- (a) for a Member who has selected monthly pension payments — the 15th of each month; and

- (b) for a Member who has selected quarterly pension payments — the 15th of each of the 4 months selected by the Member under regulation 189(1)(aa); and
- (c) for a Member who has selected annual pension payments — the 15th of the month selected by the Member under regulation 189(1)(b);

***pension total***, in relation to a Retirement Income Member, means the total amount paid to the Member from the Retirement Income Scheme during a financial year, not including any amounts paid under regulation 192;

***retirement income account*** means an account kept under regulation 178;

***reversionary pensioner*** means a person selected under regulation 193(1)(b) by a Retirement Income Member as the person to whom the reversionary pension payable on the death of the Member is to be paid.

*[Regulation 171 inserted in Gazette 19 Mar 2003 p. 817-18; amended in Gazette 13 Apr 2007 p. 1581.]*

## **Division 2 — Membership**

*[Heading inserted in Gazette 19 Mar 2003 p. 818.]*

### **172. Members**

- (1) A person listed in subregulation (2) may apply to become a Retirement Income Member if he or she is entitled to —
  - (a) immediate payment of a lump sum benefit from another scheme or another superannuation fund; or
  - (b) immediate payment of any other eligible termination payment; or
  - (ba) an amount of a transfer benefit available for transfer under regulation 44B; or
  - (c) payment of a phased retirement benefit.

- (2) A person may apply under subregulation (1) if he or she is —
- (a) a Member; or
  - (b) a Pension Scheme Member or a Provident Scheme Member; or
  - (c) in receipt of, or entitled to receive, a pension under the Pension Scheme; or
  - (d) a former member; or
  - (e) a partner or former partner of a person mentioned in paragraphs (a) to (d).

*[(3) deleted]*

- (4) The Board is to accept an application under this regulation unless the Board considers that the applicant, if accepted as a Retirement Income Member, will not comply with regulation 175.

*[Regulation 172 inserted in Gazette 19 Mar 2003 p. 818-19; amended in Gazette 1 Dec 2004 p. 5714; 26 May 2006 p. 1919-20; 13 Apr 2007 p. 1583; 6 Jun 2007 p. 2625.]*

**173. Additional or replacement pensions**

- (1) A Retirement Income Member may apply to the Board —
- (a) to start an additional pension; or
  - (b) to cancel an existing pension and start a replacement pension.
- (2) A person applying for membership under regulation 172 may, simultaneously, make an application under subregulation (1)(a) as if he or she were a Retirement Income Member.
- (3) The Board is to accept an application under this regulation unless the Board considers that if the application is accepted the Member will not comply with regulation 176 or 177 (as the case requires).

- (4) When the Board accepts a Member's application under this regulation, Divisions 4, 5 and 6 apply as if the Member were, in respect of each pension, a separate person.

*[Regulation 173 inserted in Gazette 19 Mar 2003 p. 819.]*

**174. Cessation of membership**

A person ceases to be a Retirement Income Member when the balance in all of the Member's retirement income accounts is reduced to zero.

*[Regulation 174 inserted in Gazette 19 Mar 2003 p. 820.]*

**Division 3 — Contributions**

*[Heading inserted in Gazette 19 Mar 2003 p. 820.]*

**175. Compulsory transfer for new Retirement Income Member**

- (1) When a person becomes a Retirement Income Member he or she must transfer to the Retirement Income Scheme all or part of the benefit or eligible termination payment referred to in regulation 172(1).
- (2) A Retirement Income Member may transfer to the Retirement Income Scheme all or part of —
- (a) a benefit that is immediately payable to the person from another scheme or another superannuation fund; or
  - (b) any other eligible termination payment immediately payable to the person; or
  - (ba) an amount of a transfer benefit available for transfer under regulation 44B; or
  - (c) a phased retirement benefit.
- (3) A transfer under subregulation (1) or (2) must be made before the person's first pension day.

- (4) The total amount transferred under subregulations (1) and (2) must not be less than \$30 000 unless the Board agrees to accept a lesser amount.

*[Regulation 175 inserted in Gazette 19 Mar 2003 p. 820;  
amended in Gazette 1 Dec 2004 p. 5714-15; 26 May 2006  
p. 1920; 13 Apr 2007 p. 1584; 6 Jun 2007 p. 2625.]*

**176. Contribution for an additional pension**

- (1) When the Board accepts a Member's application under regulation 173(1)(a) the Member must transfer to the Retirement Income Scheme all or part of —
- (a) a benefit that is immediately payable to the Member from another scheme or another superannuation fund; or
  - (b) any other eligible termination payment that is immediately payable to the Member; or
  - (ba) an amount of a transfer benefit available for transfer under regulation 44B; or
  - (c) a phased retirement benefit.
- (2) The transfer under subregulation (1) must be made before the Member's first pension day after the Board accepts the Member's application.
- (3) The total amount transferred under subregulation (1) must not be less than \$10 000 unless the Board agrees to accept a lesser amount.

*[Regulation 176 inserted in Gazette 19 Mar 2003 p. 821;  
amended in Gazette 26 May 2006 p. 1921; 6 Jun 2007 p. 2625.]*

**177. Contribution and transfer for replacement pension**

- (1) When the Board accepts a Member's application under regulation 173(1)(b) —
- (a) the Board is to transfer the balance of the Member's retirement income account to the new retirement income

- account established for the Member in respect of the replacement pension; and
- (b) the Member may transfer to the Retirement Income Scheme all or part of —
- (i) a benefit that is immediately payable to the Member from another scheme or another superannuation fund; or
  - (ii) any other eligible termination payment that is immediately payable to the Member; or
  - (iii) a phased retirement benefit.
- (2) A transfer under subregulation (1)(b) must be made before the Member's first pension day after the Board accepts the Member's application.
- (3) The total amount transferred under subregulation (1) must not be less than \$30 000 unless the Board agrees to accept a lesser amount.

*[Regulation 177 inserted in Gazette 19 Mar 2003 p. 821-2; amended in Gazette 26 May 2006 p. 1921.]*

**177A. Transfers must be directly to Retirement Income Scheme**

A transfer under this Division must be made to the Retirement Income Scheme directly from the other scheme or superannuation fund or the payer of the eligible termination payment.

*[Regulation 177A inserted in Gazette 1 Dec 2004 p. 5715.]*

**178A. Restriction on contributions and transfers**

Despite anything else in this Part the Board must not accept a contribution or transfer for a person if the trustee of a regulated superannuation fund would be prevented by the SIS Regulations from accepting such a contribution or transfer.

*[Regulation 178A inserted in Gazette 8 Jul 2008 p. 3237.]*

**Division 4 — Retirement income accounts**

*[Heading inserted in Gazette 19 Mar 2003 p. 822.]*

**178. Retirement income accounts**

- (1) The Board is to establish and maintain in the Fund a retirement income account for each Retirement Income Member.
- (2) The Board may divide a retirement income account into 2 or more sub-accounts.

*[Regulation 178 inserted in Gazette 19 Mar 2003 p. 822.]*

**179. Member may divide account into sub-accounts**

- (1) A Retirement Income Member may request the Board to divide the Member's retirement income account into a cash sub-account and an investment sub-account.
- (2) The Member must set out in a request under subregulation (1) —
  - (a) the amount that is to be allocated to each sub-account (the sum of which must be equal to the balance of the Member's account); or
  - (b) the proportion of the balance of the account that is to be allocated to each sub-account,at the time the sub-accounts are established.
- (3) A Member whose retirement income account has been divided into sub-accounts under this regulation may request the Board to —
  - (a) transfer a specified amount from one sub-account to the other; or
  - (b) change the proportion of the balance of the Member's account that is held in each sub-account; or
  - (c) combine the sub-accounts into a single account.
- (4) The Board is to comply with a request under subregulation (1) or (3) but the Board is not otherwise required to ensure that

balances of the sub-accounts remains in accordance with the requested amounts or proportions.

*[Regulation 179 inserted in Gazette 19 Mar 2003 p. 822-3; amended in Gazette 10 Dec 2004 p. 5895.]*

**180. Amounts to be credited to retirement income accounts**

- (1) The Board is to credit to a Retirement Income Member's retirement income account —
  - (a) the amounts transferred to the Retirement Income Scheme under regulation 175, 176 or 177(1)(b); and
  - (b) any amount required under regulation 177(1)(a) to be transferred to the account; and
  - (c) earnings in accordance with regulation 182.
- (2A) If —
  - (a) a lump sum benefit becomes payable on the death on or after 1 January 2010 of a Retirement Income Member; and
  - (b) the Board would be entitled to a deduction under the *Income Tax Assessment Act 1997* (Commonwealth) section 295-485 if it were to increase the amount of the benefit,

then the Board may, if it considers it appropriate to do so, credit to the Member's retirement income account an amount determined by the Board, not exceeding the tax saving amount in respect of the benefit.

- (2) The Board may temporarily keep contributions made for a Retirement Income Member, together with contributions made for other Retirement Income Members, in an account maintained for that purpose until the contributions are credited to the appropriate retirement income accounts.

*[Regulation 180 inserted in Gazette 19 Mar 2003 p. 823; amended in Gazette 1 Dec 2004 p. 5715; 13 Apr 2007 p. 1590; 8 Jan 2010 p. 30.]*

**181. Amounts to be debited to retirement income accounts**

- (1) The Board is to debit to a Retirement Income Member's retirement income account —
  - (a) any amount required under regulation 177(1) to be transferred from the account; and
  - (b) any amounts paid as benefits to, or in respect of, the Member; and
  - (c) any amounts transferred to other schemes or to other superannuation funds in satisfaction of a Member's entitlement to a benefit from the Retirement Income Scheme.
- (2) The Board may debit to a Retirement Income Member's retirement income account —
  - (a) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 188; and
  - (b) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member; and
  - (c) the amount of any fees payable by the Member for, or in relation to, any product or service provided to the Member in accordance with section 6(1)(e) of the Act.
- (3) The Board may only debit an amount to a retirement income account —
  - (a) under subregulation (2)(a), if an actuary has advised that it is appropriate for that amount to be debited to that account; or
  - (b) under subregulation (2)(c), if the Member has given the Board written consent to the debiting of that amount to the account.
- (3a) If the Board debits an amount to a retirement income account under subregulation (2)(c) in respect of a fee payable to a person

other than the Board, the Board must pay the amount deducted to that other person.

- (4) If a Member's retirement income account has been divided into sub-accounts under regulation 179, then to the extent that the balance of the relevant sub-account is sufficient to allow it to do so, the Board is to debit —
- (a) pension payments made under regulation 191 to the Member's cash sub-account; and
  - (b) any other amount that is to be, or may be, debited to the Member's retirement income account, to the Member's investment sub-account,

unless the Member requests that the amount be debited to the Member's other sub-account.

*[Regulation 181 inserted in Gazette 19 Mar 2003 p. 823-4; amended in Gazette 13 Apr 2007 p. 1590-1 and 1662.]*

## **182. Earnings**

- (1) The Board is to credit earnings to each Member's retirement income account at a rate equal to the Member's earning rate on the balance of the account —
- (a) at least once every year; and
  - (b) when a lump sum benefit is to be paid, or an amount transferred, from the Member's retirement income account under Division 6.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.
- (3) If a Member's retirement income account has been divided into sub-accounts under regulation 179 the Board is to credit earnings to each sub-account as if it were a separate retirement income account.

*[Regulation 182 inserted in Gazette 19 Mar 2003 p. 824-5.]*

**Division 5 — Member investment choice**

*[Heading inserted in Gazette 19 Mar 2003 p. 825.]*

**183. Terms used**

In this Division —

**default plan** means the readymade investment plan selected by the Board under regulation 185 as the default plan for Retirement Income Members;

**personalised investment plan** means an investment plan established under regulation 184(4);

**readymade investment plan** means an investment plan established under regulation 184(1).

*[Regulation 183 inserted in Gazette 19 Mar 2003 p. 825.]*

**184. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for retirement income Members with asset allocations determined by the Board.
- (2) One of the investment plans established under subregulation (1) must provide for investment in cash only.
- (3) Subject to subregulation (2), the Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (4) The Board may establish an investment plan under which a Retirement Income Member who selects that plan may select the Member's own asset allocation subject to any conditions determined by the Board.
- (5) The Board must notify all Retirement Income Members of —
  - (a) the establishment of a new investment plan for Retirement Income Members including, in the case of a readymade investment plan, the asset allocation for that plan; and

- (b) any material change in the asset allocation of a readymade investment plan; and
- (c) any material change in the conditions applying to a personalised investment plan,

before, or as soon as practicable after, the establishment or change occurs.

*[Regulation 184 inserted in Gazette 19 Mar 2003 p. 825-6.]*

**185. Default plan**

- (1) The Board is to select one of the readymade investment plans as the default plan for Retirement Income Members.
- (2) The Board may change the plan selected as the default plan whenever the Board considers it appropriate to do so.
- (3) The Board must notify all Retirement Income Members of any change made under subregulation (2) before, or as soon as practicable after, the change occurs.

*[Regulation 185 inserted in Gazette 19 Mar 2003 p. 826; amended in Gazette 13 Apr 2007 p. 1591.]*

**186. Member to select investment plan**

- (1) A Retirement Income Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (2) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (3) A Member may change his or her selection under subregulation (1) or (2) at any time by giving notice to the Board.
- (3a) As soon as practicable after receiving a notice under this regulation the Board must give effect to it by investing the Member's assets in accordance with regulation 187.

- (4) Until a Retirement Income Member selects otherwise the Member is taken to have selected the plan that was the default plan at the time the person became a Retirement Income Member.

*[Regulation 186 inserted in Gazette 19 Mar 2003 p. 826-7;  
amended in Gazette 13 Apr 2007 p. 1591.]*

**187. Board to invest assets to reflect Member's choice**

- (1) For each Retirement Income Member who selects a readymade investment plan the Board must, as far as is practicable —
- (a) invest the Member's assets in accordance with the asset allocation determined under regulation 184 for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a Retirement Income Member who selects a personalised investment plan the Board must invest the Member's assets as at the time the Board gives effect to the selection in accordance with the asset allocation selected by the Member but, unless the Board and the Member agree otherwise, the Board is not required to ensure that the investment of the Member's assets remains in accordance with that asset allocation.
- (3) If a Member's retirement income account is divided into sub-accounts under regulation 179, the Board is to invest the Member's assets in accordance with this regulation as if —
- (a) each of the sub-accounts were a retirement income account maintained for a separate person; and
  - (b) the person for whom the investment sub-account is maintained had selected, under regulation 186, the investment plan selected by the Member under that regulation; and
  - (c) the person for whom the cash sub-account is maintained had selected, under regulation 186, the investment plan referred to in regulation 184(2).

- (4) In this regulation —

**Member's assets** means the assets of the Fund that represent the retirement income account of a Retirement Income Member.

*[Regulation 187 inserted in Gazette 19 Mar 2003 p. 827-8;  
amended in Gazette 10 Dec 2004 p. 5895; 13 Apr 2007  
p. 1591-2.]*

**188. Determination of earning rates**

- (1) At the end of each financial year and at any other time when the Board considers it desirable to do so, an earning rate is to be determined for —
- (a) each readymade investment plan; and
  - (b) each Retirement Income Member who has selected a personalised investment plan.
- (2) The earning rates are to be determined —
- (a) by the Board; or
  - (b) on behalf of the Board in accordance with procedures or formulae determined by the Board.
- (3) In determining an earning rate, or the procedures or formulae to be used to determine an earning rate, the Board must have regard to —
- (a) the nett rate of return achieved by the investment of the assets of the Fund that represent the retirement income accounts of the Members to whom the earning rate will apply; and
  - (b) administrative costs; and
  - (c) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

*[Regulation 188 inserted in Gazette 19 Mar 2003 p. 828-9.]*

**Division 6 — Pension and other benefits**

*[Heading inserted in Gazette 19 Mar 2003 p. 829.]*

**189. Selection of payment frequency**

- (1) A Retirement Income Member is to select —
  - (a) whether the Member's pension is to be paid monthly, quarterly or annually; and
  - (aa) if the Member selects quarterly payments, whether the payments are to be made in —
    - (i) January, April, July and October; or
    - (ii) February, May, August and November; or
    - (iii) March, June, September and December;and
  - (b) if the Member selects annual payments, the month in which the Member's pension is to be paid,and give notice of those selections to the Board.
- (2) A Member may change his or her selection under subregulation (1) at any time by giving notice to the Board.
- (3) Until a Retirement Income Member selects otherwise the Member is taken to have selected monthly pension payments.

*[Regulation 189 inserted in Gazette 19 Mar 2003 p. 829-30; amended in Gazette 13 Apr 2007 p. 1582.]*

**190. Selection of pension amount**

- (1) A Retirement Income Member is to select an amount that is —
  - (a) not less than the Commonwealth minimum; and
  - (b) not more than the Commonwealth maximum,as the annual amount of the Member's pension and give notice of those selections to the Board.

- (2) A Member may change his or her selection under subregulation (1) at any time by giving notice to the Board.
- (3) If a Member does not make a selection under subregulation (1), or the amount selected by a Member does not comply with subregulation (1), the Board may make a selection for the Member of an amount the Board considers to be reasonable, and if it does so, the Board must give notice of the selection to the Member.

*[Regulation 190 inserted in Gazette 19 Mar 2003 p. 830.]*

**191. Payment of pension**

- (1) Subject to this regulation, on each pension day the Board is to pay to a Retirement Income Member an amount equal to the annual amount selected by or for the Member under regulation 190 divided by —
  - (a) if the Member has selected monthly pension payments, 12; or
  - (b) if the Member has selected quarterly pension payments, 4; or
  - (c) if the Member has selected annual pension payments, 1.
- (2) If, on a pension day, the balance of a Member's Retirement Income Account is less than the amount to be paid under subregulation (1), the amount to be paid is reduced to an amount equal to that balance.
- (3) If, in any financial year, a Retirement Income Member's pension total is less than the Commonwealth minimum, the Board is to pay to the Member, before the end of the year, an amount equal to the difference between the pension total and the Commonwealth minimum.
- (4) If payment to a Retirement Income Member of the amount to be paid under subregulation (1) on a pension day would result in the Member's pension total for a financial year exceeding the Commonwealth maximum, the amount to be paid on that day is

reduced by the amount by which that maximum would otherwise be exceeded.

- (5) If, in any financial year, a Retirement Income Member's pension total reaches the Commonwealth maximum the Board is to make no further payments under subsection (1) to the Member during that year.

*[Regulation 191 inserted in Gazette 19 Mar 2003 p. 830-1; amended in Gazette 13 Jun 2003 p. 2113.]*

**192. Withdrawal of lump sum**

- (1) A Retirement Income Member may request the Board to —
- (a) pay to the Member; or
  - (b) transfer to another scheme or to another superannuation fund,

a lump sum benefit of an amount equal to all or part of the balance of the Member's retirement income account and, subject to subregulation (3), the Board is to comply with that request.

- (2) The amount requested must not be —
- (a) less than \$1 000; or
  - (b) an amount the payment or transfer of which will reduce the balance in the Member's retirement income account to less than \$1 000,

unless the amount requested is the whole of the balance in the account or the Board otherwise agrees.

- (3) If a Member's benefit in the Retirement Income Scheme is a phased retirement benefit, the Board must not pay or transfer any of that benefit or earnings on it, under this regulation unless —
- (a) the Member has satisfied an unrestricted condition of release; or

- (b) the benefit is transferred to another scheme or superannuation fund the rules of which prevent the cashing, commutation or transfer of the benefit unless —
  - (i) the Member has satisfied an unrestricted condition of release; or
  - (ii) the benefit is transferred to another superannuation fund the rules of which include provisions having the same effect as this subregulation;
- or
- (c) the benefit is to be used to pay contributions tax and is paid to the Member for payment to the Commonwealth Commissioner of Taxation.

*[Regulation 192 inserted in Gazette 19 Mar 2003 p. 831-2; amended in Gazette 26 May 2006 p. 1921-2; 21 Jul 2006 p. 2652.]*

**193. Death benefit options**

- (1) When a person becomes a Retirement Income Member he or she is to select —
  - (a) whether the benefit to be paid on the Member's death (if he or she dies while still a Retirement Income Member) is to be —
    - (i) a lump sum benefit under regulation 194; or
    - (ii) a reversionary pension under regulation 195;
  - and
  - (b) if the Member selects a reversionary pension, the person to whom that pension is to be paid,
- and give notice of those selections to the Board.
- (2) The person selected under subregulation (1)(b) must be a partner or a dependant of the Member.

- (3) If a Retirement Income Member has not given notice of the Member's selection to the Board before the Member's first pension day, or the Member's selection under subregulation (1)(b) does not comply with subregulation (2), the Member is taken to have selected a lump sum death benefit.

*[Regulation 193 inserted in Gazette 19 Mar 2003 p. 832;  
amended in Gazette 1 Dec 2004 p. 5706.]*

**194. Lump sum death benefit**

If a Retirement Income Member who selected a lump sum death benefit dies while there is still an amount in the Member's retirement income account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the Member's estate.

*[Regulation 194 inserted in Gazette 19 Mar 2003 p. 833.]*

**195. Reversionary pension**

On and after the death of a Retirement Income Member who selected a reversionary pension (the **primary Member**) —

- (a) the pension that would have been payable to the primary Member had he or she not died is to be paid to the reversionary pensioner; and
- (b) for the purposes of these regulations, the reversionary pensioner is to be taken to be the primary Member.

*[Regulation 195 inserted in Gazette 19 Mar 2003 p. 833.]*

## **Part 4A — Term Allocated Pension Scheme**

*[Heading inserted in Gazette 10 Dec 2004 p. 5896.]*

### **Division 1 — Establishment and preliminary**

*[Heading inserted in Gazette 10 Dec 2004 p. 5896.]*

#### **196. Establishment of Term Allocated Pension Scheme**

The Term Allocated Pension Scheme is established as a superannuation scheme under section 28 of the Act.

*[Regulation 196 inserted in Gazette 10 Dec 2004 p. 5896.]*

#### **196A. Terms used**

In this Part —

***pension day*** means —

- (a) for a Member who has selected monthly pension payments — the 15th of each month; and
- (b) for a Member who has selected quarterly pension payments — the 15th of each of the 4 months selected by the Member under regulation 196Q(1)(aa); and
- (c) for a Member who has selected annual pension payments — the 15th of the month selected by the Member under regulation 196Q(1)(b);

***term allocated pension*** means a pension payable under this Part;

***term allocated pension account*** means an account kept under regulation 196E.

*[Regulation 196A inserted in Gazette 10 Dec 2004 p. 5896; amended in Gazette 13 Apr 2007 p. 1582.]*

**Division 2 — Membership and purchase**

*[Heading inserted in Gazette 10 Dec 2004 p. 5896.]*

**196B. Members**

- (1) A person listed in subregulation (1a) may apply to become a Term Allocated Pension Member if he or she is entitled to —
  - (a) immediate payment of a lump sum benefit from another scheme or another superannuation fund; or
  - (b) immediate payment of any other eligible termination payment; or
  - (ba) an amount of a transfer benefit available for transfer under regulation 44B; or
  - (c) payment of a phased retirement benefit.
- (1a) A person may apply under subregulation (1) if he or she is —
  - (a) a Member; or
  - (b) a Pension Scheme Member or a Provident Scheme Member; or
  - (c) in receipt of, or entitled to receive, a pension under the Pension Scheme; or
  - (d) a former member; or
  - (e) a Term Allocated Pension Member applying for a second or subsequent term allocated pension; or
  - (f) a partner or former partner of a person mentioned in paragraphs (a) to (e).
- (2) The Board is to accept an application under this regulation unless the Board considers that the applicant, if accepted as a Term Allocated Pension Member, will not comply with regulation 196D.
- (3) If a person becomes a Term Allocated Pension Member for a second or subsequent term allocated pension, these regulations

apply as if he or she were, in respect of each term allocated pension, a separate person.

*[Regulation 196B inserted in Gazette 10 Dec 2004 p. 5896-7; amended in Gazette 26 May 2006 p. 1922; 13 Apr 2007 p. 1584-5; 6 Jun 2007 p. 2626.]*

**196C. Cessation of membership**

A person ceases to be a Term Allocated Pension Member when the balance in the Member's term allocated pension account is reduced to zero.

*[Regulation 196C inserted in Gazette 10 Dec 2004 p. 5897.]*

**196D. Transfer of benefit or ETP**

- (1) When a person becomes a Term Allocated Pension Member he or she must transfer to the Term Allocated Pension Scheme all or part of the benefit or eligible termination payment referred to in regulation 196B(1).
- (2) The person may also transfer to the Term Allocated Pension Scheme all or part of any other —
  - (a) benefit that is immediately payable to the person from another scheme or another superannuation fund; or
  - (b) eligible termination payment immediately payable to the person; or
  - (ba) amount of a transfer benefit available for transfer under regulation 44B; or
  - (c) phased retirement benefit payable to the person.
- (3) A transfer under subregulation (1) or (2) must be made before the person's first pension day.
- (4) The total amount transferred under subregulations (1) and (2) must not be less than —
  - (a) \$30 000 for a person's first term allocated pension; or

- (b) \$10 000 for a second or subsequent term allocated pension,

unless the Board agrees to accept a lesser amount.

- (5) A transfer under this regulation must be made to the Term Allocated Pension Scheme directly from the other scheme or superannuation fund or the payer of the eligible termination payment.

*[Regulation 196D inserted in Gazette 10 Dec 2004 p. 5897; amended in Gazette 26 May 2006 p. 1923; 13 Apr 2007 p. 1585; 6 Jun 2007 p. 2626.]*

**196EA. Restriction on transfers**

Despite anything else in this Part the Board must not accept a transfer for a person if the trustee of a regulated superannuation fund would be prevented by the SIS Regulations from accepting such a transfer.

*[Regulation 196EA inserted in Gazette 8 Jul 2008 p. 3238.]*

**Division 3 — Term allocated pension accounts**

*[Heading inserted in Gazette 10 Dec 2004 p. 5897.]*

**196E. Term allocated pension accounts**

- (1) The Board is to establish and maintain in the Fund a term allocated pension account for each Term Allocated Pension Member.
- (2) The Board may divide a term allocated pension account into 2 or more sub-accounts.

*[Regulation 196E inserted in Gazette 10 Dec 2004 p. 5897-8.]*

**196F. Member may divide account into sub-accounts**

- (1) A Term Allocated Pension Member may request the Board to divide the Member's term allocated pension account into a cash sub-account and an investment sub-account.

- (2) The Member must set out in a request under subregulation (1) —
  - (a) the amount that is to be allocated to each sub-account (the sum of which must be equal to the balance of the Member's account); or
  - (b) the proportion of the balance of the account that is to be allocated to each sub-account,at the time the sub-accounts are established.
- (3) A Member whose term allocated pension account has been divided into sub-accounts under this regulation may request the Board to —
  - (a) transfer a specified amount from one sub-account to the other; or
  - (b) change the proportion of the balance of the Member's account that is held in each sub-account; or
  - (c) combine the sub-accounts into a single account.
- (4) The Board is to comply with a request under subregulation (1) or (3) but is not otherwise required to ensure that the balances of the sub-accounts remain in accordance with the requested amounts or proportions.

*[Regulation 196F inserted in Gazette 10 Dec 2004 p. 5898.]*

**196G. Amounts to be credited to term allocated pension accounts**

- (1) The Board is to credit to a Term Allocated Pension Member's term allocated pension account —
  - (a) the amounts transferred to the Term Allocated Pension Scheme under regulation 196D; and
  - (b) earnings in accordance with regulation 196I.
- (2) The Board may temporarily keep amounts transferred for a Term Allocated Pension Member, together with amounts transferred for other Term Allocated Pension Members, in an

account maintained for that purpose until those amounts are credited to the appropriate term allocated pension accounts.

*[Regulation 196G inserted in Gazette 10 Dec 2004 p. 5898; amended in Gazette 13 Apr 2007 p. 1592.]*

**196H. Amounts to be debited to term allocated pension accounts**

- (1) The Board is to debit to a Term Allocated Pension Member's term allocated pension account any amounts paid as benefits to, or in respect of, the Member under Division 5.
- (2) The Board may debit to a Term Allocated Pension Member's term allocated pension account —
  - (a) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 196I; and
  - (b) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member; and
  - (c) the amount of any fees payable by the Member for, or in relation to, any product or service provided to the Member in accordance with section 6(1)(e) of the Act.
- (3) The Board may only debit an amount to a term allocated pension account —
  - (a) under subregulation (2)(a), if an actuary has advised that it is appropriate for that amount to be debited to that account; or
  - (b) under subregulation (2)(c), if the Member has given the Board written consent to the debiting of that amount to the account.
- (3a) If the Board debits an amount to a term allocated pension account under subregulation (2)(c) in respect of a fee payable to a person other than the Board, the Board must pay the amount deducted to that other person.

- (4) If a Member's term allocated pension account has been divided into sub-accounts under regulation 196F, then to the extent that the balance of the relevant sub-account is sufficient to allow it to do so, the Board is to debit —
- (a) term allocated pension payments made under regulation 196R to the Member's cash sub-account; and
  - (b) any other amount that is to be, or may be, debited to the Member's term allocated pension account, to the Member's investment sub-account,

unless the Member requests otherwise.

*[Regulation 196H inserted in Gazette 10 Dec 2004 p. 5899;  
amended in Gazette 13 Apr 2007 p. 1592-3 and 1663.]*

**196I. Earnings**

- (1) The Board is to credit earnings to each Term Allocated Pension Member's term allocated pension account at a rate equal to the Member's earning rate on the balance of the account —
- (a) at least once every year; and
  - (b) when a lump sum benefit is to be paid, or an amount transferred, from the Member's term allocated pension account under Division 5.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.
- (3) If a Member's term allocated pension account has been divided into sub-accounts under regulation 196F the Board is to credit earnings to each sub-account as if it were a separate term allocated pension account.

*[Regulation 196I inserted in Gazette 10 Dec 2004 p. 5899.]*

**Division 4 — Member investment choice**

*[Heading inserted in Gazette 10 Dec 2004 p. 5900.]*

**196J. Terms used**

In this Division —

**default plan** means the readymade investment plan selected by the Board under regulation 196L as the default plan for Term Allocated Pension Members;

**personalised investment plan** means an investment plan established under regulation 196K(4);

**readymade investment plan** means an investment plan established under regulation 196K(1).

*[Regulation 196J inserted in Gazette 10 Dec 2004 p. 5900.]*

**196K. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for Term Allocated Pension Members with asset allocations determined by the Board.
- (2) One of the investment plans established under subregulation (1) must provide for investment in cash only.
- (3) Subject to subregulation (2), the Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (4) The Board may establish an investment plan under which a Term Allocated Pension Member who selects that plan may select the Member's own asset allocation subject to any conditions determined by the Board.
- (5) The Board must notify all Term Allocated Pension Members of —
  - (a) the establishment of a new investment plan for Term Allocated Pension Members including, in the case of a

readymade investment plan, the asset allocation for that plan; and

- (b) any material change in the asset allocation of a readymade investment plan; and
- (c) any material change in the conditions applying to a personalised investment plan,

before, or as soon as practicable after, the establishment or change occurs.

*[Regulation 196K inserted in Gazette 10 Dec 2004 p. 5900.]*

**196L. Default plan**

- (1) The Board is to select one of the readymade investment plans as the default plan for Term Allocated Pension Members.
- (2) The Board may change the plan selected as the default plan whenever the Board considers it appropriate to do so.
- (3) The Board must notify all Term Allocated Pension Members of any change made under subregulation (2) before, or as soon as practicable after, the change occurs.

*[Regulation 196L inserted in Gazette 10 Dec 2004 p. 5900-1; amended in Gazette 13 Apr 2007 p. 1593.]*

**196M. Member to select investment plan**

- (1) A Term Allocated Pension Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (2) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (3) A Member may change his or her selection under subregulation (1) or (2) at any time by giving notice to the Board.

- (3a) As soon as practicable after receiving a notice under this regulation the Board must give effect to it by investing the Member's assets in accordance with regulation 196N.
- (4) Until a Term Allocated Pension Member selects otherwise the Member is taken to have selected the default plan.  
*[Regulation 196M inserted in Gazette 10 Dec 2004 p. 5901; amended in Gazette 13 Apr 2007 p. 1593.]*

**196N. Board to invest assets to reflect Member's choice**

- (1) For each Term Allocated Pension Member who selects a readymade investment plan the Board must, as far as is practicable —
  - (a) invest the Member's assets in accordance with the asset allocation determined under regulation 196K for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a Term Allocated Pension Member who selects a personalised investment plan the Board must invest the Member's assets as at the time the Board gives effect to the selection in accordance with the asset allocation selected by the Member but, unless the Board and the Member agree otherwise, the Board is not required to ensure that the investment of the Member's assets remains in accordance with that asset allocation.
- (3) If a Member's term allocated pension account is divided into sub-accounts under regulation 196F, the Board is to invest the Member's assets in accordance with this regulation as if —
  - (a) each of the sub-accounts were a term allocated pension account maintained for a separate person; and
  - (b) the person for whom the investment sub-account is maintained had selected, under regulation 196M, the

- investment plan selected by the Member under that regulation; and
  - (c) the person for whom the cash sub-account is maintained had selected, under regulation 196M, the investment plan referred to in regulation 196K(2).
- (4) In this regulation —
- Member's assets** means the assets of the Fund that represent the term allocated pension account of a Term Allocated Pension Member.

*[Regulation 196N inserted in Gazette 10 Dec 2004 p. 5901-2; amended in Gazette 13 Apr 2007 p. 1593.]*

**196O. Determination of earning rates**

- (1) At the end of each financial year and at any other time when the Board considers it desirable to do so, an earning rate is to be determined for —
- (a) each readymade investment plan; and
  - (b) each Term Allocated Pension Member who has selected a personalised investment plan.
- (2) The earning rates are to be determined —
- (a) by the Board; or
  - (b) on behalf of the Board in accordance with procedures or formulae determined by the Board.
- (3) In determining an earning rate, or the procedures or formulae to be used to determine an earning rate, the Board must have regard to —
- (a) the nett rate of return achieved by the investment of the assets of the Fund that represent the term allocated pension accounts of the Members to whom the earning rate will apply; and
  - (b) administrative costs; and

- (c) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

*[Regulation 196O inserted in Gazette 10 Dec 2004 p. 5902.]*

**Division 5 — Pension and other benefits**

*[Heading inserted in Gazette 10 Dec 2004 p. 5902.]*

**196P. Selection of pension period**

- (1) A Term Allocated Pension Member is to select the period for which the Member's term allocated pension is to be paid and give notice of that selection to the Board before the Member's first pension day.
- (2) Subject to subregulation (3), the period selected must be a whole number of years that is —
  - (a) not less than the Member's life expectancy; and
  - (b) not more than the greater of —
    - (i) what would be the Member's life expectancy if he or she were 5 years younger; and
    - (ii) 100 minus the Member's current age (in years).
- (3) If —
  - (a) the Member has selected a reversionary pension under regulation 196T; and
  - (b) the selected reversionary pensioner is the Member's partner; and
  - (c) the partner's life expectancy is greater than the Member's,

then the period selected by the Member may be a whole number of years that is —

- (d) not less than the partner's life expectancy; and

- (e) not more than the greater of —
  - (i) what would be the partner's life expectancy if he or she were 5 years younger; and
  - (ii) 100 minus the partner's current age (in years).
- (4) In this regulation —

***life expectancy***, in relation to a person, means the number of years in the person's expectation of life ascertained when the person became a Term Allocated Pension Member from the then most recent Australian Life Tables published by the Australian Government Actuary, rounded up to the nearest whole number.

*[Regulation 196P inserted in Gazette 10 Dec 2004 p. 5902-3; amended in Gazette 13 Apr 2007 p. 1581.]*

**196Q. Selection of payment frequency**

- (1) A Term Allocated Pension Member is to select —
  - (a) whether the Member's term allocated pension is to be paid monthly, quarterly or annually; and
  - (aa) if the Member selects quarterly payments, whether the payments are to be made in —
    - (i) January, April, July and October; or
    - (ii) February, May, August and November; or
    - (iii) March, June, September and December;
  - and
  - (b) if the Member selects annual payments, the month in which the Member's term allocated pension is to be paid,

and give notice of those selections to the Board.

- (2) A Member may change his or her selection under subregulation (1) at any time by giving notice to the Board.

- (3) Until a Term Allocated Pension Member selects otherwise the Member is taken to have selected monthly pension payments.

*[Regulation 196Q inserted in Gazette 10 Dec 2004 p. 5903;  
amended in Gazette 13 Apr 2007 p. 1582-3.]*

**196R. Payment of term allocated pension**

- (1) The annual pension amount for a Term Allocated Pension Member is —
- (a) in the financial year in which he or she becomes a Term Allocated Pension Member — the SIS annual amount calculated as at the day he or she becomes a Term Allocated Pension Member; and
  - (b) in each subsequent financial year — the SIS annual amount calculated as at 1 July in that year.
- (2) If a Term Allocated Pension Member commutes part of his or her term allocated pension the annual pension amount for the period from the commutation date to the end of the financial year in which the commutation occurs is the SIS annual amount calculated as at the commutation date.
- (3) On each pension day the Board is to pay to a Term Allocated Pension Member an amount equal to the Member's annual pension amount divided by the number of the Member's pension days in the financial year.
- (4) If, on a pension day, the balance of a Member's term allocated pension account is less than the amount due to be paid under subregulation (3), the amount to be paid is an amount equal to that balance.
- (5) If after a Term Allocated Pension Member's last pension day there is still an amount in the Member's term allocated pension account, the Board is to pay the Member a lump sum benefit of an amount equal to that amount within 28 days after the end of the pension period selected by the Member.

- (6) In this regulation —

**SIS annual amount** means the amount prescribed under the SIS Act as the total amount of payments that a superannuation fund's rules must require to be made in a year in order for a market linked pension payable for a term equal to the pension period selected by the Member to be taken to be a pension for the purposes of the SIS Act.

*[Regulation 196R inserted in Gazette 10 Dec 2004 p. 5903-4.]*

#### **196S. Commutation**

- (1) A Term Allocated Pension Member may request the Board to commute some or all of his or her term allocated pension if —
- (a) the request —
    - (i) is made within 6 months after he or she became a Term Allocated Pension Member; and
    - (ii) does not relate to any amount transferred to the Term Allocated Pension Scheme under regulation 196D from the commutation of another SIS annuity or pension;
  - or
  - (b) the commuted amount is to be used to pay contributions tax; or
  - (c) the commuted amount is to be used to purchase —
    - (i) another term allocated pension; or
    - (ii) another SIS annuity or pension.
- (2) Subject to subregulations (3) and (3a), the Board is to comply with a request under subregulation (1) and pay or transfer the commuted amount, in the case of a request under —
- (a) subregulation (1)(a) — to, or as requested by, the Member; or
  - (b) subregulation (1)(b) — to the Member for payment to the Commonwealth Commissioner of Taxation; or

- (c) subregulation (1)(c)(i) — to a new term allocated pension account for the Member; or
  - (d) subregulation (1)(c)(ii) — to the provider of the SIS annuity or pension.
- (3) The Board must not pay or transfer a term allocated pension unless, or until, any applicable SIS minimum amount has been paid.
- (3a) If a Member's benefit in the Term Allocated Pension Scheme is a phased retirement benefit, the Board must not pay or transfer any of that benefit or earnings on it, under subregulation (2)(a) or (d) unless —
  - (a) the Member has satisfied an unrestricted condition of release; or
  - (b) the commuted amount is transferred to another scheme or superannuation fund the rules of which prevent the cashing, commutation or transfer of the amount unless —
    - (i) the Member has satisfied an unrestricted condition of release; or
    - (ii) the amount is transferred to another superannuation fund the rules of which include provisions having the same effect as this subregulation.
- (4) In this regulation —

***SIS annuity or pension*** means a benefit that is taken to be an annuity or pension for the purposes of the SIS Act;

***SIS minimum amount*** means the amount prescribed under the SIS Act as the minimum amount that a superannuation fund's rules must require to have been paid before a market linked pension can be commuted in order for the pension to be taken to be a pension for the purposes of the SIS Act.

*[Regulation 196S inserted in Gazette 10 Dec 2004 p. 5904-5; amended in Gazette 26 May 2006 p. 1923-4 and 1930; 21 Jul 2006 p. 2652.]*

**196T. Death benefit options**

- (1) A Term Allocated Pension Member is to select —
- (a) whether the benefit to be paid on the Member's death (if he or she dies while still a Term Allocated Pension Member) is to be —
    - (i) a lump sum benefit under regulation 196U; or
    - (ii) a reversionary pension under regulation 196V;
  - and
  - (b) if the Member selects a reversionary pension, the person to whom that pension is to be paid,

and give notice of those selections to the Board before the Member's first pension day.

- (2) The person selected under subregulation (1)(b) must be a partner or dependant of the Member.
- (3) If a Term Allocated Pension Member has not given notice of the Member's selection to the Board before the Member's first pension day, or the Member's selection under subregulation (1)(b) does not comply with subregulation (2), the Member is taken to have selected a lump sum death benefit.

*[Regulation 196T inserted in Gazette 10 Dec 2004 p. 5905-6.]*

**196U. Lump sum death benefit**

If a Term Allocated Pension Member who selected a lump sum death benefit dies while there is still an amount in the Member's term allocated pension account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the Member's estate.

*[Regulation 196U inserted in Gazette 10 Dec 2004 p. 5906.]*

**196V. Reversionary pension**

- (1) On and after the death of a Term Allocated Pension Member who selected a reversionary pension (the *primary Member*) —
  - (a) the term allocated pension that would have been payable to the primary Member had he or she not died is to be paid to the reversionary pensioner; and
  - (b) these regulations apply as if the reversionary pensioner were the primary Member.
- (2) If a reversionary pensioner dies while there is still an amount in his or her term allocated pension account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the reversionary pensioner's estate.

*[Regulation 196V inserted in Gazette 10 Dec 2004 p. 5906.]*

*[197 to 199. Reserved.]*

## **Part 5 — GESB Super (Retirement Access) Scheme**

*[Heading inserted in Gazette 28 Jun 2002 p. 3014; amended in Gazette 11 Apr 2008 p. 1379.]*

### **Division 1 — Establishment and preliminary**

*[Heading inserted in Gazette 28 Jun 2002 p. 3014.]*

#### **200. Establishment of Retirement Access Scheme**

The Retirement Access Scheme is established as a superannuation scheme under section 28 of the Act.

*[Regulation 200 inserted in Gazette 28 Jun 2002 p. 3014.]*

#### **200A. Scheme renamed as GESB Super (Retirement Access) Scheme**

When this regulation comes into operation the superannuation scheme established by regulation 200 is renamed as the GESB Super (Retirement Access) Scheme.

*[Regulation 200A inserted in Gazette 11 Apr 2008 p. 1377.]*

#### **201. Term used: retirement access account**

In this Part —

***retirement access account*** means an account kept under regulation 207.

*[Regulation 201 inserted in Gazette 28 Jun 2002 p. 3014; amended in Gazette 13 Apr 2007 p. 1596.]*

### **Division 2 — Membership**

*[Heading inserted in Gazette 28 Jun 2002 p. 3014.]*

**202.    GESB Super (Retirement Access) Scheme closed to new members**

No person can become a GESB Super (Retirement Access) Member on or after the day on which this regulation comes into operation.

*[Regulation 202 inserted in Gazette 1 Apr 2008 p. 1286; amended in Gazette 11 Apr 2008 p. 1379 and 1380.]*

**203.    Cessation of membership**

A person ceases to be a GESB Super (Retirement Access) Member when the balance in the Member's retirement access account is reduced to zero.

*[Regulation 203 inserted in Gazette 28 Jun 2002 p. 3015; amended in Gazette 11 Apr 2008 p. 1380.]*

### **Division 3 — Contributions**

*[Heading inserted in Gazette 28 Jun 2002 p. 3015.]*

*[204.    Deleted in Gazette 11 Apr 2008 p. 1377.]*

**205.    Voluntary contribution**

- (1) A GESB Super (Retirement Access) Member may contribute to the Fund the amounts, at the times, and in the manner, agreed between the Member and the Board.
- (2) The Board must not accept a contribution for a person who is over 65 years of age if a regulated superannuation fund would be prevented by regulation 7.04 of the SIS Regulations from accepting the contribution.

*[Regulation 205 inserted in Gazette 28 Jun 2002 p. 3015; amended in Gazette 11 Apr 2008 p. 1377 and 1380.]*

**206. Member may transfer benefits or other ETPs**

A GESB Super (Retirement Access) Member may transfer to the GESB Super (Retirement Access) Scheme —

- (a) a benefit that is immediately payable to the Member from another scheme or from another superannuation fund; or
- (b) any other eligible termination payment that is immediately payable to the Member,

by paying, or arranging the payment of, the amount of that benefit or payment to the Fund.

*[Regulation 206 inserted in Gazette 28 Jun 2002 p. 3015; amended in Gazette 11 Apr 2008 p. 1379 and 1380.]*

**206A. Other payments or contributions for a Member**

The Board may accept, in respect of a GESB Super (Retirement Access) Member —

- (a) Commonwealth payments; and
- (b) any contribution payable for the Member under Part 3 or 3A but not paid; and
- (c) a contributions-split transfer to the GESB Super (Retirement Access) Scheme for the Member from another scheme or other superannuation fund.

*[Regulation 206A inserted in Gazette 1 Dec 2004 p. 5716; amended in Gazette 13 Apr 2007 p. 1594; 11 Apr 2008 p. 1379 and 1380.]*

**206B. Transfers must be directly to GESB Super (Retirement Access) Scheme**

A transfer under this Division must be made to the GESB Super (Retirement Access) Scheme directly from the other scheme or superannuation fund or the payer of the eligible termination payment.

*[Regulation 206B inserted in Gazette 1 Dec 2004 p. 5717; amended in Gazette 11 Apr 2008 p. 1379.]*

**207A.   Restriction on contributions and transfers**

Despite anything else in this Part the Board must not accept a contribution or transfer for a person if the trustee of a regulated superannuation fund would be prevented by the SIS Regulations from accepting such a contribution or transfer.

*[Regulation 207A inserted in Gazette 8 Jul 2008 p. 3238.]*

**Division 4 — Retirement access accounts**

*[Heading inserted in Gazette 28 Jun 2002 p. 3015.]*

**207.    Retirement access accounts**

- (1) The Board is to establish and maintain in the Fund a retirement access account for each GESB Super (Retirement Access) Member.
- (2) The Board may divide a retirement access account into 2 or more sub-accounts.

*[Regulation 207 inserted in Gazette 28 Jun 2002 p. 3015;  
amended in Gazette 11 Apr 2008 p. 1380.]*

**208.    Amounts to be credited to retirement access accounts**

- (1) The Board is to credit to a GESB Super (Retirement Access) Member's retirement access account —
  - [(a)   deleted]*
  - (b) any contributions made by the Member under regulation 205; and
  - (c) any benefits or other eligible termination payments transferred to the GESB Super (Retirement Access) Scheme under regulation 206; and
  - (ca) any amounts accepted in respect of the Member under regulation 206A; and
  - (d) earnings in accordance with regulation 210.

(2A) If —

- (a) a benefit becomes payable on the death on or after 1 January 2010 of a GESB Super (Retirement Access) Member; and
- (b) the Board would be entitled to a deduction under the *Income Tax Assessment Act 1997* (Commonwealth) section 295-485 if it were to increase the amount of the benefit,

then the Board may, if it considers it appropriate to do so, credit to the Member's retirement access account an amount determined by the Board, not exceeding the tax saving amount in respect of the benefit.

- (2) The Board may temporarily keep amounts transferred to the GESB Super (Retirement Access) Scheme for a GESB Super (Retirement Access) Member, together with amounts transferred for other GESB Super (Retirement Access) Members, in an account maintained for that purpose until those amounts are credited to the appropriate retirement access accounts.

*[Regulation 208 inserted in Gazette 28 Jun 2002 p. 3016; amended in Gazette 19 Mar 2003 p. 839; 1 Dec 2004 p. 5717; 13 Apr 2007 p. 1594; 11 Apr 2008 p. 1377, 1379 and 1380; 8 Jan 2010 p. 30.]*

**209. Amounts to be debited to retirement access accounts**

- (1) The Board is to debit to a GESB Super (Retirement Access) Member's retirement access account —
  - (a) any amounts paid as benefits to, or in respect of, the Member; and
  - (b) any amounts transferred to other schemes or to other superannuation funds in satisfaction of a Member's entitlement to a benefit from the GESB Super (Retirement Access) Scheme.

- (2) The Board may debit to a GESB Super (Retirement Access) Member's retirement access account —
- (a) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 216; and
  - (b) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member; and
  - (c) the amount of any fees payable by the Member for, or in relation to, any product or service provided to the Member in accordance with section 6(1)(e) of the Act.
- (3) The Board may only debit an amount to a retirement access account —
- (a) under subregulation (2)(a), if an actuary has advised that it is appropriate for that amount to be debited to that account; or
  - (b) under subregulation (2)(c), if the Member has given the Board written consent to the debiting of that amount to the account.
- (4) If the Board debits an amount to a retirement access account under subregulation (2)(c) in respect of a fee payable to a person other than the Board, the Board must pay the amount deducted to that other person.

*[Regulation 209 inserted in Gazette 19 Mar 2003 p. 839-40; amended in Gazette 13 Apr 2007 p. 1594-5 and 1663; 11 Apr 2008 p. 1379 and 1380.]*

## **210. Earnings**

- (1) The Board is to credit earnings to each Member's retirement access account at a rate equal to the Member's earning rate on the balance of the account —
- (a) at least once every year; and

- (b) when a benefit is to be paid, or an amount transferred, from the Member's retirement access account under Division 6.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.
- [Regulation 210 inserted in Gazette 28 Jun 2002 p. 3016-17; amended in Gazette 19 Mar 2003 p. 840.]*

**Division 5 — Member investment choice**

*[Heading inserted in Gazette 28 Jun 2002 p. 3017.]*

**211. Terms used**

In this Division —

***default plan*** means the readymade investment plan selected by the Board under regulation 213 as the default plan for GESB Super (Retirement Access) Members;

***personalised investment plan*** means an investment plan established under regulation 212(3);

***readymade investment plan*** means an investment plan established under regulation 212(1).

*[Regulation 211 inserted in Gazette 28 Jun 2002 p. 3017; amended in Gazette 11 Apr 2008 p. 1380.]*

**212. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for GESB Super (Retirement Access) Members with asset allocations determined by the Board.
- (2) The Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (2A) The Board must ensure that for each readymade investment plan established under regulation 106(1) there is a corresponding

readymade investment plan established under this regulation with the same asset allocation.

- (3) The Board may establish an investment plan under which a GESB Super (Retirement Access) Member who selects that plan may select the Member's own asset allocation subject to any conditions determined by the Board.
- (4) The Board must notify all GESB Super (Retirement Access) Members of —
  - (a) the establishment of a new investment plan for GESB Super (Retirement Access) Members including, in the case of a readymade investment plan, the asset allocation for that plan; and
  - (b) any material change in the asset allocation of a readymade investment plan; and
  - (c) any material change in the conditions applying to a personalised investment plan,

before, or as soon as practicable after, the establishment or change occurs.

*[Regulation 212 inserted in Gazette 28 Jun 2002 p. 3017; amended in Gazette 11 Apr 2008 p. 1377 and 1380.]*

**213. Default plan**

- (1) The Board is to select one of the readymade investment plans as the default plan for GESB Super (Retirement Access) Members.
- (2) The Board may change the plan selected as the default plan whenever the Board considers it appropriate to do so.
- (3) The Board must notify all GESB Super (Retirement Access) Members of any change made under subregulation (2) before, or as soon as practicable after, the change occurs.

*[Regulation 213 inserted in Gazette 28 Jun 2002 p. 3017; amended in Gazette 13 Apr 2007 p. 1595; 11 Apr 2008 p. 1380.]*

**214. Member to select investment plan**

- (1) A GESB Super (Retirement Access) Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (1a) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (2) A Member may change his or her selection under subregulation (1) or (1a) at any time by giving notice to the Board.
- (2a) As soon as practicable after receiving a notice under this regulation the Board must give effect to it by investing the Member's assets in accordance with regulation 215.
- (3) Until a GESB Super (Retirement Access) Member selects otherwise the Member is taken to have selected the plan that was the default plan at the time the person became a GESB Super (Retirement Access) Member.

*[Regulation 214 inserted in Gazette 28 Jun 2002 p. 3018; amended in Gazette 19 Mar 2003 p. 840-1; 13 Apr 2007 p. 1596; 11 Apr 2008 p. 1380.]*

**214A. Member who is also a GESB Super Member**

- (1) This regulation applies —
  - (a) in relation to each GESB Super (Retirement Access) Member who is also a GESB Super Member; and
  - (b) despite anything in regulation 214.
- (2) If the Member's selection under regulation 108 is a readymade investment plan (as defined in regulation 105), then the Member is taken to have selected under regulation 214(1) the readymade investment plan (as defined in regulation 211) with the same asset allocation as that of the plan selected under regulation 108.

- (3) If the Member's selection under regulation 108 is a personalised investment plan (as defined in regulation 105), then the Member is taken to have selected —
- (a) under regulation 214(1), a personalised investment plan (as defined in regulation 211); and
  - (b) under regulation 214(1a), the same asset allocation as the Member has selected under regulation 108(2).

*[Regulation 214A inserted in Gazette 11 Apr 2008 p. 1378.]*

**215. Board to invest assets to reflect Member's choice**

- (1) For each GESB Super (Retirement Access) Member who selects a readymade investment plan the Board must, as far as is practicable —
- (a) invest the Member's assets in accordance with the asset allocation determined under regulation 212 for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a GESB Super (Retirement Access) Member who selects a personalised investment plan the Board must invest —
- (a) the Member's assets as at the time the Board gives effect to the selection (***selection day***); and
  - (b) contributions made, and any benefits or other eligible termination payments transferred to the Fund, by or in respect of the Member after the selection day,

in accordance with the asset allocation selected by the Member but, unless the Board and the Member agree otherwise, the Board is not required to ensure that the investment of the Member's assets remains in accordance with that asset allocation.

- (3) In this regulation —

**Member's assets** means the assets of the Fund that represent the retirement access account of a GESB Super (Retirement Access) Member.

*[Regulation 215 inserted in Gazette 28 Jun 2002 p. 3018;  
amended in Gazette 13 Apr 2007 p. 1596; 11 Apr 2008  
p. 1380.]*

## **216. Determination of earning rates**

- (1) At the end of each financial year and at any other time when the Board considers it desirable to do so, an earning rate is to be determined for —
- (a) each readymade investment plan; and
  - (b) each GESB Super (Retirement Access) Member who has selected a personalised investment plan.
- (2) The earning rates are to be determined —
- (a) by the Board; or
  - (b) on behalf of the Board in accordance with procedures or formulae determined by the Board.
- (3) In determining an earning rate, or the procedures or formulae to be used to determine an earning rate, the Board must have regard to —
- (a) the nett rate of return achieved by the investment of the assets of the Fund that represent the retirement access accounts of the Members to whom the earning rate will apply; and
  - (aa) administrative costs; and
  - (b) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

*[Regulation 216 inserted in Gazette 28 Jun 2002 p. 3018-19;  
amended in Gazette 19 Mar 2003 p. 841; 11 Apr 2008 p. 1380.]*

**Division 6 — Access to benefits**

*[Heading inserted in Gazette 28 Jun 2002 p. 3019.]*

**217. Member may request payment or transfer**

- (1) A GESB Super (Retirement Access) Member may request the Board to —

- (a) pay to the Member; or
- (b) transfer to another scheme or to another superannuation fund,

a benefit of an amount equal to all or part of the balance of the Members retirement access account.

- (1A) A request under subregulation (1)(a) may be made —

- (a) in relation to so much of the Member's account balance as constitutes an unrestricted non-preserved benefit, at any time; or
- (b) in relation to so much of the Member's account balance as constitutes a restricted non-preserved benefit, at any time after the Member has ceased to be a worker; or
- (c) in relation to an eligible termination payment transferred to the GESB Super (Retirement Access) Scheme from a source other than a superannuation fund, at any time.

- (1B) A request under subregulation (1)(b) may be made at any time.

- (2) The amount requested must not be —

- (a) less than \$1 000; or
- (b) an amount the payment or transfer of which will reduce the balance in the Member's retirement access account to less than \$1 000,

unless the amount requested is the whole of the balance in the account or the Board otherwise agrees.

- (3) On receipt of a request under subregulation (1) the Board is to pay or transfer the benefit as requested.

*[Regulation 217 inserted in Gazette 28 Jun 2002 p. 3019;  
amended in Gazette 11 Apr 2008 p. 1378 and 1380.]*

*[218. Deleted in Gazette 13 Apr 2007 p. 1596.]*

**219. Death of a GESB Super (Retirement Access) Member**

- (1) If a GESB Super (Retirement Access) Member dies while there is still an amount in the Member's retirement access account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the Member's estate.
- (2) An amount paid under subregulation (1) to the executor or administrator of a Member's estate —
- (a) forms part of the Member's estate; but
  - (b) is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3) If the Board —
- (a) has been unable, after making reasonable enquires, to find an administrator or executor of the Member's estate; or
  - (b) considers it desirable to do so in order to relieve or avoid hardship,
- the Board may pay up to \$25 000 of the benefit —
- (c) to one or more of the Member's dependants in proportions determined by the Board; or
  - (d) if, after making reasonable enquiries, the Board has been unable to find any dependant of the Member, to one or more other individuals in proportions determined by the Board.

- (4) In this regulation —

***dependant*** has the same meaning as it has in section 10 of the SIS Act.

*[Regulation 219 inserted in Gazette 28 Jun 2002 p. 3020;  
amended in Gazette 13 Jun 2003 p. 2113; 1 Dec 2004 p. 5706;  
11 Apr 2008 p. 1379 and 1380.]*

**219AA. Transfer to eligible rollover fund**

The Board may transfer the balance of a Member's retirement access account to an eligible rollover fund if that fund is permitted by the SIS Act to accept the benefit, whether or not the Member has requested the transfer.

*[Regulation 219AA inserted in Gazette 11 Apr 2008 p. 1379.]*

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

*[Heading inserted in Gazette 18 Jan 2008 p. 150.]*

### **219A. Terms used**

- (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 unsplittable 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) ***unsplittable interest***.

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(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.

*[Regulation 219A inserted in Gazette 18 Jan 2008 p. 150-1.]*

**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.

*[Regulation 219B inserted in Gazette 18 Jan 2008 p. 151.]*

**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.

*[Regulation 219C inserted in Gazette 18 Jan 2008 p. 151-2.]*

**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.

*[Regulation 219D inserted in Gazette 18 Jan 2008 p. 152.]*

**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

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Member's superannuation interests in each scheme in which he or she is a member, unless the splitting instrument provides otherwise.

*[Regulation 219E inserted in Gazette 18 Jan 2008 p. 152.]*

**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 GESB Super (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).

*[Regulation 219F inserted in Gazette 18 Jan 2008 p. 153;  
amended in Gazette 11 Apr 2008 p. 1379.]*

**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.

*[Regulation 219G inserted in Gazette 18 Jan 2008 p. 153.]*

**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.

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- (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.

*[Regulation 219H inserted in Gazette 18 Jan 2008 p. 153-4.]*

## Part 6 — Information requirements

*[Heading inserted in Gazette 29 Jun 2001 p. 3092.]*

### 220. Terms used

In this Part —

**accumulation scheme** means the GESB Super Scheme, West State Super Scheme, GESB Super (Retirement Access) Scheme, Retirement Income Scheme or Term Allocated Pension Scheme;

**annual reporting day** means the day selected under regulation 222(1);

**contact details** of the Board means the Board's name and address and the name and telephone number of a person who is available to deal with inquiries directed to the Board;

**reporting period** means —

- (a) on and before a Member's first annual reporting day — the period on and from the day the person became a Member to and including that first annual reporting day; and
- (b) otherwise, the period from one annual reporting day to and including the next;

**Superannuation Complaints Tribunal** means the Superannuation Complaints Tribunal established by the *Superannuation (Resolution of Complaints) Act 1993* of the Commonwealth.

*[Regulation 220 inserted in Gazette 29 Jun 2001 p. 3092; amended in Gazette 13 Apr 2007 p. 1603 and 1663; 11 Apr 2008 p. 1379.]*

### 221. Information to new Members

- (1) As soon as practicable after a person becomes a Member the Board is to give the person all the information that the Board

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reasonably believes a person would reasonably need for the purpose of understanding —

- (a) the main features of the scheme of which the person has become a Member; and
  - (b) the management of the relevant scheme and financial condition of the Fund; and
  - (c) the investment performance of the Fund.
- (2) The information given under subregulation (1) is to include —
- (a) the Board's contact details; and
  - (b) a summary of the main features of the relevant scheme; and
  - (c) a summary of the benefits provided under the relevant scheme and the method by which they are calculated; and
  - (d) for a Member of an accumulation scheme —
    - (i) details of the investment options available to Members of the scheme; and
    - (ii) an outline of the fees and charges that are attributed to Members of the scheme;and
  - (e) a copy of the latest information given under regulation 224 to Members of the relevant scheme; and
  - (f) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and
    - (ii) the functions of the Superannuation Complaints Tribunal.

*[Regulation 221 inserted in Gazette 29 Jun 2001 p. 3093-4;  
amended in Gazette 13 Apr 2007 p. 1603-4.]*

**222. Annual reporting day**

- (1) For each Member the Board is to select a day to be the Member's annual reporting day.
- (2) The Board may change a Member's annual reporting day but any such change must not result in a reporting period being more than 12 months.
- (3) The Board is to notify the Member of the day selected under subregulation (1) and any change in that selection.
- (4) Until the Board selects otherwise a Member's annual reporting day is 30 June.

*[Regulation 222 inserted in Gazette 29 Jun 2001 p. 3094.]*

**223. Annual Member specific information**

- (1) As soon as practicable after the last day of a Member's reporting period the Board is to give to the Member all the information that the Board reasonably believes a Member reasonably needs for the purpose of understanding the Member's benefit entitlements.
- (2) The information given under subregulation (1) is to include —
  - (a) the Board's contact details; and
  - (b) details of amounts received in respect of the Member during the reporting period including —
    - (i) contributions made by the Member; and
    - (ii) contributions made for the Member by an Employer or spouse; and
    - (iii) Commonwealth payments received in respect of the Member; and
    - (iv) benefits or other eligible termination payments transferred to the scheme for the Member; and
    - (v) splittable contributions transferred for the benefit of the Member;and

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- (c) an explanation of the circumstances in which the Member will or may become entitled to a benefit; and
- (d) details of the Member's benefit entitlements (including death and disablement benefits and any other insured benefits) —
  - (i) on last day of the reporting period; and
  - (ii) except in the case of death and disablement benefits, on the first day of the reporting period,and the methods by which the amounts of the benefits are calculated; and
- (e) for a Member of an accumulation scheme —
  - (i) the amounts of fees and charges deducted from the Member's accumulation account during the reporting period; and
  - (ii) the rate at which earnings were credited to the Member's accumulation account during the reporting period and the amount credited.

*[Regulation 223 inserted in Gazette 29 Jun 2001 p. 3094-5; amended in Gazette 28 Jun 2002 p. 3022; 13 Apr 2007 p. 1604-5; 8 Jul 2011 p. 2901.]*

**224. Annual Fund information**

- (1) As soon as practicable after the last day of a Member's reporting period the Board is to give to the Member all the information that the Board reasonably believes a Member would reasonably need for the purpose of understanding the management, financial condition and investment performance of the Fund.
- (2) The information given under subregulation (1) is to include —
  - (a) details about the Board including —
    - (i) the Board's contact details; and

- (ii) the names of the directors of the Board during the reporting period and details of how and by whom they were appointed or elected; and
  - (iii) a statement as to whether or not any indemnity insurance has been taken out by the Board;
- and
- (b) investment details including —
- (i) a description of the investment strategy of the Board; and
  - (ii) the names of investment managers appointed by the Board; and
  - (iii) a statement of the assets of the Fund as at the end of —
    - (I) the reporting period; and
    - (II) the immediately preceding reporting period,that includes all information that the Board reasonably believes a Member would reasonably need to understand the asset allocation of the Fund at those times; and
  - (iv) details of —
    - (I) each investment the value of which exceeds 5% of the total value of the assets of the Fund; and
    - (II) each combination of investments that the Board knows or ought reasonably to know are invested, directly or indirectly, in a single enterprise or a single group of associated enterprises, the combined value of which exceeds 5% of the total value of the assets of the Fund;
- and

- (c) details of the Fund's accounts being either —
    - (i) the audited Fund accounts and the auditor's report; or
    - (ii) both —
      - (I) abridged financial information about the Fund for the reporting period; and
      - (II) a statement as to when the audited Fund accounts and the auditor's report will be sent, or made available, to Members;and
  - (d) in relation to an accumulation scheme, a statement of —
    - (i) the earning rates determined for each of the readymade investment plans established for Members of the scheme, for the 5 years ending at the end of the reporting period; and
    - (ii) the fees and charges that are attributed to Members of the scheme;and
  - (e) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and
    - (ii) the functions of the Superannuation Complaints Tribunal;and
  - (f) a statement setting out the kind of information that is available on request.
- (3) In this regulation —
- abridged financial information*** in relation to a reporting period means information derived from the Fund's accounts or records that gives a reasonable summary of either —
- (a) both —

- (i) changes in the financial position of the Fund during the reporting period; and
  - (ii) the financial position of the Fund at the end of the reporting period;
- or
- (b) both —
  - (i) changes in the nett assets of the Fund during the reporting period; and
  - (ii) the nett assets of the Fund at the end of the reporting period.

*[Regulation 224 inserted in Gazette 29 Jun 2001 p. 3095-8;  
amended in Gazette 13 Apr 2007 p. 1605.]*

**224A. Information about significant events**

- (1) As soon as practicable after the occurrence of a significant event the Board is to give to each Member who the Board reasonably expects has been, will or may be affected by the event all the information about the event that the Board reasonably believes that the Member would reasonably expect to be provided with, including details of —
  - (a) the nature of the event; and
  - (b) the purpose (if any) of the event; and
  - (c) its effect on the Member's rights and entitlements.
- (2) In this regulation —  
***significant event*** means any event that the Board reasonably believes —
  - (a) will or may have, or has had, an adverse effect on —
    - (i) a Member's right to accrued benefits or the amount of those benefits; or
    - (ii) the benefits to which a Member may become entitled; or

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- (iii) the circumstances in which those benefits will or may become payable; or
- (iv) the manner in which those benefits would be calculated; or
- (v) the security of the Member's benefits;

or

- (b) Members would reasonably expect to be informed of.

*[Regulation 224A inserted in Gazette 29 Jun 2001 p. 3098-9;  
amended in Gazette 13 Apr 2007 p. 1605-6.]*

**224B. Information to exiting Member**

- (1) When a Member ceases to be a Member other than because the Member has died, the Board is to give to the Member all the information that the Board reasonably believes the Member would reasonably need for the purpose of understanding his or her entitlements.
- (2) The information given under subregulation (1) is to include —
  - (a) the Board's contact details; and
  - (b) details of the kind referred to in regulation 223(2)(b), (d) and (e) in respect of the period from the last annual reporting day on which the person was a Member to the day on which the person ceased to be a Member; and
  - (c) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and
    - (ii) the functions of the Superannuation Complaints Tribunal.
- (3) If a Member dies while still a Member, the Board is to give to each person to whom a death benefit is paid a statement setting out —
  - (a) a summary of —

- (i) the arrangements that the Board has to deal with inquiries or complaints; and
- (ii) the functions of the Superannuation Complaints Tribunal;

and

- (b) the kind of information that is available on request.

*[Regulation 224B inserted in Gazette 29 Jun 2001  
p. 3099-100.]*

**224C. Employers to provide information to Board**

- (1) The Board may give directions to Employers setting out the information Employers are to give to the Board about workers who are, or have applied to become, Members, and an Employer is to comply with those directions.
- (2) If, in breach of a direction given under subregulation (1), an Employer fails to give the Board information relating to —
  - (a) a Member's entitlement to a benefit; or
  - (b) the amount of a benefit to which a Member is entitled,

the Board may defer payment of the benefit until the information is provided.

*[Regulation 224C inserted in Gazette 29 Jun 2001 p. 3100-1;  
amended in Gazette 13 Apr 2007 p. 1606.]*

**224D. Information to be provided on request**

- (1) If requested to do so by a Member or a person to whom a death benefit is paid, the Board is to give to the person all the information that the person reasonably requires for the purposes of —
  - (a) understanding any benefit entitlements that the person may have, has or used to have; and
  - (b) understanding the main features of the relevant scheme; and

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- (c) making an informed judgment about the management and financial condition of the Fund; and
    - (d) making an informed judgment about the investment performance of the Fund; and
    - (e) understanding the particular investments of the Fund.
  - (2) If requested to do so by an Employer, the Board is to give to the Employer all the information that the Employer reasonably requires for the purposes of —
    - (a) understanding the main features of the relevant scheme; and
    - (b) understanding the kinds of benefits to which the Employer's workers are entitled or will or may become entitled; and
    - (c) making an informed judgment about the management and financial condition of the Fund; and
    - (d) making an informed judgment about the investment performance of the Fund.
  - (3) If requested to do so by a Member, a person to whom a death benefit is paid or an Employer, the Board is to give to the person a copy, or access to a copy, of —
    - (a) the Act, these regulations and any other regulation under the Act; or
    - (b) the most recent audited accounts of the Fund, together with (whether or not specifically requested) the auditor's report in relation to the accounts; or
    - (c) the most recent actuarial report on the Fund, and any subsequent written advice by an actuary to the Board, to the extent that those documents are relevant to —
      - (i) the overall financial condition of the Fund; and
      - (ii) the entitlements of the person or, in the case of an Employer, the Employer's workers;
- or

- (d) the latest information given under regulation 223 to Members of the relevant scheme.
- (4) The Board need not give a person information or a copy of a document under this regulation if it has previously given the person the information, or a copy of the document, under this regulation.

*[Regulation 224D inserted in Gazette 29 Jun 2001 p. 3101-3; amended in Gazette 13 Apr 2007 p. 1606-7; 6 Dec 2011 p. 5133.]*

**224E. Information to be provided on transfer to eligible rollover fund**

If the Board transfers a benefit to an eligible rollover fund the Board is to give to the trustee of that fund —

- (a) if the Member entitled to the benefit is a lost member (as defined under the SIS Act), a statement to that effect; and
- (b) if the Member has specifically asked the Board not to disclose information of a specified kind — a statement to that effect; and
- (c) all information in the possession of the Board that could reasonably help the trustee of the eligible rollover fund to locate or identify the Member, other than information of a kind referred to in paragraph (b).

*[Regulation 224E inserted in Gazette 29 Jun 2001 p. 3103; amended in Gazette 13 Apr 2007 p. 1607.]*

**224F. Confidential information**

Nothing in this Part requires or authorises the disclosure of —

- (a) internal working documents of the Board; or
- (b) information or documents that would disclose, or tend to disclose —

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- (i) personal information of another person if, in the circumstances, the disclosure would be unreasonable; or
- (ii) trade secrets or other information having a commercial value that would be reduced or destroyed by the disclosure;

or

- (c) information or documents in relation to which the Board owes to another person a duty of non-disclosure.

*[Regulation 224F inserted in Gazette 29 Jun 2001 p. 3103-4; amended in Gazette 13 Apr 2007 p. 1607.]*

**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.

*[Regulation 224G inserted in Gazette 18 Jan 2008 p. 154.]*

**225A. Mode of giving information**

- (1) The Board is to give the information required to be given under regulation 221 —
  - (a) to the extent that the Board considers that the information is key information about the scheme, in writing; and
  - (b) otherwise, either —

- (i) in writing; or
  - (ii) by making the information available to the Member on a website maintained by the Board, and notifying the Member in writing that the information is so available.
- (2) The Board is to give the information required to be given to a Member under regulations 223 and 224 —
  - (a) in writing; or
  - (b) with the agreement of the Member, by —
    - (i) making the information available to the Member on a website maintained by the Board; and
    - (ii) notifying the Member that the information is so available.
- (3) The Board is to give the information required to be given under regulations 224A, 224B, 224D and 224E in writing.
- (4) The Board is to ensure that the way it makes information available to a Member on a website under subregulation (1)(b)(ii) or (2)(b)(i) allows the Member to make and retain a record or copy of the information.
- (5) The Board is to ensure that information made available to a Member on a website under subregulation (2)(b)(i) continues to be available to the Member on the website for at least 2 years from the date on which the Member is notified of availability under subregulation (2)(b)(ii).

*[Regulation 225A inserted in Gazette 22 Jul 2011 p. 3028-9; amended in Gazette 6 Dec 2011 p. 5133-4.]*

## Part 7 — Board elections

### 225. Terms used

In this Part —

**close of nominations** means the end of the period within which nominations for candidates for an election must be lodged;

**Member** means —

- (a) a Member as defined in regulation 3; or
- (b) a Provident Scheme Member or Pension Scheme Member; or
- (c) a person who is in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
- (d) a person who is entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.

**organisation** means an organisation of employees registered pursuant to the *Workplace Relations Act 1996* of the Commonwealth or the *Industrial Relations Act 1979*;

**Registrar** means the Registrar appointed under the *Industrial Relations Act 1979*;

**returning officer** means the person appointed under regulation 228;

**UnionsWA** means the body known as Unions Western Australia (and formerly known as the Trades and Labor Council of Western Australia).

*[Regulation 225 amended in Gazette 28 Jun 2002 p. 3021; 19 Mar 2003 p. 834-5; 13 Apr 2007 p. 1609.]*

### 226. Conduct of elections

Elections for the purposes of section 8(1)(c) of the Act are to be conducted by UnionsWA in accordance with these regulations.

**227. Notification of need for an election**

The Board is to notify UnionsWA that an election is required —

- (a) at least 6 months before the expiry of the term of office of a current director elected under section 8(1)(c) of the Act; or
- (b) in the case of an election to fill a casual vacancy in the office of a director elected under section 8(1)(c) of the Act, as soon as practicable after the vacancy occurs.

**228. Appointment of returning officer**

On receipt of a notification under regulation 227 UnionsWA is to appoint a returning officer who is to be responsible for the conduct of the election.

**229. Returning officer to call for nominations**

- (1) On being appointed the returning officer is to cause to be published at least once in a newspaper circulating throughout the State a notice calling for nominations for candidates for the election.
- (2) The notice is to set out —
  - (a) the number of vacancies to be filled at the election; and
  - (b) the term of office; and
  - (c) the form in which nominations are to be made; and
  - (d) the place where nominations are to be lodged; and
  - (e) the period within which nominations are to be lodged, which is to be at least 14 days in duration; and
  - (f) the eligibility requirements for election.
- (3) The notice must be published not less than 14 days, and not more than 21 days, before the commencement of the period for lodging nominations.
- (4) The returning officer is to give a copy of the notice to the Registrar.

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**230. Nominations**

- (1) A nomination of a person as a candidate is to be —
  - (a) in writing, signed by the nominee; and
  - (b) signed by 5 Members (not including the nominee, if he or she is a Member); and
  - (c) given to the returning officer before the close of nominations.
- (2) If a nomination does not comply with subregulation (1) the returning officer is to reject it and notify the nominee.
- (3) A candidate may withdraw his or her nomination before the close of nominations by giving notice to the returning officer.

*[Regulation 230 amended in Gazette 28 Jun 2002 p. 3027.]*

**231. Determination of need for an election**

- (1) If, at the close of nominations, the number of candidates is equal to the number of vacancies to be filled at the election, the candidate is, or candidates are, elected unopposed.
- (2) If, at the close of nominations, the number of candidates is less than the number of offices to be filled at the election —
  - (a) the candidate is, or candidates are, elected; and
  - (b) the returning officer is to notify the Minister; and
  - (c) the unfilled vacancies are to be taken to be casual vacancies occurring on the day after the close of nominations.
- (3) If, at the close of nominations, the number of candidates is greater than the number of vacancies, an election is to be held.

**232. Entitlement of organisations to vote**

- (1) An organisation whose members includes people who are, or are eligible to become, Members may vote in an election.

- (2) On receipt of a notice under regulation 229(4) the Registrar is to determine, for each organisation entitled to vote in the election, the number of people who —
- (a) are, or are eligible to become, members of the organisation; and
  - (b) are, or are eligible to become, Members.
- (3) In making a determination under subregulation (2) the Registrar is to —
- (a) have regard to the public sector employment statistics of the State; and
  - (b) consult with —
    - (i) the department of the public service principally assisting the Minister to whom the administration of the *Industrial Relations Act 1979* is for the time being committed by the Governor in the administration of that Act; and
    - (ii) UnionsWA; and
    - (iii) the Board; and
    - (iv) the relevant organisation.
- (4) An organisation entitled to vote in an election may cast the number of votes equal to the number of people (as determined under subregulation (2)) who —
- (a) are, or are eligible to become, members of the organisation; and
  - (b) are, or are eligible to become, Members.

**233. Ballot papers**

- (1) When an election is to be held the returning officer is to —
- (a) draw lots to determine the order in which the candidates' names are to appear on the ballot paper; and
  - (b) cause ballot papers to be printed for each organisation entitled to vote in the election.

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- (2) Each ballot paper is to set out —
  - (a) whether the election is a regular triennial election or to fill a casual vacancy; and
  - (b) the name of the organisation entitled to exercise the vote; and
  - (c) the number of votes the organisation is entitled to cast, as determined under regulation 232; and
  - (d) the names of each of the candidates in the order determined under subregulation (1)(a); and
  - (e) instructions on how to mark the ballot paper; and
  - (f) where, when and how the ballot paper is to be returned to the returning officer.
- (3) The time specified under subregulation (2)(f) as the time by which ballot papers must be returned must not be more than 28 days after the close of nominations.
- (4) Within 14 days of the close of nominations the returning officer is to deliver to the secretary (or a similar officer) of each organisation eligible to vote in the election a ballot paper initialled by the returning officer.

**234. Replacement ballot paper**

If the returning officer is satisfied that the ballot paper for an organisation entitled to vote at the election has not been received or has been lost or spoiled, the returning officer may issue a replacement ballot paper to that organisation.

**235. Voting**

- (1) To exercise its right to vote in an election an organisation is to —
  - (a) fill in the ballot paper by numbering the candidates sequentially in order of preference starting with the number “1”; and

- (b) return the ballot paper to the returning officer in accordance with the instructions set out on the ballot paper.
- (2) An organisation is taken to have complied with subregulation (1)(a) if it has, in accordance with that subregulation, numbered all except one candidate, and in that case that candidate is taken to rank last in the organisation's order of preference.
- (3) On receipt of a ballot paper the returning officer is to place it in a ballot box arranged for the purpose.

**236. Scrutineers**

- (1) Each candidate may, by notice to the returning officer, appoint a scrutineer and a deputy scrutineer.
- (2) A scrutineer or deputy scrutineer must not be a candidate in the election.
- (3) A scrutineer (or in the absence of the scrutineer, the deputy scrutineer) for each candidate may be present when the ballot box is opened and during the counting of the votes so as to observe all proceedings at the count.

**237. Counting of votes**

- (1) After the close of voting the returning officer is to open the ballot box, and examine and count the ballot papers.
- (2) The returning officer is to reject any ballot paper that —
  - (a) does not bear the initials of the returning officer; or
  - (b) is not marked in accordance with these regulations.
- (3) The votes are to be counted in accordance with Schedules 1 and 2 of the *Electoral Act 1907* as in force at the commencement of these regulations.

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**238. Declaration and notification of results**

- (1) After counting the votes the returning officer is to declare the results of the election and notify all the candidates.
- (2) Within 7 days of declaring the results the returning officer is to notify the Minister —
  - (a) of the results; and
  - (b) that the election has been conducted in accordance with these regulations.
- (3) The Minister is to cause notice of the results to be published in the *Gazette*.

**239. Preservation of ballot papers**

UnionsWA is to keep all nomination and ballot papers in safe custody for at least 12 months after the election.

**240. Disputes**

- (1) A person may appeal to the Minister against —
  - (a) the manner in which the election was conducted; or
  - (b) the result of the election.
- (2) An appeal is to be in writing and must be received by the Minister within one month of the publication of the election results in the *Gazette*.
- (3) The Minister is to determine an appeal made under subregulation (1) and the Minister's decision is final and binding.

**241. Costs of an election**

The Board may pay out of the Fund the reasonable costs incurred by UnionsWA, the returning officer or the Registrar in conducting an election.

## **Part 8 — General**

### **Division 1 — Benefits**

#### **242. Incapacity of beneficiary**

- (1) If the Board considers that a person entitled to payment of a benefit is incapable of managing the person's affairs, the Board may —
  - (a) withhold payment of the benefit; or
  - (b) pay all or part of the benefit to a person authorised by or under a written law to administer the entitled person's affairs; or
  - (c) pay all or part of the benefit to be applied for the care, maintenance, benefit and support of the entitled person or any of the person's dependants.
- (2) For the purpose of determining whether a person is incapable the Board may obtain and have regard to such medical or other evidence as it considers appropriate.

#### **243. Interest if payment delayed**

If a benefit is not paid on the day on which it becomes payable, interest accrues on the benefit —

- (a) at a rate equal to —
    - (i) for any part of the benefit consisting of an amount equal to the balance of the Member's accumulation account, the Member's earning rate (which may be positive or negative); or
    - (ii) for any other part of the benefit, the CPI rate plus 2%;
- and
- (b) from the day on which the benefit became payable up to, but not including, the day on which it is paid; and

(c) in a manner determined by the Board.

*[Regulation 243 amended in Gazette 29 Jun 2001 p. 3104; 28 Jun 2002 p. 3021; 19 Mar 2003 p. 841; 26 May 2006 p. 1927; 13 Apr 2007 p. 1663.]*

**244. Benefit in special circumstances**

- (1) If the Treasurer considers there are special circumstances the Treasurer may direct the Board to pay a benefit that is not otherwise payable to —
- (a) a Member; or
  - (b) a former Member; or
  - (c) the personal representative of a Member or former Member; or
  - (d) a person who is not a Member but in respect of whom contributions have been made as if he or she was a Member; or
  - (e) a class of persons each of whom is a person referred to in paragraphs (a) to (d),

and the Board is to give effect to that direction.

- (2) The cost to the Fund (if any) of paying a benefit under this regulation is to be assessed by an actuary and paid to the Fund by the person specified by the Treasurer in the direction.
- (3) When giving a direction under subregulation (1) the Treasurer may make payment of the benefit subject to any conditions the Treasurer considers appropriate.

*[Regulation 244 amended in Gazette 28 Jun 2002 p. 3021; 19 Mar 2003 p. 835; 13 Jun 2003 p. 2114; 26 Aug 2003 p. 3756-7; 10 Dec 2004 p. 5906.]*

**245. Assignment or charge of benefit prohibited**

Subject to the Family Law Act 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.

*[Regulation 245 amended in Gazette 18 Jan 2008 p. 154.]*

**246. Benefit does not pass to other persons**

Subject to the Family Law Act where, but for this regulation, a benefit would pass by operation of law to a person other than the person who is entitled to it under these regulations, the benefit does not so pass.

*[Regulation 246 amended in Gazette 18 Jan 2008 p. 155.]*

**246A. Transfers to other superannuation funds**

The Board is not required to comply with a Member's request that a benefit be transferred to another superannuation fund if the trustee of that other fund (or if there is no such trustee, the person who manages that fund) does not agree to accept the transfer.

*[Regulation 246A inserted in Gazette 28 Jun 2002 p. 3027.]*

**246B. Exercise of investment powers after death or for incapacitated Member**

- (1) When a benefit (other than a reversionary pension) is payable because a Member has died the investment powers that would be exercisable by the Member if he or she were alive and entitled to the benefit may be exercised —
  - (a) if the benefit is payable to the executor or administrator of the estate of a Member —
    - (i) until probate of the will, or administration of the estate, of the Member is granted, by the Board;  
and
    - (ii) thereafter, by the executor or administrator;
  - or
  - (b) otherwise, by the Board.

- (2) If, under regulation 242, the Board does not pay a benefit to a person entitled to it, the investment powers exercisable by that person may be exercised —
  - (a) if there is a person authorised by or under a written law to administer the entitled person's affairs, by that authorised person; or
  - (b) otherwise, by the Board.
- (3) When exercising a power under this regulation the Board is to act in what it reasonably considers to be the best interests of the person who is or will become entitled to the benefit.
- (4) In this regulation —  
***investment powers*** means the powers exercisable by a Member under the regulations relating to investment choice for Members of the scheme of which the Member was a member.

*[Regulation 246B inserted in Gazette 10 Dec 2004 p. 5907.]*

### **Division 2 — Other matters**

#### **247. In-house assets — prescribed percentage**

The prescribed percentage for the purposes of section 20(3) of the Act is 5%.

#### **248. Recovery of money owing to the Fund by a Member**

- (1) The Board must not give a direction under section 26(2) of the Act for an Employer to deduct more than \$20 a fortnight from a Member's pay unless the Member agrees.
- (2) If a Member who owes money to the Fund notifies the Board that he or she cannot reasonably afford to repay the money at the rate of \$20 a fortnight, the Board is to negotiate with the Member with a view to arranging for the Member to repay the money at a lesser rate or in some other manner.

**248A. Payment to be made in accordance with deed**

The Crown is to make payments to the Board in accordance with the deed between the Treasurer and the Board entered into in June 2001 relating to the under-funding of the West State Super Scheme which occurred between 1 July 1992 and 30 June 1998.

*[Regulation 248A inserted in Gazette 29 Jun 2001 p. 3104.]*

**248B. Overpayment by Employer**

- (1) This regulation applies if an Employer makes a payment to the Fund that the Employer is not required by these regulations to make (an *overpayment*).
- (2) The Employer must notify the Board of the overpayment as soon as possible after the Employer becomes aware of it, unless the Board has already notified the Employer under subregulation (3).
- (3) If the Board becomes aware of the overpayment before being notified by the Employer, the Board is to notify the Employer.
- (4) If, when the Board becomes aware of the overpayment, the overpaid amount has not been credited to an accumulation account, the Board may —
  - (a) retain the overpaid amount and offset it against amounts that become payable to the Fund by the Employer in the future; or
  - (b) refund the overpaid amount to the Employer.
- (5) If, when the Board becomes aware of the overpayment the overpaid amount —
  - (a) has been credited to an accumulation account; but
  - (b) has not been paid as a benefit or transferred out of that account,the Board may —
  - (c) retain the overpaid amount in that accumulation account and offset it against contributions that become payable

by the Employer in the future and are to be credited to that account; or

- (d) deduct the overpaid amount from that accumulation account and deal with it in accordance with subregulation (4).
- (6) If, when the Board becomes aware of the overpayment, the overpaid amount has been paid or transferred as part of a benefit, the overpaid amount is not repayable from the Fund to the Employer unless the making of the overpayment was due to the fault of the Board.

*[Regulation 248B inserted in Gazette 13 Apr 2007 p. 1663-5.]*

**249. Power to restore lost rights**

- (1) If a person has ceased to be entitled to a right, privilege or benefit to which the person was, or might have been, entitled under the Act and the Board is satisfied that —
  - (a) the cessation was not due to the person's own fault; and
  - (b) it is just and equitable to do so,

the Board may —

- (c) permit the person to exercise the right; or
- (d) grant the person the privilege; or
- (e) pay the benefit to the person,

even if any relevant time period prescribed by or under the Act has expired.

- (2) For the purposes of subregulation (1) the Board may make any enquiries it considers appropriate.
- (3) When exercising a power under subregulation (1) the Board may impose any conditions it considers appropriate.

*[Regulation 249 amended in Gazette 28 Jun 2002 p. 3028.]*

**250. Referral of decision for independent review**

Subject to the *Superannuation (Resolution of Complaints) Act 1993* of the Commonwealth a person aggrieved by a decision of the Board on a review under section 13(1) of the Act may refer the decision to the Superannuation Complaints Tribunal established by that Act by making a complaint in accordance with that Act.

**251. Documents and information**

- (1) An application, approval, certificate, determination, direction, notice, notification, report, request, return or statement made or given for the purposes of the Act must be made or given in writing.
- (2) If a person is required by these regulations to provide information or evidence to the Board, the Board may require the person to provide that information or evidence in writing and the person is to comply with that requirement.
- (3) A document to be used for the purposes of the Act must be —
  - (a) in the form (if any) determined by the Board; and
  - (b) signed by the person making or giving it; and
  - (c) if it is to be given to the Board, delivered to the offices of the Board.
- (4) The Board may accept a document given to it —
  - (a) other than in accordance with subregulation (3); or
  - (b) after the expiry of the time fixed under the Act for giving the document.
- (5) In this regulation —  
**document** means anything in writing.

*[Regulation 251 amended in Gazette 28 Jun 2002 p. 3028;  
22 Jul 2011 p. 3029.]*

**252. Special provisions for certain Gold State Super Members and West State Super Members**

Schedule 2 has effect.

**253. Discontinuance of old rules**

The continued application of —

- (a) the provisions of Parts I (including Schedule 1), VIIA, VIIB and VIII (including Schedule 4) of the GES Act to and in relation to the West State Super Scheme; and
- (b) Parts I (including Schedule 1), IV, V, VI, VII, VIIB and VIII (including Schedule 4) of the GES Act to and in relation to the Gold State Super Scheme,

under section 26(1) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* is discontinued.

**254. Transitional provisions**

Schedule 3 has effect.

*[Part 9<sup>2</sup> omitted under the Reprints Act 1984 s. 7(4)(e).]*

## Schedule 1 — Employers

[r. 7]

### Division 1 — State funded employers

1. **Departments** established or continued, or deemed to have been established, under the *Public Sector Management Act 1994*, other than department or parts of departments listed in Division 2
2. **The Government of Western Australia** in relation to a worker in respect of whom the obligations of the Government are being discharged under regulation 9(1)(a) by a Minister
3. **The Government of Western Australia** in relation to a worker in respect of whom the obligations of the Government are being discharged by a person, or by the employing authority of a department or organisation, specified in an order under regulation 9(1)(b) if the order specifies that in relation to that worker the Government is a Division 1 Employer
- 3a. **The Government of Western Australia** in relation to a worker who is a parliamentarian
4. **Agent General** appointed under the *Agent General Act 1895*
5. **Agricultural Produce Commission** established by the *Agricultural Produce Commission Act 1988*
- [6, 7. *deleted*]
8. **Colleges** established or continued under the *Vocational Education and Training Act 1996*
- 8a. **Commission for Occupational Safety and Health** (WorkSafe W A) established by the *Occupational Safety and Health Act 1984*
- [9. *deleted*]
10. **Commissioner for Equal Opportunity** appointed under the *Equal Opportunity Act 1984*
11. **Commissioner of Police** appointed under the *Police Act 1892*
12. **Coordinator of Energy** appointed under the *Energy Coordination Act 1994*
13. **Coordinator of Water Services** appointed under the *Water Services Licensing Act 1995*<sup>3</sup>

- 13A. **Corruption and Crime Commission** established under the *Corruption and Crime Commission Act 2003*
- 14. **Director of Public Prosecutions** under the *Director of Public Prosecutions Act 1991*
- 15. **Governor** under the *Governor's Establishment Act 1992*
- 16. **Hospital Boards** constituted under section 15 of the *Hospitals and Health Services Act 1927* and the **Minister** to whom the administration of that Act has for the time being been committed by the Governor in relation to any public hospital under the control of that Minister under section 7 of that Act
- 17. **Information Commissioner** under the *Freedom of Information Act 1992*
- 18. **Inspector of Custodial Services** under the *Inspector of Custodial Services Act 2003*
- [19. *deleted*]
- 20. **Parliamentary Commissioner for Administrative Investigations** appointed under the *Parliamentary Commissioner Act 1971*
- 21. **Perth Theatre Trust** established by the *Perth Theatre Trust Act 1979*
- 22. **President of the Legislative Council, Speaker of the Legislative Assembly, President of the Legislative Council and Speaker of the Legislative Assembly acting jointly** under the *Parliamentary and Electorate Staff (Employment) Act 1992*
- 23. **Rural Business Development Corporation** continued under the *Rural Business Development Corporation Act 2000*
- 24. **State Supply Commission** established under the *State Supply Commission Act 1991*
- 25. **The Agriculture Protection Board of Western Australia** constituted under the *Agriculture Protection Board Act 1950*
- 26. **The Board of the Art Gallery of Western Australia** continued by the *Art Gallery Act 1959*
- 27. **The Library Board of Western Australia** constituted under the *Library Board of Western Australia Act 1951*

- 28.        **The Western Australian Industrial Relations Commission**  
            continued by the *Industrial Relations Act 1979*
- 29.        **The Western Australian Museum** constituted by the *Museum Act 1969*
- 30.        **Western Australian Land Information Authority** established by the  
            the *Land Information Authority Act 2006*
- 31.        **Western Australian Planning Commission** established by the  
            *Planning and Development Act 2005*  
  
            *[Division 1 amended in Gazette 29 Jun 2001 p. 3105; 26 Aug 2003 p. 3757; 1 Dec 2004 p. 5703 and 5717; 26 May 2006 p. 1931; 13 Apr 2007 p. 1609-10; amended by Act No. 75 of 2003 s. 56(1); No. 10 of 2007 s. 43; 11 Feb 2011 p. 506.]*

**Division 2 — Self funding employers**

- 1.        **The Government of Western Australia** in relation to a worker in respect of whom the obligations of the Government are being discharged by a person, or by the employing authority of a department or organisation, specified in an order under regulation 9(1)(b) unless the order specifies that in relation to that worker the Government is a Division 1 Employer
- 2.        **Animal Resources Authority** established by the *Animal Resources Authority Act 1981*
- [3.        *deleted*]
- 4.        **Botanic Gardens and Parks Authority** established under the  
            *Botanic Gardens and Parks Authority Act 1998*
- 5.        **Builders' Registration Board of Western Australia** continued under the *Builders' Registration Act 1939*
- 6.        **Building and Construction Industry Training Board** established under the *Building and Construction Industry Training Fund and Levy Collection Act 1990*
- 6a.       **Chemistry Centre (WA)** established by the *Chemistry Centre (WA) Act 2007*
- 7.        **Commissioner of Main Roads** appointed under the *Main Roads Act 1930*

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**Schedule 1** Employers

**Division 2** Self funding employers

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[8. *deleted*]

9. **Construction Industry Long Service Leave Payments Board**  
established under *Construction Industry Portable Paid Long  
Service Leave Act 1985*

10. **Country High School Hostels Authority** established under the  
*Country High School Hostels Authority Act 1960*

11. **Country Housing Authority** established under the *Country Housing  
Act 1998*

12. **Curriculum Council** established under the *Curriculum Council  
Act 1997*

[13, 14. *deleted*]

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

16. **East Perth Redevelopment Authority** established under the *East  
Perth Redevelopment Act 1991*<sup>13</sup>

[17. *deleted*]

17A. **Electricity Generation Corporation** established by the *Electricity  
Corporations Act 2005*

17B. **Electricity Networks Corporation** established by the *Electricity  
Corporations Act 2005*

17C. **Electricity Retail Corporation** established by the *Electricity  
Corporations Act 2005*

18. **Family Court of Western Australia** continued by the *Family Court  
Act 1997*

19. **Fire and Emergency Services Authority of Western Australia**  
established under the *Fire and Emergency Services Authority of  
Western Australia Act 1998*

20. **Forest Products Commission** established by the *Forest Products  
Act 2000*

21. **Fremantle Cemetery Board** established by the Governor under the  
*Cemeteries Act 1986*

22. **Gaming and Wagering Commission of Western Australia**  
established under the *Gaming and Wagering Commission Act 1987*

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- [23.      *deleted*]
  - 24.      **Government Employees Superannuation Board** under the Act
  - 25.      **Heritage Council of Western Australia** established under the  
            *Heritage of Western Australia Act 1990*
  - 26.      **Hospitals and Health Services Act 1927** — all **agencies** established  
            under section 7B(1) of that Act
  - 26A.     **Housing Authority** continued under the *Housing Act 1980*
  - 27.      **Insurance Commission of Western Australia** continued under the  
            *Insurance Commission of Western Australia Act 1986*
  - 28.      **Keep Australia Beautiful Council (W.A.)** established under the  
            *Litter Act 1979*
  - 29.      **Legal Aid Commission of Western Australia** established under the  
            *Legal Aid Commission Act 1976*
  - 30.      **Lotteries Commission** preserved and continued under the *Lotteries*  
            *Commission Act 1990*
  - [31.      *deleted*]
  - 32.      **Metropolitan Cemeteries Board** established under the *Cemeteries*  
            *Act 1986*
  - 33.      **Midland Redevelopment Authority** established under the *Midland*  
            *Redevelopment Act 1999*<sup>13</sup>
  - 34.      **Minerals and Energy Research Institute of Western Australia**  
            established under the *Minerals and Energy Research Act 1987*
  - 35.      **Nurses Board of Western Australia** established under the *Nurses*  
            *Act 1992*<sup>4</sup>
  - 36.      **Office of Health Review** established under the *Health Services*  
            *(Conciliation and Review) Act 1995*
  - [37.      *deleted*]
  - 38.      **Perth Market Authority** preserved and continued under the *Perth*  
            *Market Act 1926*
  - 39.      **Port authorities** established under the *Port Authorities Act 1999*
  - 40.      **Potato Marketing Corporation of Western Australia** preserved and  
            continued under the *Marketing of Potatoes Act 1946*

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- 40a. **Public Transport Authority of Western Australia** established under the *Public Transport Authority Act 2003*
- 41. **Public Trust Office** established by the *Public Trustee Act 1941*
- 42. **Racing and Wagering Western Australia** established by the *Racing and Wagering Western Australia Act 2003*
- 43. **Regional development commissions** established under the *Regional Development Commissions Act 1993*
- 43A. **Regional Power Corporation** established by the *Electricity Corporations Act 2005*
- 44. **Rottneest Island Authority** established under the *Rottneest Island Authority Act 1987*
- 45. **Small Business Development Corporation** established under the *Small Business Development Corporation Act 1983*
- 46. **Subiaco Redevelopment Authority** established under the *Subiaco Redevelopment Act 1994*<sup>13</sup>
- 47. **The Aboriginal Affairs Planning Authority** continued by the *Aboriginal Affairs Planning Authority Act 1972*
- 48. **The Burswood Park Board** established under the *Parks and Reserves Act 1895*
- 49. **The National Trust of Australia (W.A.)** established and incorporated under the *National Trust of Australia (W.A.) Act 1964*
- [50-52. *deleted*]
- 53. **Water and Rivers Commission** established under the *Water and Rivers Commission Act 1995*<sup>5</sup>
- 54. **Water Corporation** established under the *Water Corporation Act 1995*
- 55. **Waterways Conservation Act 1976** — all management authorities constituted under section 10 and 14<sup>6</sup> of that Act
- 56. **Western Australian Alcohol and Drug Authority** established under the *Alcohol and Drug Authority Act 1974*
- 57. **Western Australian Coastal Shipping Commission** established under the *Western Australian Coastal Shipping Commission Act 1965*

- [58.        *deleted*]
59.        **Western Australian Greyhound Racing Association** established under the *Western Australian Greyhound Racing Association Act 1981*
60.        **Western Australian Health Promotion Foundation** established under the *Tobacco Products Control Act 2006*
61.        **Western Australian Land Authority (Landcorp)** established under the *Western Australian Land Authority Act 1992*
62.        **Western Australian Meat Industry Authority** established under the *Western Australian Meat Industry Authority Act 1976*
63.        **Western Australian Mint** preserved and continued in existence under the *Gold Corporation Act 1987*
64.        **Western Australian Sports Centre Trust** established under the *Western Australian Sports Centre Trust Act 1986*
65.        **Western Australian Tourism Commission** established under the *Western Australian Tourism Commission Act 1983*
66.        **Western Australian Treasury Corporation** established under the *Western Australian Treasury Corporation Act 1986*
- [67.        *deleted*]
68.        **WorkCover Western Australia Authority (WorkCover Western Australia)** constituted under the *Workers' Compensation and Injury Management Act 1981*<sup>7</sup>
69.        **Zoological Parks Authority** established under the *Zoological Parks Authority Act 2001*
- [Division 2 amended in Gazette 15 Aug 2003 p. 3692; 26 Aug 2003 p. 3757; 30 Dec 2003 p. 5725-6; 25 Jun 2004 p. 2232 and 2234; 1 Dec 2004 p. 5717; 31 Mar 2006 p. 1354; 13 Apr 2007 p. 1610; amended by Act No. 43 of 2006 s. 7; No. 10 of 2007 s. 43; No. 28 of 2008 s. 16.]*

## **Schedule 2 — Special provisions for certain Gold State Super Members and West State Super Members**

[r. 252]

### **Part 1 — Gold State Super Members who transferred from the Pension Scheme or Provident Scheme**

#### **1. Terms used**

(1) In this Part —

**1987 part-time transferee** means a person who became a member of the 1987 scheme under the GES Act under clause 14 of Schedule 4 to that Act;

**adjusted final remuneration** means a Part 1 Member's final remuneration calculated as if the Member's contributory membership period included the Member's transferred service;

**compulsory transferee** means a person who became a member of the 1987 scheme under the GES Act under clause 6 of Schedule 4 to that Act;

**Part 1 Member** means —

- (a) a voluntary transferee; or
- (b) a compulsory transferee; or
- (c) a 1987 part-time transferee; or
- (d) a post-1987 part-time transferee; or
- (e) a retrenched transferee;

**post-1987 part-time transferee** means a person who —

- (a) became a member of the 1987 scheme under the GES Act under clause 14A of Schedule 4 to that Act; or
- (b) becomes a Gold State Super Member under regulation 19(1)(b);

**retrenched transferee** means a person who —

- (a) became a member of the 1987 scheme under the GES Act by making an election under clause 7B of Schedule 4 to that Act; or

- (b) becomes a Gold State Super Member under regulation 19(1)(c);

***transfer day*** means —

- (a) for a voluntary transferee, the day on which the Member's election to transfer under Schedule 4 to the GES Act was lodged with the Board; and
- (b) for a compulsory transferee, 1 July 1987; and
- (c) for a 1987 part-time transferee, the day on which the Member elected to become a member of the 1987 scheme under the GES Act; and
- (d) for a post-1987 part-time transferee, the day on which the Member ceased to be a contributor under the S&FB Act because he or she was no longer required to give his or her whole time to the duties of his or her employment; and
- (e) for a retrenched transferee, the day on which the Member is or was retrenched;

***transferred contributions*** means, subject to subclause (2) —

- (a) for a Part 1 Member who was, immediately before the Member's transfer day, a subscriber or contributor to the Provident Account (within the meaning of the S&FB Act) — the amount, including interest, that was standing to the credit of the Member in the Provident Account on that day; or
- (b) for a Part 1 Member who was, immediately before the Member's transfer day, contributing for units of pension under the S&FB Act —
  - (i) the amount of the contributions made by the Member under the S&FB Act excluding moneys held to the credit of the Member under section 38(2) or 41(3a) of the S&FB Act; plus
  - (ii) compound interest calculated at the rate of 10% from the time the contributions were made up to and including the Member's transfer day;

***transferred service*** means —

- (a) the period of service or employment of a Part 1 Member that constituted service for the purposes of the S&FB Act before the Member's transfer day; plus

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**cl. 2**

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- (b) for a 1987 part-time transferee — the number of complete months of full-time service that the Board considers equivalent to the number of days of part-time service actually completed by the Member before 1 July 1987;

**voluntary transferee** means a person who became a member of the 1987 scheme under the GES Act by making an election under clause 4, 5, 7 or 7A of Schedule 4 to that Act.

- (2) The transferred contributions for a 1987 part-time transferee are nil.

**2. Contributions by Crown for unfunded liability**

The Crown is to contribute to the Fund under regulation 31 for a Part 1 Member even if he or she is not a Member of the kind described in regulation 31(1)(a) or (b).

**3. Benefit on retirement, death or disablement**

- (1) If a benefit becomes payable to or in respect of a Part 1 Member under regulations 38 to 43 the benefit is increased by adding an amount calculated in accordance with subclause (2).
- (2) The amount calculated under this subclause is **B** in the formula —

$$B = \left( FR \times \frac{TS}{12} \times \frac{C}{5} \times \frac{12}{100} \right) + A$$

where —

**FR** is the Member's adjusted final remuneration;

**TS** is the number of complete months of the Member's transferred service;

**C** is —

- (i) for a retrenched transferee, 5%; or
- (ii) otherwise, the Member's average contribution rate;

**A** is the Member's transferred contributions plus compound interest calculated —

- (i) at the rate of the CPI rate plus 2%;
- (ii) from the Member's transfer day up to, but not including, the day on which the benefit becomes payable.

**4. Benefit on other termination of work**

- (1) If a Part 1 Member becomes entitled to a benefit under regulation 44 because the Member withdraws from the Gold State Super Scheme under regulation 24, the Member is also entitled to either —
- (a) both —
    - (i) a preserved benefit under subclause (3); and
    - (ii) a preserved benefit under subclause (4);or
  - (b) a benefit under subclause (4) that is not preserved.
- (2) If a Part 1 Member becomes entitled to a benefit under regulation 44 for any other reason the Member is also entitled to —
- (a) a preserved benefit under subclause (3); and
  - (b) either —
    - (i) a preserved benefit under subclause (4); or
    - (ii) a benefit under subclause (4) that is not preserved.
- (3) The benefit under this subclause is an amount equal to **B** in the formula —

$$B = FR \times \frac{TS}{12} \times \frac{C}{5} \times \frac{12}{100}$$

where —

**FR** is the Member's adjusted final remuneration;

**TS** is the number of complete months of the Member's transferred service;

**C** is —

- (i) for a retrenched transferee 5%; or
- (ii) for a Part 1 Member who withdrew from the Gold State Super Scheme under regulation 24 and elected in the Member's application under that regulation to take the Member's transferred contributions immediately — zero; or
- (iii) otherwise, the Member's average contribution rate.

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**cl. 5**

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- (4) The benefit under this subclause is an amount equal to the Member's transferred contributions plus compound interest calculated —
  - (a) at the rate of the CPI rate plus 2%;
  - (b) from the Member's transfer day up to, but not including, the day on which the member becomes entitled to it.
- (5) Despite the definition of *GSS withdrawal benefit* in regulation 12, a benefit described in subclause (1) or (2) as a preserved benefit is a GSS withdrawal benefit for the purposes of Part 2 of the regulations.
- (6) Despite regulation 46(a), the interest rate to be applied under regulation 46 to a benefit under subclause (4) is a rate equal to the CPI rate plus 2%.

*[Clause 4 amended in Gazette 13 Jun 2003 p. 2114; 13 Apr 2007 p. 1602.]*

**5. Transferred contributors for limited benefits — benefit under r. 43**

- (1) In this clause —  
*transferred contributor for limited benefits* means a Part 1 Member who was, immediately before the Member's transfer day, a contributor for limited benefits for the purposes of section 61 of the S&FB Act.
- (2) If a benefit becomes payable under regulation 43 to or in respect of a transferred contributor for limited benefits, the amount of the benefit is to be calculated as if G in the formula in that regulation was an amount equal to 4 times the Member's average contribution rate.

**6. Curtin and Edith Cowan Universities deemed to be Employers for Part 1 Members**

- (1) If a Part 1 Member was, immediately before the Member's transfer day, an employee of a University, then while the person remains a Gold State Super Member the University for which that Member works is deemed to be a Division 2 Employer with respect to that Member.

(2) In this clause —

**University** means the Curtin University of Technology established under the *Curtin University of Technology Act 1966* or the Edith Cowan University established under the *Edith Cowan University Act 1984*.

## Part 2 — Gold State Super Members who were formerly non-contributory members

### 7. Terms used

In this Part —

**non-contributory period** means the period during which a Part 2 Member was a non-contributory member under the previous law;

**Part 2 Member** means a Gold State Super Member who, under the previous law, was a non-contributory member before becoming a contributory member;

**previous law** means the GES Act as in force before the commencement of Part 2 of the *Superannuation Legislation Amendment Act 1993*.

### 8. Contributions by the Crown for unfunded benefits

The Crown is to contribute to the Fund under regulation 31 for a Part 2 Member who, at any time during the Member's non-contributory period was employed by an employer who was, at that time listed, or deemed by or under that Act to be listed, in Part A of Schedule 1 to the GES Act, even if he or she is not a Member of the kind described in regulation 31(1)(a) or (b).

### 9. Recognition of service as a non-contributory member

When calculating the benefit payable to or in respect of a Part 2 Member —

- (a) the Member's contributory membership period is to be taken to include the Member's non-contributory period; and

- (b) the Member's average contribution rate for the Member's non-contributory period is to be taken to be —
  - (i) for the part of the non-contributory period that was before 1 July 1992 — 0.825; and
  - (ii) for the part of the non-contributory period that was on or after 1 July 1992 — one quarter of the charge percentage for the quarter during which the Member elected to become a contributory member.

### **Part 3 — Director of Public Prosecutions**

#### **10. Term used: DPP**

In this Part —

**DPP** means the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*.

#### **11. Employer**

- (1) If an order is in force under regulation 9(1)(b) in relation to the DPP, then in relation to the DPP, the Government of Western Australia is a Division 1 Employer.
- (2) If, on the commencement day, an instrument is in force under clause 3(2) of Schedule 1 to the *Director of Public Prosecutions Act 1991* specifying a person or department that is to be treated as the employer of the DPP, that instrument continues in force on and from that day as if it were an order made under regulation 9(1)(b) specifying that person or department.

#### **12. Member contributions**

If the DPP is a Gold State Super Member —

- (a) the DPP is taken to have selected under regulation 33 the highest possible member contribution rate; and
- (b) the DPP is not required to pay member contributions; and
- (c) the Employer is to pay the contributions that would, but for paragraph (b), be payable by the DPP; and
- (d) those contributions are to be taken to have been made by the DPP.

## **Part 4 — Members who became ASIC staff**

*[Heading amended in Gazette 28 Sep 2001 p. 5356.]*

### **13. Terms used**

In this Part —

**ASIC** means —

- (a) the Australian Securities Commission established by the *Australian Securities and Investments Commission Act 1989* of the Commonwealth; and
- (b) the Australian Securities and Investments Commission as the Australian Securities Commission became known under that Act; and
- (c) the Australian Securities and Investments Commission as continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

**ASIC worker** means a person who is a member of the staff of ASIC;

**relevant regulations** means in relation to a person who, immediately before becoming an ASIC worker, was —

- (a) a contributory member under the GES Act — so much of these regulations as relate to the Gold State Super Scheme; or
- (b) a non-contributory member under the GES Act — so much of these regulations as relate to the West State Super Scheme.

*[Clause 13 amended in Gazette 28 Sep 2001 p. 5356.]*

### **14. Continuation of membership**

(1) If an ASIC worker —

- (a) was, immediately before becoming an ASIC worker, a member under the *Government Employees Superannuation Act 1987*<sup>8</sup> as then in force (**old law**); and
- (b) elected under section 83 of the *Corporations (Western Australia) Act 1990* as in force before the commencement day, to continue to be such a member; and

- (c) was still such a member immediately before the commencement day,

then while he or she remains an ASIC worker the relevant regulations apply to and in relation to the person as if ASIC were an Employer.

- (2) While a person continues to be a Member after becoming an ASIC worker, ASIC is deemed to be a Division 2 Employer, but only in respect of that Member.

*[Clause 14 amended in Gazette 28 Sep 2001 p. 5356.]*

### **Part 5 — Curtin and Edith Cowan University Staff**

#### **15. Terms used**

In this Part —

**relevant regulations** means so much of these regulations as relate to the Gold State Super Scheme;

**University** means the Curtin University of Technology established under the *Curtin University of Technology Act 1966* or the Edith Cowan University established under the *Edith Cowan University Act 1984*;

**University staff member** means a person who works for a University.

#### **16. Continued membership**

- (1) If a Gold State Super Member becomes a University staff member and elects to continue to be a Member then while he or she remains a University staff member the relevant regulations apply to and in relation to the person as if the University for which the person works were an Employer.
- (2) If a University staff member —
- (a) was, before becoming a University staff member, a member of the 1987 scheme under the GES Act; and
  - (b) under clause 16 of Schedule 4 to the GES Act continued to be such a member after becoming a University staff member, and

- (c) was still such a member immediately before the commencement day,

then while he or she remains a University staff member the relevant regulations apply to and in relation to the person as if the University for which the person works were an Employer.

- (3) While a person continues to be a Member after becoming a University staff member, the University for which that Member works is deemed to be a Division 2 Employer, but only in respect of that Member.

## **Part 6 — Police officers, magistrates and industrial commissioners**

### **17. Terms used**

In this Part —

**average Part 6 contribution rate** means the sum of the contribution rates selected by a Part 6 Member under clause 20 applying for each day on which the person was a Part 6 Member divided by the number of days on which the person was a Part 6 Member;

**end date** means the date determined under clause 18;

**industrial commissioner** means a commissioner under the *Industrial Relations Act 1979*;

**magistrate** means a magistrate of the Magistrates Court or, in respect of a day before 1 May 2005, a stipendiary magistrate under the *Stipendiary Magistrates Act 1957*<sup>9</sup>;

**over 50 transferee police officer** means a police officer who —

- (a) became a Gold State Super Member by transferring from the Pension Scheme; and
- (b) was over 50 when he or she became a Gold State Super Member; and
- (c) was a Part 6 Member for the whole of the time from when he or she became a Gold State Super Member until he or she turned 60 or ceased to be an eligible Gold State worker (whichever occurred first);

**Part 6 Member** means a police officer, magistrate or industrial commissioner who has elected to be a Part 6 Member under clause 19 and who has not ceased to be a Part 6 Member;

*police officer* means a person appointed under Part I of the *Police Act 1892* other than the Commissioner of Police.

*[Clause 17 amended in Gazette 18 Jan 2008 p. 150.]*

**18. Meaning of end date**

- (1) For the purposes of this Part the end date for a police officer is —
  - (a) if the person was, on his or her 45th birthday, both a Gold State Super Member and a police officer — the person's 55th birthday; or
  - (b) otherwise —
    - (i) if he or she transferred to the Gold State Super Scheme under Schedule 4 to the GES Act and was a police officer at the time of the transfer — the earlier of —
      - (I) the day 10 years after the day on which the person became both a Gold State Super Member and a police officer; and
      - (II) the Member's 60th birthday;
    - or
    - (ii) otherwise — the person's 55th birthday.
- (2) For the purposes of this Part the end date for a magistrate or an industrial commissioner is —
  - (a) if the person was, on his or her 45th birthday, both a Gold State Super Member and a magistrate or industrial commissioner — the person's 55th birthday; or
  - (b) otherwise — the day 10 years after the day on which the person became both a Gold State Super Member and a magistrate or industrial commissioner.

**19. Part 6 Members**

- (1) A Gold State Super Member who —
  - (a) is a police officer, magistrate or industrial commissioner; and
  - (b) whose —
    - (i) average contribution rate is 5%; or

- (2) An election under subclause (1) takes effect on the later of —
  - (a) the Member's 45th birthday; and
  - (b) the day on which it is made.
- (3) A Part 6 Member may withdraw from Part 6 at any time by giving notice to the Board.
- (4) A person ceases to be a Part 6 Member —
  - (a) if, before the end day, the person —
    - (i) ceases to be an eligible Gold State worker; or
    - (ii) withdraws from Part 6 under subclause (3); or
    - (iii) ceases to be a police officer, magistrate or industrial commissioner,  
on the day on which the person so ceases or withdraws; or
  - (b) otherwise, on the end day.

- (1) A Part 6 Member is to select a contribution rate of —
  - (a) in the case of a police officer, 1%, 2% or 2.5%; or
  - (b) in the case of a magistrate or industrial commissioner, 1%, 2%, 3%, 4% or 5%,and give notice of that selection to the Board.
- (2) Regulation 33(3), (4) and (8) apply to a selection under subclause (1) as if it were a selection under regulation 33(1).
- (3) Subject to regulations 35 and 36 a Part 6 Member is to contribute to the Fund for each complete contribution period during which the person is a Part 6 Member an amount equal to —
  - (a) the rate selected by a Part 6 Member under subclause (1); multiplied by

- (b) the Member's superannuation salary in respect of the contribution period,

rounded up or down to the nearest whole dollar.

- (4) For the purposes of regulations 34 and 35 contributions under subclause (3) are taken to be member contributions.

**21. Increased Employer contributions**

- (1) While a person is a Part 6 Member the amount of the contributions payable under regulation 29 by the person's Employer is to be calculated as if *M* in the formula in regulation 29(3) was the Member's member contribution rate plus the rate selected by the Member under clause 20.
- (2) The Crown is to contribute to the Fund under regulation 31 for a person whose benefit is increased under this Part even if he or she is not a Member of the kind described in regulation 31(1)(a) or (b).

**22. Retirement benefit**

If a person who is, or was at any time, a Part 6 Member becomes entitled to a benefit under regulation 38 the benefit is to be increased by adding to it an amount equal to *B* in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

*R* is the Member's final remuneration; and

*M* is the number of complete months during which the person was a Part 6 Member; and

*C* is the Member's average Part 6 contribution rate; and

*N* is —

- (i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or
- (ii) in any other case, zero.

**23. Death benefit**

- (1) If a benefit becomes payable under regulation 39 in respect of a police officer, magistrate or industrial commissioner who was under 45 when he or she died the benefit is to be increased by adding to it an amount equal to **B** in the formula —

$$B = R \times \frac{C}{5}$$

where —

**R** is the Member's final remuneration; and

**C** is the Member's average contribution rate.

- (2) If a benefit becomes payable under regulation 39 in respect of a Gold State Super Member who was at any time a Part 6 Member the benefit is to be increased by adding to it an amount equal to **B** in the formula —

$$B = \left[ R \times \frac{M + (F \times P)}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

**R** is the Member's final remuneration; and

**M** is the number of complete months during which the person was a Part 6 Member; and

**F** is —

- (i) if the Member —

(I) was a Part 6 Member when he or she died; and

(II) died before the end day,

the number of complete months from the day on which the Member died to the end day; or

- (ii) otherwise, zero;

and

**P** is —

- (i) if the Member was working on a part-time basis at the time the Member died, the number of hours customarily worked in a week by the Member divided by the number of hours customarily worked in a week by a comparable full-time employee (excluding overtime); or

(ii) otherwise, one;

and

**C** is the Member's average Part 6 contribution rate; and

**N** is —

(i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or

(ii) in any other case, zero.

**24. Total and permanent disablement benefit**

If a police officer, magistrate or industrial commissioner —

(a) who is under 45; or

(b) who is or was at any time a Part 6 Member,

becomes entitled to a benefit under regulation 40, the benefit that is to be paid is a benefit equal to the benefit that would have been payable under regulation 39 if the Member had died on the day the Member ceased to be an eligible Gold State worker, as increased in accordance with clause 23.

**25. Partial and permanent disablement**

(1) If a police officer, magistrate or industrial commissioner who is under 45 becomes entitled to a benefit under regulation 41 the benefit is to be increased by adding to it an amount equal to **B** in the formula —

$$B = R \times \frac{C}{5}$$

where —

**R** is the Member's final remuneration; and

**C** is the Member's average contribution rate.

(2) If a person who is or was at any time a Part 6 Member becomes entitled to a benefit under regulation 41 the benefit is to be increased by adding to it an amount equal to **B** in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ (R - E) \times \frac{F}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

**R** is the Member's final remuneration; and

**M** is the number of complete months during which the person was a Part 6 Member; and

**C** is the Member's average Part 6 contribution rate; and

**E** is the annual amount of the remuneration that the Board considers the Member has the capacity to earn after becoming disabled; and

**F** is —

(i) if the Member —

(I) was a Part 6 Member when he or she ceased to be an eligible Gold State worker; and

(II) ceased to be an eligible Gold State worker before the end day,

the number of complete months from the day on which the Member ceased to be an eligible Gold State worker to the end day; or

(ii) otherwise, zero;

and

**N** is —

(i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or

(ii) in any other case, zero.

(3) Subregulation 41(2) applies in respect of the determination of the value of **E** in the formula in subclause (1).

## **26. Benefit in other circumstances**

If a person who is or was at any time a Part 6 Member becomes entitled to a benefit under regulation 43 or 44 the benefit is to be increased by adding to it an amount equal to **B** in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

*R* is the Member's final remuneration; and

*M* is the number of complete months during which the person was a Part 6 Member; and

*C* is the Member's average Part 6 contribution rate; and

*N* is —

- (i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or
- (ii) in any other case, zero.

**27. Transitional provisions**

- (1) If a person was, immediately before the commencement day, making higher contributions to the 1987 scheme under the GES Act in accordance with a discretion notice, then on and from that day, the person continues as a Part 6 Member subject to this Part.
- (2) If, at any time before the commencement day, a person made higher contributions to the 1987 scheme under the GES Act in accordance with a discretion notice, then on and from that day this Part applies to and in relation to the person as if —
  - (a) at all times while the person had been so contributing —
    - (i) this Part had been in operation; and
    - (ii) the person had been a Part 6 Member;and
  - (b) the contribution rates elected by the person, and the contributions paid by and in respect of, the person in accordance with the discretion notice, had been selected and paid under this Part.
- (3) In relation to a person who at any time before the commencement day, made higher contributions to the 1987 scheme under the GES Act in accordance with a discretion notice, a reference in this Part to the person being a Gold State Super Member includes a reference to the person being a member of the 1987 scheme under the GES Act.

- (4) In this clause —
- discretion notice*** means —
- (a) the notice purportedly given to the Board by the Treasurer under section 49 of the GES Act on 28 December 1987 relating to contributions and benefits for certain police officers, magistrates and industrial commissioners; or
  - (b) the notice purportedly given to the Board by the Treasurer under section 49 of the GES Act on 15 September 1988 relating to contributions and benefits for certain police officers,
- in each case, as validated by section 58 of the *Government Employees Superannuation Amendment Act (No. 2) 1995*.

## **Schedule 3 — Transitional provisions**

[r. 254]

### **Part 1 — Preliminary**

#### **1. Terms used**

(1) In this Schedule —

**1987 scheme** means the superannuation scheme continued by section 29(1)(b) of the Act as it was immediately before the commencement day;

**1993 scheme** means the superannuation scheme continued by section 29(1)(a) of the Act as it was immediately before the commencement day;

**continues** means continues on and after the commencement day;

**continuing Gold State Super Member** means a Gold State Super Member who was a member of the 1987 scheme immediately before the commencement day;

**continuing Member** means a continuing West State Super Member or a continuing Gold State Super Member;

**continuing West State Super Member** means a West State Super Member who was a member of the 1993 scheme immediately before the commencement day;

**current** means in force immediately before the commencement day.

(2) Words and phrases defined in Part 2, 3 or 7 of these regulations have the same meanings when used in Part 2, 3 or 5 (respectively) of this Schedule as they have in that Part of the regulations.

#### **2. Terms used: GSS withdrawal benefit and WSS withdrawal benefit**

In the regulations, in relation to a continuing Member —

**GSS withdrawal benefit** includes a benefit to which the Member became entitled under the GES Act before the commencement day but which, as at that day, had not been paid by reason of the operation of section 38 of the GES Act;

**WSS withdrawal benefit** includes a benefit to which the Member became entitled under the GES Act before the commencement day but which, as at that day, had not been paid by reason of the operation of section 38K of the GES Act.

*[Clause 2 amended in Gazette 13 Apr 2007 p. 1602.]*

**3. Meaning of remuneration (r. 5)**

- (1) A current determination made by an Employer for the purposes of section 4(5) of the GES Act as to the value of any non-monetary remuneration or benefit continues as a determination for the purposes of the definition of **remuneration** in regulation 5(1).
- (2) A current certification given by an Employer or an authorised person for the purposes of section 4(1) or 4AA(1)(b) of the GES Act that a person is entitled to remuneration or a benefit on a continuing basis continues as a certification for the purposes of the definition of **remuneration** in regulation 5(1).
- (3) A current authorisation given by an Employer for the purposes of section 4(1) or 4AA(1)(b) of the GES Act authorising a person to certify matters under that section on behalf of the Employer continues as an authorisation for the purposes of the definition of **remuneration** in regulation 5(1).
- (4) A current determination made by the Board under section 4(4)(b)(vii) or 4AA(4)(f) of the GES Act that an allowance is to be excluded from a member's remuneration continues as a determination under regulation 5(2)(h).
- (5) A current determination made by the Treasurer under section 4(4)(c) of the GES Act that a class of remuneration or benefit is to be excluded from a member's remuneration continues as a determination under regulation 5(3)(f).
- (6) A current notice given by a continuing Gold State Super Member for the purposes of section 4(6) of the GES Act consenting to the application of a determination, continues as a notice for the purposes of regulation 5(5).
- (7) A current permission granted by the Board under section 26(2) of the GES Act allowing a continuing Gold State Super Member to contribute at his or her elected rate applied to the amount of a former

or notional relevant remuneration continues as a determination under regulation 5(6) that the Member's remuneration is the amount of that former or notional relevant remuneration.

- (8) A current determination by the Board under section 39A(1) of the GES Act that a continuing West State Super Member's benefit is to be assessed as if the Member's relevant remuneration were the amount of a former or notional relevant remuneration continues as a determination under regulation 5(6) that the Member's remuneration is the amount of that former or notional relevant remuneration.

**4. The Government, departments and unincorporated entities as Employers (r. 9)**

- (1) A current order made by the Treasurer under section 3(6) of the GES Act specifying that a person, department or authority is to be treated as the employer of an office holder continues as an order under regulation 9(1)(b) specifying that person, department or authority.
- (2) If an order continued by subclause (1) specifies that the person, department or authority is to be deemed to be listed in Part A of Schedule 1 to the GES Act, the order as so continued is taken to specify that in relation to the office holder to whom the order relates the Government of Western Australia is a Division 1 Employer.

**Part 2 — Gold State Super Scheme**

**5. Terms used**

In these regulations, in relation to a continuing Gold State Super Member —

***adjustment day*** means, in relation to a period before the commencement day, the Member's birthday;

***contributory membership period*** includes the Member's contributory period under the GES Act;

***member contribution rate*** means, in relation to time before the commencement day, the rate elected by the Member under section 22 of the GES Act that applied at that time.

## 6. Meaning of contributory membership period (r. 14)

A current exercise of discretion by the Treasurer under section 49(1)(a) of the GES Act deeming a continuing Gold State Super Member to have a greater contributory period than he or she would otherwise have had, continues as a direction under regulation 14(3) that the Member is to be treated as having a longer contributory membership period than he or she would otherwise have.

## 7. Meaning of eligible Gold State worker (r. 15)

A current decision by the Board under section 17B(2)(i) of the GES Act that that paragraph does not apply to a particular person continues as a decision under regulation 15(3) that regulation 15(2)(j) does not apply to that person.

## 8. Meaning of final remuneration (r. 16)

For the purpose of determining the value of D in the formula in the definition of ***final remuneration*** in regulation 16(1), a continuing Gold State Super Member is taken to have been a Gold State Super Member on each day on which he or she was a member of the 1987 scheme.

## 9. Limits of insurance cover — health conditions (r. 18)

- (1) The Board is taken to have imposed a health condition of the kind referred to in paragraph (a) of the definition of *health condition* in regulation 12 on a continuing Gold State Super Member if —
- (a) the Board accepted the Member's election to become a member of the 1987 scheme subject to a condition of the kind referred to in section 18(5)(a) of the GES Act; or
  - (b) the Board made a determination under section 24(3) of the GES Act to vary the Member's contributions subject to a condition of the kind referred to in section 18(5)(a) of the GES Act; or
  - (c) the Member transferred to the 1987 scheme under Schedule 4 to the GES Act and was a transferred contributor for limited benefits within the meaning of that Schedule; or
  - (d) the Member was a subscriber to the Provident Account under the S&FB Act whose election to transfer to the 1987 scheme

under Schedule 4 to the GES Act was accepted subject to a condition of the kind referred to in clause 10(4)(a) in Schedule 4 to the GES Act.

- (2) The Board is taken to have imposed a health condition of the kind referred to in paragraph (b) of the definition of **health condition** in regulation 12 on a continuing Gold State Super Member if —
- (a) the Board accepted the Member's election to become a member of the 1987 scheme subject to a condition of the kind referred to in section 18(5)(b) of the GES Act; or
  - (b) the Board made a determination under section 24(3) of the GES Act to vary the Member's contributions subject to a condition of the kind referred to in section 18(5)(b) of the GES Act; or
  - (c) the Member was a contributor to the Provident Account under the S&FB Act who transferred to the 1987 scheme under Schedule 4 to the GES Act; or
  - (d) the Member was a subscriber to the Provident Account under the S&FB Act whose election to transfer to the 1987 scheme under Schedule 4 to the GES Act was accepted subject to a condition of the kind referred to in clause 10(4)(b) in Schedule 4 to the GES Act.
- (3) A condition taken to have been imposed under subclause (1)(b) or (2)(b) applies only in respect of the Member's membership relating to the increased working hours.
- (4) If, before the commencement day, a continuing Gold State Super Member was —
- (a) required by the Board to provide information under section 18(3) or 24(3a) of, or clause 10(3) of Schedule 4 to, the GES Act; or
  - (b) required under section 20(2)(e) of the GES Act to provide a declaration as to his or her continuing good health,

but as at that day the Member had not provided the information or declaration, the requirement continues as a request under regulation 18(1) to provide medical information.

- (5) If, before the commencement day and in reliance on a statement contained in medical information provided by a continuing Gold State Super Member, the Board did not impose a condition of the kind referred to in section 18(5) of the GES Act when it might have done so and the Board subsequently becomes aware that —
- (a) the Member knew the statement was untrue; or
  - (b) the statement was misleading because it omitted material information of which the Member had knowledge,
- the Board may impose a health condition on the Member.

## 10. Membership (r. 19)

- (1) Every person who was a member of the 1987 scheme immediately before the commencement day continues as a Gold State Super Member subject to these regulations.
- (2) If a person was, immediately before the commencement day, entitled to a benefit from the 1987 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38 of the GES Act or otherwise), the person is taken to have been a member of the 1987 scheme immediately before the commencement day.
- (3) If a member of the 1987 scheme was retired on the grounds of physical or mental incapacity to perform his or her duties not more than 12 months before the commencement day but as at that day had not applied for a benefit under section 32, 33 or 34 of the GES Act, the person is taken to have been a member of the 1987 scheme immediately before the commencement day.
- (4) If, before the commencement day, a person lodged —
  - (a) an election under section 18(1) of the GES Act to become a member of the 1987 scheme; or
  - (b) an election under Schedule 4 to the GES Act to transfer to the 1987 scheme,but as at that day the Board had not dealt with it, the election continues as an application under regulation 19(1) to become a Gold State Super Member.
- (5) A current approval granted by the Treasurer under clause 7B(2)(c) of Schedule 4 to the GES Act of other circumstances that constitute

retrenchment continues as an approval for the purposes of regulation 19(2)(c).

**11. Application to become a Gold State Super Member (r. 20)**

If an application under regulation 19(1)(c) is deemed by regulation 20(3) to have been lodged at a time before the commencement day, these regulations apply to and in relation to the application as if they had been in force at that time.

**12. Minister may direct Board to accept ineligible worker as a Member (r. 21)**

- (1) If, before the commencement day, the Treasurer gave notice to the Board that the Treasurer had, under section 49(1)(b) of the GES Act, deemed a person to be eligible to be a member of the 1987 scheme but as at that day the Board had not dealt with it, the notice continues as a direction under regulation 21(1) to accept the person as a Gold State Super Member.
- (2) If a continuing Gold State Super Member was accepted as a member of the 1987 scheme as a result of having been deemed by the Treasurer under section 49(1)(b) of the GES Act to be eligible to be such a member, regulation 21(2) applies to and in relation to the person as if he or she had been accepted as a Gold State Super Member under regulation 21(1).

**13. Changing jobs (r. 22)**

- (1) If —
  - (a) within 3 months before the commencement day, a member of the 1987 scheme ceased to be an employee for the purposes of that Act; and
  - (b) within 12 months of so ceasing becomes a worker who is not excluded by regulation 15(2) from being an eligible Gold State worker,

regulation 22(2) to (4) apply to and in relation to the person as if he or she had been a Gold State Super Member who ceased to be a worker on the day he or she ceased to be an employee.

- (2) If, before the commencement day, a person elected under section 20(2) of the GES Act to continue as a member of the 1987 scheme but as at that day the Board had not dealt with it, the election continues as an application under regulation 22(2) or 23(1) (as the case requires) to continue as a Gold State Super Member.
- (3) A current determination by the Board under section 20(2)(a) of the GES Act as to the rate of interest to apply to a refund of contributions under that paragraph continues as a determination under regulation 22(3)(b).

**14. Member who becomes ineligible due to reduced working hours then becomes eligible again (r. 23)**

If —

- (a) within 12 months before the commencement day, a member of the 1987 scheme became excluded under section 17C(1) of the GES Act because his or her working hours were reduced to less than one hour a week; and
- (b) within 12 months of becoming so excluded becomes a worker who is not excluded by regulation 15(2) from being an eligible Gold State worker.

regulation 23 applies to and in relation to the person as if he or she had been a Gold State Super Member who ceased to be an eligible Gold State worker on the day he or she became so excluded.

**15. Voluntary withdrawal from the Gold State Super Scheme (r. 24)**

If, before the commencement day, a continuing Gold State Super Member lodged a notice with the Board under section 19A(1) of the GES Act terminating his or her membership of the 1987 scheme but as at that day the Board had not dealt with it, the notice continues as an application under regulation 24(1) to withdraw from the Gold State Super Scheme.

## 16. Contributions

Any contribution in respect of a period before the commencement day that would have become payable under Part V or VI of the GES Act if that Act had not been repealed, becomes payable and is to be paid in accordance with that Act as if it had not been repealed.

**17. Employer contributions (r. 29)**

A current declaration made by the Treasurer under section 27(3) of the GES Act of a percentage to be used in determining employer contributions continues as a determination for the purposes of the description of T in regulation 29(3).

**18. Payment of Employer contributions (r. 30)**

A current instrument given by the Treasurer under section 27(7) of the GES Act allowing an Employer to defer payment of contributions continues as a notice under regulation 30(3).

**19. Selection of member contribution rate (r. 33)**

- (1) A current election made by a continuing Gold State Super Member under section 22 of the GES Act of a contribution rate continues as a selection under regulation 33(1).
- (2) If, before the commencement day, a continuing Gold State Super Member made an election under section 22 of the GES Act but as at that day the election had not taken effect, the election continues as a selection under regulation 33(1).

**20. Recognised unpaid leave — options for member contributions (r. 35)**

- (1) If a continuing Gold State Super Member who is on recognised unpaid leave as at the commencement day elected under section 23(2) of the GES Act to suspend elective contributions, the election continues as a notice under regulation 35(3) to the effect that the Member has chosen the reduced benefits option under regulation 35(2)(c).
- (2) If a continuing Gold State Super Member who is on recognised unpaid leave as at the commencement day elected under section 23(4) of the GES Act to defer payment of elective contributions, the election continues as a notice under regulation 35(3) to the effect that the Member has chosen the deferred contributions option under regulation 35(2)(b).
- (3) A current determination by the Board under section 23(4) of the GES Act as to the rate of interest to apply to deferred elective contributions, continues as a determination under regulation 35(6)(b).

## 21. Unrecognised unpaid leave — no contributions (r. 36)

If, before the commencement day, the Board granted an exemption under section 23A of the GES Act allowing a continuing Gold State Super Member to continue his or her entitlement to death and disability benefits, the determination by the Board as to the amount to be paid by the Member in lieu of contributions continues as a determination under regulation 36(2) as to the cost of continuing the Member's entitlement.

## 22. Entitlement to benefits

If a continuing Gold State Super Member was, immediately before the commencement day, entitled to a benefit from the 1987 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38 of the GES Act or otherwise), the entitlement continues as an entitlement to a benefit from the Gold State Super Scheme.

**23. Total and permanent disablement (r. 40)**

- (1) If a continuing Gold State Super Member was retired on the grounds of physical or mental incapacity to perform his or her duties not more than 12 months before the commencement day but as at that day had not applied for a benefit under section 32, 33 or 34 of the GES Act, these regulations apply to and in relation to the person as if he or she ceased to be an eligible Gold State worker on the day, and for the reasons, that he or she was retired.
- (2) If, before the commencement day, a continuing Gold State Super Member applied for a benefit under section 32, 33 or 34 of the GES Act but as at that day the Board had not dealt with it, the application continues as an application for a benefit under regulation 40, 41 or 43 (as the case requires) as if the Member had ceased to be an eligible Gold State worker on the day, and for the reasons, that he or she was retired.

**24. Restriction on payment of GSS withdrawal benefit (r. 45)**

- (1) Despite regulation 45(1) the Board is to pay a continuing Gold State Super Member's GSS withdrawal benefit if —
  - (a) the Member became entitled to the benefit before the commencement day; and

- (b) the Board is satisfied that the Member has permanently departed from Australia, or will do so within 3 months after the commencement day; and
  - (c) the Member —
    - (i) applied, before the commencement day, for payment of the benefit under section 38(1)(d) of the GES Act, but as at that day the Board had not dealt with the application; or
    - (ii) applies for payment of the benefit within 3 months after the commencement day.
- (2) Despite regulation 45(1) the Board is to pay a continuing Gold State Super Member's GSS withdrawal benefit if —
  - (a) the benefit is \$500 or less; and
  - (b) the Member became entitled to the benefit before the commencement day; and
  - (c) the Member applies to the Board for payment of the benefit before, or within 3 months after, the commencement day.

*[Clause 24 amended in Gazette 13 Apr 2007 p. 1602.]*

**25. Interest on preserved benefits (r. 46)**

A current determination by the Board under section 40(3) of the GES Act as to the manner in which interest is to be calculated in relation to benefits the payment of which is deferred under section 38 of the GES Act continues as a determination under regulation 46(c).

**26. Transfer of benefits to another superannuation fund (r. 47)**

- (1) If, before the commencement day, a continuing Gold State Super Member made a request under section 13B(6) or 13C(1) of the GES Act to transfer an amount to another superannuation fund but as at that day the Board had not dealt with it, the request continues as a request under regulation 47(1).
- (2) A current approval given by the Treasurer for the purposes of section 13C(3)(a) of the GES Act approving the transfer of benefits to other superannuation funds, continues as an approval for the purposes of regulation 47(3).

**27.      Payment of death benefits (r. 48)**

If, before the commencement day, a benefit became payable under the GES Act as a result of the death of a member of the 1987 scheme but as at that day the benefit had not been paid, regulation 48 applies to and in relation to the benefit as if it were a death benefit as defined in that regulation.

**28.      Application for disablement benefits (r. 49)**

A current authorisation given by a continuing Gold State Super Member for the purposes of section 53(3)(b) of the GES Act allowing the Board to obtain medical and other information and evidence continues as an authorisation for the purposes of regulation 49(3)(c).

**29.      Certain Members who transferred to 1987 scheme and left within 2 years entitled to further benefit**

- (1) On the commencement day a relevant Member becomes entitled to a benefit of an amount equal to —
  - (a) the amount of the benefit the Member would have become entitled to on the resignation day if —
    - (i) clause 13(2) of Schedule 4 to the GES Act had not applied to the Member; and
    - (ii) clause 13(4) of that Schedule had applied to the Member notwithstanding that his or her membership period under the GES Act was less than 24 months;  
less
  - (b) the amount of the benefit the Member received under clause 13(2) of that Schedule.
- (2) To the extent that a benefit referred to in subclause (1)(a)(ii) would have been a deferred benefit if the relevant Member had become entitled to it on the resignation day, the benefit is preserved and taken to be a GSS withdrawal benefit.
- (3) In this clause —  
**relevant Member** means continuing Gold State Super Member who transferred to the 1987 scheme under Schedule 4 to the GES Act and became entitled to a benefit under clause 13(2) of Schedule 4 to the GES Act on or after 1 July 1992;

*resignation day* means the day on which a relevant Member became entitled to a benefit under clause 13(2) of Schedule 4 to the GES Act.

*[Clause 29 amended in Gazette 13 Apr 2007 p. 1602-3.]*

### **Part 3 — West State Super Scheme**

#### **30. Membership (r. 51 and 52)**

- (1) Every person who was a statutory member or voluntary member of the 1993 scheme immediately before the commencement day continues as a statutory Member or voluntary Member (respectively) of the West State Super Scheme subject to these regulations.
- (2) If a person was, immediately before the commencement day, entitled to a benefit from the 1993 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38K of the GES Act or otherwise), the person is taken to have been a statutory member or voluntary member (as the case requires) of the 1993 scheme immediately before the commencement day.
- (3) If a statutory member of the 1993 scheme was retired on the grounds of physical or mental incapacity to perform his or her duties not more than 12 months before the commencement day but as at that day had not applied for a benefit under section 38N or 38O of the GES Act, the person is taken to have been a statutory member of the 1993 scheme immediately before the commencement day.

#### **31. Voluntary Members (r. 52)**

- (1) If, before the commencement day, a person elected under section 38EA(1) of the GES Act to contribute to the 1993 scheme as a voluntary member but as at that day the Board had not dealt with it, the election continues as an application under regulation 52(1) to become a voluntary Member.
- (2) A current approval granted by the Treasurer under section 38EA(1)(b) of the GES Act permitting a person to make voluntary employee contributions continues as an approval under regulation 52(4) allowing the person to become a voluntary member.

**32. Contributions**

Any contribution in respect of a period before the commencement day that would have become payable under Part VIIA of the GES Act if that Act had not been repealed, becomes payable and is to be paid in accordance with that Act as if it had not been repealed.

**33. Treasurer may increase compulsory contributions (r. 55)**

A current notice given by the Treasurer under section 38PA(1) of the GES Act increasing the amount an Employer is to contribute continues as a notice under regulation 55(1).

**34. Voluntary employer contributions (r. 57)**

- (1) A current approval given by the Treasurer for the purposes of section 38E of the GES Act permitting an Employer to make voluntary employer contributions continues as an approval under regulation 57(1).
- (2) A current permission granted by the Board under section 38E of the GES Act allowing an Employer to make voluntary employer contributions and specifying the amount of, and timing and manner of payment of, those contributions continues as an agreement between the Board and the Employer under regulation 57(2).

**35. Employer contribution returns (r. 60 and 61)**

- (1) As soon as practicable after the commencement day an Employer to whom Part VIIA of the GES Act applied immediately before that day is to give to the Board a contribution return relating to each contribution period in which an employee of the Employer was a statutory member under that Part except a contribution period that has been the subject of a return under section 38F of that Act.
- (2) Regulation 61 applies to and in relation to —
  - (a) a contribution return made under this clause; or
  - (b) a return made under section 38F of the GES Act but in respect of which a notice has not been given under section 38G(1) of that Act,

as if it were a return under regulation 60(1).

- (3) If, before the commencement day, an Employer made a request under section 38G(2) of the GES Act for the Board to review the basis on which a notice under section 38G(1) of that Act was given but as at that day the Board had not dealt with it, the request continues as a request under regulation 61(2) as if the notice had been given under regulation 61(1).

**36. Treasurer may require additional amounts to be paid (r. 62)**

- (1) A current direction given by the Treasurer under section 38Q(3) of the GES Act directing an Employer to pay an additional amount to the Fund continues as a direction under regulation 62(1).
- (2) A current instrument made by the Treasurer under section 38Q(4) of the GES Act allowing an Employer to defer payment of amounts payable under section 38Q of that Act continues as a notice under regulation 62(4).

**37. Member contributions (r. 63)**

If a West State Super Member was, immediately before the commencement day, contributing to the 1993 scheme under section 38EA of the GES Act, then until they agree otherwise, the Member and the Board are taken to have agreed under regulation 63 that the Member is to contribute under that regulation at the rate, and at the times, that the Member was contributing to the 1993 scheme immediately before the commencement day.

**38. Benefit accounts (r. 66 and 67)**

- (1) The benefit account established under regulation 66(1) for a continuing West State Super Member is a continuation of the account maintained for that Member under Part VIIA of the GES Act.
- (2) Without limiting regulation 67(1), the Board is to credit to the benefit account of a continuing West State Super Member —
- (a) any amounts that —
    - (i) became payable to the Fund under the GES Act before the commencement day; and
    - (ii) are received by the Board after that day; and

- (iii) would have been credited to the Member's account under Part VIIA of the GES Act had they been received before the commencement day;
  - and
  - (b) any contributions paid by or in respect of the Member under clause 32 of this Schedule.
- (3) In relation to a continuing West State Super Member, a reference in regulation 68(1) to costs includes a reference to costs incurred before the commencement day.

**39. Interest (r. 69)**

- (1) A current determination by the Board under section 38I(2) of the GES Act as to the calculation and crediting of interest to member's accounts continues as a decision of the Board under regulation 69(2).
- (2) The time at which the Board first credits interest to the benefit account of a continuing West State Super Member must not be more than 12 months after interest was last credited to the member's account under section 38I(1) of the GES Act.

**40. Entitlement to benefits**

If a continuing West State Super Member was, immediately before the commencement day, entitled to a benefit from the 1993 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38K of the GES Act or otherwise), the entitlement continues as an entitlement to a benefit from the West State Super Scheme.

**41. Death and disablement benefits (r. 70, 71 and 72)**

- (1) For the purposes of regulations 70, 71 and 72 the period during which a continuing West State Super Member has been a statutory Member includes the period during which he or she was a statutory member of the 1993 scheme.
- (2) If a continuing West State Super Member was retired on the grounds of physical or mental incapacity to perform his or her duties not more than 12 months before the commencement day but as at that day had not applied for a benefit under section 38N or 38O of the GES Act,

these regulations apply to and in relation to the person as if he or she ceased to be a worker on the day, and for the reasons, that he or she was retired.

- (3) If, before the commencement day, a continuing West State Super Member applied for a benefit under section 38N or 38O of the GES Act but as at that day the Board had not dealt with it, the application continues as an application for a benefit under regulation 71 or 72 (as the case requires) as if the Member had ceased to be a worker on the day, and for the reasons, that he or she was retired.

**42. Treasurer may increase benefits (r. 75)**

A current notice given by the Treasurer under section 38PB(1) of the GES Act increasing the amount of a benefit continues as a notice under regulation 75(1).

**43. Restriction of payment of WSS withdrawal benefit (r. 76)**

- (1) Despite regulation 76(1) the Board is to pay a continuing West State Super Member's WSS withdrawal benefit if —
- (a) the Member became entitled to the benefit before the commencement day; and
  - (b) the Board is satisfied that the Member has permanently departed from Australia, or will do so within 3 months after the commencement day; and
  - (c) the Member —
    - (i) applied for payment of the benefit under section 38K(1)(e) of the GES Act before the commencement day, but as at that day the Board had not dealt with the application; or
    - (ii) applies for payment of the benefit within 3 months after the commencement day.
- (2) Despite regulation 76(1) the Board is to pay a continuing West State Super Member's WSS withdrawal benefit if —
- (a) the benefit is \$500 or less; and
  - (b) the Member became entitled to the benefit before the commencement day; and

- (c) the Member applies to the Board for payment of the benefit before, or within 3 months after, the commencement day.

*[Clause 43 amended in Gazette 13 Apr 2007 p. 1603.]*

**43A. Preserved benefits for former contributory members**

- (1) A continuing West State Super Member who —
  - (a) was formerly a contributory member under the GES Act; and
  - (b) before 28 September 1993, terminated his or her contributory membership under section 19A of that Act; and
  - (c) as a result of that termination became entitled to a deferred benefit under section 35(1)(b) of that Act,may apply to the Board to crystallise that deferred benefit.
- (2) On receipt by the Board of an application under subclause (1) —
  - (a) the Board is to calculate the amount of the deferred benefit as if the Member has ceased to be an employee on the date the application is received by the Board; and
  - (b) the Member —
    - (i) ceases to be entitled to the deferred benefit referred to in subclause (1)(c); and
    - (ii) becomes entitled to a preserved benefit of an amount equal to the amount calculated under paragraph (a).
- (3) Part 2 Division 5 applies to a benefit referred to in subclause (2)(b)(ii) as if the Member were a Gold State Super Member and became entitled to the benefit under regulation 44.

*[Clause 43A inserted in Gazette 26 May 2006 p. 1925-6.]*

**44. Interest on preserved benefits (r. 78)**

A current determination by the Board under section 40(3) of the GES Act as to the manner in which interest is to be calculated in relation to benefits the payment of which is deferred under section 38K of the GES Act continues as a determination under regulation 78(c).

**45. Transfer of benefits to another superannuation fund (r. 79)**

If, before the commencement day, a continuing West State Super Member made a request under section 13B(6) or 13D(1) of the GES Act to transfer an amount to another superannuation fund but as at that day the Board had not dealt with it, the request continues a request under regulation 79(1).

**46. Payment of death benefits (r. 80)**

If, before the commencement day, a benefit became payable under the GES Act as a result of the death of a member of the 1993 scheme but as at that day the benefit had not been paid, regulation 80 applies to and in relation to the benefit as if it were a death benefit as defined in that regulation.

**47. Application for disablement benefits (r. 81)**

A current authorisation given by a continuing West State Super Member for the purposes of section 53(3)(b) of the GES Act allowing the Board to obtain medical and other information or evidence continues as an authorisation for the purposes of regulation 81(3)(c).

**Part 4 — Information requirements**

**48. Annual statement for Members (r. 221)**

- (1) The first annual reporting day for a continuing Member must be on or before 30 June 2001.
- (2) For the purposes of regulation 221(5), the first reporting period for a continuing Member is the period from 1 July 2000 to the Member's first annual reporting day.

**49. Information to exiting Members (r. 222)**

If a continuing Member ceases to be a Member before being given an annual statement under regulation 221(5), then the statement given to the person under regulation 222(1) is to set out the information referred to in regulation 222(1)(c) in relation to the period from 1 July 2000 to the day the person ceases to be a Member.

**50. Employers to provide information to Board (r. 224C)**

A current direction given by the Board under section 52(1) of the GES Act specifying information or evidence to be provided by Employers continues as a direction under regulation 224C(1).

*[Clause 50 amended in Gazette 29 Jun 2001 p. 3105.]*

**51. Member may request information from Board (r. 224D)**

If, before the commencement day, a continuing Member made a request under regulation 8 of the *Government Employees Superannuation (General) Regulations 1992*<sup>8</sup> but as at that day the Board had not dealt with it, the request continues as a request under regulation 224D(1) or (3).

*[Clause 51 amended in Gazette 29 Jun 2001 p. 3105.]*

**Part 5 — Board elections**

**52. Elections underway at commencement day**

If, before the commencement day, the Board notified the Trades and Labor Council of Western Australia (as it was then called) under regulation 4 of the *Government Employees Superannuation (Board Elections) Regulations 1988*<sup>8</sup> that a vacancy had occurred or was about to occur but as at that day the vacancy had not been filled —

- (a) the process of filling the vacancy is to be completed in accordance with those regulations as if they were still in force; and
- (b) for the purposes of section 6(3) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* the person elected to fill that vacancy is taken to have been elected under section 5(3)(c) of the GES Act.

**53. Dispute in progress at commencement day**

If, before the commencement day, a person lodged a dispute with the Minister under regulation 25 of the *Government Employees Superannuation (Board Elections) Regulations 1988*<sup>8</sup> but as at that day the Minister had not dealt with it, the Minister is to deal with the dispute in accordance with those regulations as if they were still in force.

**Part 6 — General**

**54. Interest if payment delayed (r. 243)**

- (1) If a benefit became payable under the GES Act but as at the commencement day had not been paid, the interest payable under regulation 243 on the benefit is to be calculated —
- (a) for a Gold State Member —
    - (i) from the day on which the benefit became payable up to, but not including, the commencement day, at a rate equal to the CPI rate plus 1%; and
    - (ii) on and after the commencement day, at a rate equal to the CPI rate plus 2%;
  - or
  - (b) for a West State Member —
    - (i) from the day on which the benefit became payable up to, but not including 1 July 2001, at a rate equal to the CPI rate plus 2%; and
    - (ii) on and after 1 July 2001, at a rate equal to the Member's earning rate (which may be positive or negative).
- (2) A current determination by the Board under section 40(3) of the GES Act as to the manner in which interest is to be calculated in relation to benefits that are not paid when they become payable, continues as a determination for the purposes of regulation 243(c).

*[Clause 54 amended in Gazette 29 Jun 2001 p. 3105-6; 13 Apr 2007 p. 1665.]*

**55. Benefit in special circumstances (r. 244)**

- (1) A current notice given by the Treasurer under section 49(1)(c) of the GES Act deeming a person to be entitled to a benefit to which he or she would not otherwise be entitled, continues as a direction under regulation 244(1).
- (2) In regulation 244 —  
**former Member** includes a person who was formerly a member of the 1987 scheme or the 1993 scheme.

**56. Power to restore lost rights (r. 249)**

- (1) A current permission to exercise a right, or a current privilege, granted by the Board under section 55(1) of the GES Act continues as a permission or privilege granted under regulation 249(1).
- (2) In regulation 249, in relation to a continuing Member —  
*Act* includes the GES Act.

**57. Approved forms (r. 251)**

A form currently approved by the Board for use for the purposes of the GES Act continues, so far as it is relevant, as a form approved for use for the purposes of these regulations.

**58. Policy and administrative matters**

All current decisions of the Board in relation to policy or administrative matters made for the purposes of the GES Act continue, so far as they are relevant, for the purposes of these regulations.

## Notes

- <sup>1</sup> This is a compilation of the *State Superannuation Regulations 2001* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 10, 11</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>State Superannuation Regulations 2001</i>	16 Feb 2001 p. 921-1074	17 Feb 2001 (see r. 2 and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>State Superannuation Amendment Regulations 2001</i>	29 Jun 2001 p. 3077-107	1 Jul 2001 (see r. 2)
<i>Corporations (Consequential Amendments) Regulations 2001 Pt. 6</i>	28 Sep 2001 p. 5353-8	15 Jul 2001 (see r. 2 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>State Superannuation Amendment Regulations (No. 2) 2002</i>	28 Jun 2002 p. 3009-28	1 Jul 2002 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 3) 2002</i>	28 Jun 2002 p. 3029-33	21 Sep 2002 (see r. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>State Superannuation Amendment (Retirement Income Scheme) Regulations 2003</i>	19 Mar 2003 p. 813-42	19 Mar 2003
<i>State Superannuation Amendment Regulations 2003</i>	13 Jun 2003 p. 2105-14	13 Jun 2003
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 19</i>	15 Aug 2003 p. 3685-92	15 Sep 2003 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 2) 2003</i>	26 Aug 2003 p. 3756-7	26 Aug 2003
<b>Reprint 1: The State Superannuation Regulations 2001 as at 7 Nov 2003</b> (includes amendments listed above excluding the retrospective amendments published in <i>Gazette</i> 25 Jun 2004 p. 2233-4 and 13 Apr 2007 p. 1577-613)		
<i>Inspector of Custodial Services Act 2003 s. 56(1)</i>		15 Dec 2003 (see s. 2) assented to 15 Dec 2003
<i>State Superannuation Amendment Regulations (No. 4) 2003</i>	30 Dec 2003 p. 5725-6	30 Dec 2003
<i>State Superannuation Amendment Regulations 2004</i>	25 Jun 2004 p. 2228-33	25 Jun 2004
<i>State Superannuation Amendment Regulations (No. 2) 2004</i>	25 Jun 2004 p. 2233-4	1 Aug 2003 (see r. 2)

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>State Superannuation Amendment Regulations (No. 6) 2004</i>	26 Nov 2004 p. 5311	26 Nov 2004
<i>State Superannuation Amendment Regulations (No. 3) 2004</i>	1 Dec 2004 p. 5703-4	1 Jan 2004 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 4) 2004</i>	1 Dec 2004 p. 5705-18	1 Dec 2004
<i>State Superannuation Amendment Regulations (No. 5) 2004</i>	10 Dec 2004 p. 5894-908	10 Dec 2004
<b>Reprint 2: The State Superannuation Regulations 2001 as at 2 Sep 2005</b> (includes amendments listed above excluding the retrospective amendment published in <i>Gazette</i> 13 Apr 2007 p. 1577-613)		
<i>Electricity Corporations (Consequential Amendments) Regulations 2006</i> r. 87	31 Mar 2006 p. 1299-357	1 Apr 2006 (see r. 2)
<i>State Superannuation Amendment Regulations 2006</i> <sup>12</sup>	26 May 2006 p. 1915-33	26 May 2006
<i>State Superannuation Amendment Regulations (No. 2) 2006</i>	21 Jul 2006 p. 2651-2	21 Jul 2006
<i>Perth International Centre for Application of Solar Energy Repeal Act 2006</i> s. 7 assented to 3 Oct 2006		31 Oct 2006
<i>State Superannuation Amendment Regulations 2007</i>	13 Apr 2007 p. 1577-613	r. 70(5): 1 Jul 2002 (see r. 2(5)); r. 70(3): 9 Apr 2006 (see r. 2(3)); r. 70(4): 1 Jul 2006 (see r. 2(4)); r. 70(6): 31 Jul 2006 (see r. 2(6)); r. 70(2): 1 Jan 2007 (see r. 2(2)); Regulations other than r. 70(2)-(6): 13 Apr 2007 (see r. 2(1))
<i>State Superannuation Amendment Regulations (No. 2) 2007</i>	13 Apr 2007 p. 1615-65	16 Apr 2007 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 3) 2007</i>	6 Jun 2007 p. 2615-26	6 Jun 2007
<i>Chemistry Centre (WA) Act 2007</i> s. 43 assented to 29 Jun 2007		1 Aug 2007 (see s. 2(1) and <i>Gazette</i> 27 Jul 2007 p. 3735)
<b>Reprint 3: The State Superannuation Regulations 2001 as at 3 Aug 2007</b> (includes amendments listed above)		
<i>State Superannuation Amendment Regulations 2008</i> Pt. 2	18 Jan 2008 p. 149-56	19 Jan 2008 (see r. 2(b))

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>State Superannuation Amendment Regulations (No. 2) 2008</i>	1 Apr 2008 p. 1283-6	r. 1 and 2: 1 Apr 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 2 Apr 2008 (see r. 2(b))
<i>State Superannuation Amendment Regulations (No. 3) 2008</i>	11 Apr 2008 p. 1376-80	r. 1 and 2: 11 Apr 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 12 Apr 2008 (see r. 2(b))
<i>Eastern Goldfields Transport Board Repeal Act 2008</i> s. 16 assented to 1 Jul 2008		29 Jul 2008
<i>State Superannuation Amendment Regulations (No. 6) 2008</i>	8 Jul 2008 p. 3211-38	8 Jul 2008 (see r. 2)
<i>State Superannuation Amendment Regulations 2009 Pt. 2</i>	24 Nov 2009 p. 4740-3	25 Nov 2009 (see r. 2(b))
<i>State Superannuation Amendment Regulations (No. 4) 2009</i>	8 Jan 2010 p. 29-30	r. 1 and 2: 8 Jan 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 9 Jan 2010 (see r. 2(b))
<i>State Superannuation Amendment Regulations (No. 2) 2010</i>	30 Jun 2010 p. 3131-55	r. 1 and 2: 30 Jun 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2010 (see r. 2(b))
<b>Reprint 4: The State Superannuation Regulations 2001 as at 5 Nov 2010</b> (includes amendments listed above)		
<i>Public Sector Reform (Consequential Amendments) Regulations 2011 Pt. 8</i>	11 Feb 2011 p. 502-7	12 Feb 2011 (see r. 2(d))
<i>State Superannuation Amendment Regulations 2011</i>	10 May 2011 p. 1668-9	r. 1 and 2: 10 May 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 11 May 2011 (see r. 2(b))
<i>State Superannuation Amendment Regulations (No. 2) 2011</i>	8 Jul 2011 p. 2899-2901	r. 1 and 2: 8 Jul 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 9 Jul 2011 (see r. 2(b))
<i>State Superannuation Amendment Regulations (No. 3) 2011</i>	22 Jul 2011 p. 3028-9	r. 1 and 2: 22 Jul 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Jul 2011 (see r. 2(b))
<i>State Superannuation Amendment Regulations (No. 4) 2011</i>	6 Dec 2011 p. 5133-4	r. 1 and 2: 6 Dec 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 7 Dec 2011 (see r. 2(b))

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Citation	Gazettal	Commencement
<i>State Superannuation Amendment Regulations 2012</i> r. 3-24 <sup>14</sup>	17 Jan 2012 p. 466-73	Operative on the day on which the <i>State Superannuation Amendment Act 2011</i> Pt. 5 commences (see r. 2(b))

- <sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section. Part 9 of these regulations were amending regulations under that subsection. The text of the *Superannuation and Family Benefits Act 1938* as continued and amended under the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 may be viewed in the Acts database of the Statutes of Western Australia.
- <sup>3</sup> Formerly referred to the *Water Services Coordination Act 1995* the short title of which was changed to the *Water Services Licensing Act 1995* by the *Economic Regulation Authority Act 2003* s. 62. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).
- <sup>4</sup> Repealed by the *Nurses and Midwives Act 2006*.
- <sup>5</sup> Repealed by the *Water Resources Legislation Amendment Act 2007*.
- <sup>6</sup> The *Waterways Conservation Act 1976* s. 14 has been deleted by the *Water Resources Legislation Amendment Act 2007* s. 150.
- <sup>7</sup> Formerly referred to the *Workers' Compensation and Rehabilitation Commission* constituted under the *Workers' Compensation and Rehabilitation Act 1981*. The name of the Commission was changed to WorkCover Western Australia Authority and the short title of the Act was changed to the *Workers' Compensation and Injury Management Act 1981* by the *Workers' Compensation Reform Act 2004* s. 5 and 81. The references were changed under the *Reprints Act 1984* s. 7(3)(gb) and (h).
- <sup>8</sup> Repealed by the *State Superannuation Act 2000*.
- <sup>9</sup> Repealed by the *Courts Legislation Amendment and Repeal Act 2004*.
- <sup>10</sup> The *Superannuation Legislation Amendment and Validation Act 2006* s. 19 reads as follows:

**19. Validation of statutory membership of workers who ceased to be excluded**

- (1) A person who —
- (a) when the *State Superannuation Regulations 2001* came into operation —
    - (i) was a worker; and
    - (ii) was excluded from becoming a statutory Member (as defined in those regulations) by the *State Superannuation Regulations 2001* regulation 51(2), (3) or (4);
  - and
  - (b) before the *State Superannuation Amendment Regulations 2006* came into operation, ceased to be so excluded,
- is taken to have become a statutory Member when he or she ceased to be so excluded.
- (2) Anything done or purported to have been done under the *State Superannuation Regulations 2001* before this Act came into operation in relation to a person to whom subsection (1) applies, is as valid as it would have been if the *State Superannuation Amendment Regulations 2006* had come into operation immediately after the *State Superannuation Regulations 2001* came into operation.

<sup>11</sup> The *State Superannuation Amendment Regulations (No. 4) 2008* had not come into operation when it was deleted by the *State Superannuation Amendment Regulations 2009* Pt. 3.

<sup>12</sup> The *State Superannuation Amendment Regulations 2006* r. 20(2) reads as follows:

- (2) If a preserved benefit of less than \$200 has not been paid because of the operation of regulation 76(4) (as in force before this regulation came into operation), the benefit ceases to be a preserved benefit when this regulation comes into operation even if, at that time, the benefit plus interest on it, is or exceeds \$200.

<sup>13</sup> The *Metropolitan Redevelopment Authority Act 2011* s. 134(b) repeals the *East Perth Redevelopment Act 1991*, s. 134(c) repeals the *Midland Redevelopment Act 1999* and s. 134(d) repeals the *Subiaco Redevelopment Act 1994*.

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<sup>14</sup> On the date as at which this compilation was prepared, the *State Superannuation Amendment Regulations 2012* r. 3-24 had not come into operation. They read as follows:

**3. Regulations amended**

These regulations amend the *State Superannuation Regulations 2001*.

**4. Part 2A inserted**

After regulation 11 insert:

**Part 2A — Employer contribution obligations**

**12A. Terms used**

In this Part —

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

*individual superannuation guarantee shortfall* has the meaning given in the SGA Act section 19;

*over-OTE item*, for an employee, means a payment, benefit or allowance that —

- (a) is part of the employee's remuneration; but
- (b) is not part of the employee's ordinary time earnings within the meaning given in the SGA Act section 6(1);

*superannuation guarantee charge* means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Commonwealth).

**12B. Default funds**

For the purposes of the definition of *default fund* paragraph (a), 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. Employer contributions**

- (1) An Employer that is required, under section 4B of the Act, to make superannuation contributions for an employee, must —
  - (a) make those contributions in accordance with regulation 12D; and
  - (b) make contributions in accordance with regulation 12E.

- (2) An Employer that would be required, under section 4B of the Act, to make superannuation contributions for an employee, but for the SGA Act sections 26 to 29, must make contributions for the employee in accordance with subregulation (1) as if the SGA Act sections 26 to 29 did not apply.
- (3) An Employer that would be required, under section 4B of the Act, to make superannuation contributions for a worker, but for the worker not being an employee, must make contributions for the worker in accordance with subregulation (1) as if the worker were an employee.
- (4) Subregulations (1), (2) and (3) do not apply to the following Employers —
  - (a) the Architects Board of Western Australia;
  - (b) the Australian Health Practitioner Regulation Agency;
  - (c) the Bunbury Water Board;
  - (d) Gold Corporation;
  - (e) the Legal Practice Board;
  - (f) the office of Inspector of Custodial Services;
  - (g) the Pharmaceutical Council of Western Australia;
  - (h) the Veterinary Surgeons' Board;
  - (i) the Water Corporation;
  - (j) the Western Australian College of Teaching;
  - (k) the Western Australian Electricity Review Board;
  - (l) the Western Australian Energy Disputes Arbitrator;
  - (m) the Western Australian Greyhound Racing Association;
  - (n) the Western Australian Institute of Sport.
- (5) Subregulations (1), (2) and (3) 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 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.
- (6) Subregulation (4) does not limit an Employer to making contributions in accordance with section 4B of the Act.
- (7) If an Employer is unable to make a contribution under subregulation (1), (2) or (3) to a fund because the fund is unable to receive it under the SIS Act, the Employer must make the contribution to the Fund.

**12D. Making SG contributions**

- (1) The Employer must make those contributions for each of the employee's contribution periods.
- (2) The amount of the contributions for a contribution period must be equal to the amount that the Employer would be required under section 4B of the Act to contribute for 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.
- (3) Contributions for a contribution period must be paid —
  - (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.

**12E. Certain additional contributions**

- (1) For each contribution period of the employee in which the employee receives an over-OTE item, the Employer must make a contribution for the employee of an amount equal to the monetary value, determined by the Employer, of that over-OTE item multiplied by the charge percentage applicable, at the time of making the contribution, under the SGA Act section 19.
- (2) Contributions for a contribution period must be paid —

- (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.
- (3) A determination by an Employer as to the value of a non-monetary over-OTE item that would reduce the value of the item for a person who was an employee at the time the determination was made, does not apply to the person unless he or she gives notice to the Employer consenting to its application to him or her.
- (4) Contributions under this regulation must be made to the fund to which the Employer is required to make contributions under section 4B of the Act.

**12F. Standard choice forms — transitional provision**

- (1) This regulation applies for the purposes of section 4B(3) of the Act and in relation to an employee who was an employee of an Employer immediately before this regulation came into operation.
- (2) The Employer need not give the employee a standard choice form in writing if the Employer gives the employee a standard choice form in an electronic form that can be printed.
- (3) Subregulation (2) does not apply if the employee gives a written request to the Employer that the employee be given a standard choice form.
- (4) This regulation ceases to have effect at the end of the period of 2 months commencing on the day on which this regulation came into operation.

**5. Regulation 31 amended**

In regulation 31(2) delete “on the advice of an actuary,” and insert:

with the concurrence of the Treasurer,

**6. Regulation 50 amended**

In regulation 50(1) in the definition of *eligible statutory WSS Member* delete “(3)” and insert:

(3), (4A)

**7. Regulation 51 amended**

(1) Delete regulation 51(3)(c) and insert:

- (c) as a consequence, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

(2) After regulation 51(3) insert:

- (4A) A worker is excluded by this subregulation from being a statutory WSS Member if, as a consequence of the worker choosing a fund that is not a scheme, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

**8. Regulation 52 amended**

In regulation 52(1)(a) and (b) delete “(3)” and insert:

(3), (4A)

**9. Regulation 54A deleted**

Delete regulation 54A.

**10. Regulations 54 and 55 deleted**

Delete regulations 54 and 55.

**11. Regulation 62 amended**

In regulation 62(1) delete “regulation 54 or 55” and insert:

section 4B of the Act or regulation 12C

**12. Regulation 64 amended**

In regulation 64(2) delete “7 days” and insert:

14 days

**13. Regulation 79 amended**

Delete regulation 79(2) and insert:

- (2) A West State Super Member may request the Board to transfer the member's benefit to another superannuation fund that is not a scheme, and the Board is to comply with that request.

**14. Regulation 83 amended**

In regulation 83(1) in the definition of *eligible statutory GESB Super Member* delete "(3)" and insert:

(3), (4A)

**15. Regulation 84 amended**

- (1) Delete regulation 84(3)(c) and insert:

- (c) as a consequence, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

- (2) After regulation 84(3) insert:

- (4A) A worker is excluded by this subregulation from being a statutory GESB Super Member if, as a consequence of the worker choosing a fund that is not a scheme, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

**16. Regulations 88 and 89 deleted**

Delete regulations 88 and 89.

**17. Regulation 91 amended**

- (1) In regulation 91(1) delete "Subject to regulation 100, an" and insert:

An

- (2) In regulation 91(3) delete "regulation 88 or 89." and insert:

section 4B of the Act or regulation 12C.

**18. Regulation 94 amended**

- (1) In regulation 94(1) delete “regulation 100 and”.
- (2) In regulation 94(5) delete “7 days” and insert:

14 days

**19. Regulation 95 amended**

In regulation 95(1) delete “regulation 100 and”.

**20. Part 3A Division 3 Subdivision 5 deleted**

Delete Part 3A Division 3 Subdivision 5.

**21. Regulation 120 amended**

- (1) In regulation 120 delete “A GESB Super” and insert:
  - (1) A GESB Super
- (2) At the end of regulation 120 insert:
  - (2) A GESB Super Member may request the Board to transfer the member’s benefit to a superannuation fund that is not a scheme and the Board is to comply with that request.

**22. Regulation 122 amended**

In regulation 122(2) delete “West State” and insert:

GESB

**23. Regulation 224D amended**

Delete regulation 224D(3)(c) and insert:

- (c) the report relating to the most recent actuarial investigation of the Fund; or

**24. Various references to “Minister” amended**

In the provisions listed in the Table:

- (a) delete “Minister” (each occurrence) and insert:

Treasurer

- (b) delete “Minister’s” and insert:

Treasurer’s

**Table**

r. 21(1)	r. 50A(2)
r. 52B(2)	r. 231(2)(b)
r. 238(2) and (3)	r. 240(1), (2) and (3)

Note: The heading to amended regulation 21 is to read:  
**Treasurer may direct Board to accept ineligible worker as a Member**

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined Term	Provision(s)
1987 part-time transferee .....	Sch. 2 cl. 1(1)
1987 scheme.....	Sch. 3 cl. 1(1)
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abridged financial information.....	224(3)
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average contribution rate.....	12, 13(1)
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