

Western Australia

Fire and Emergency Services Superannuation Act 1985

**Fire and Emergency Services (Superannuation  
Fund) Regulations 1986**

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# Fire and Emergency Services (Superannuation Fund) Regulations 1986

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Western Australia

Fire and Emergency Services Superannuation Act 1985

## **Fire and Emergency Services (Superannuation Fund) Regulations 1986**

### **Part I — Preliminary**

#### **1. Citation**

These regulations may be cited as the *Fire and Emergency Services (Superannuation Fund) Regulations 1986*<sup>1</sup>.

*[Regulation 1 amended in Gazette 2 May 2003 p. 1492.]*

#### **2. Commencement**

These regulations shall come into operation on the day of the commencement of the Act<sup>1</sup>.

## Part II — Interpretative provisions

### 3. Terms used in these regulations

- (1) In these regulations unless the contrary intention appears —
- accumulation account** means the account kept for a member under regulation 16C;
- actuarial report** means a report received by the Superannuation Board under section 17(3) of the Act;
- Category A member** means a member other than —
- (a) a Category B member;
  - (aa) a Category C member; or
  - (b) a member referred to in paragraph (b) of the definition of “member” in this subregulation;
- Category B member** means a member under regulation 11(2), 12A(2) or 12B;
- Category C member** means a member under regulation 12C;
- complying superannuation fund** and **complying superannuation scheme** have the same meanings as they have in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth);
- death benefit** means a benefit payable in respect of a member on or after his death;
- earnings rate**, in respect of a member, means the earnings rate determined by the Superannuation Board under regulation 9B for the member;
- instalment benefit** means a benefit payable from the Superannuation Fund under regulation 23B;
- maximum benefit** in relation to a member who becomes partially and permanently disabled, means the amount equal to the maximum percentage of the amount by which the member’s partial and permanent disablement benefit is less than the total and permanent disablement benefit to which the member would have become entitled under regulation 18 if —

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

**maximum percentage** means 100% or such lesser percentage as may be determined under regulation 23D;

**member** means —

- (a) a member of the Superannuation Fund under Part III; or
- (b) a person who has ceased to be a member of the Superannuation Fund under Part III and in respect of whom a pension or other benefit is payable under these regulations,

whichever is indicated by the context, or where the context indicates, either or both of those persons;

**non-C member** means —

- (a) a Category A member;
- (b) a Category B member; or
- (c) a person —
  - (i) who is a member within the meaning of paragraph (b) of the definition of “member”; and
  - (ii) who, immediately before becoming such a member, was not a Category C member;

**partial and permanent disablement benefit** means a benefit payable under regulation 19;

**partner** means —

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

**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;

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- (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;

**previous superannuation fund** has the same meaning as in Part I of Schedule 3 to the Act;

**relevant month**, in relation to a member who is entitled to be paid a supplementary disablement benefit, means —

- (a) if the beneficiary has been paid an interim payment in respect of partial and permanent disablement benefit under regulation 27(1)(a) — the month during which it was determined under these regulations that the beneficiary is not totally and permanently disabled; or
- (b) in any other case — the month during which the beneficiary was paid a partial and permanent disablement benefit;

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

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

**SIS standards** means the standards in force under the SIS Act;

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

**Superannuation Guarantee Charge** means a charge or tax imposed on an employer under the *Superannuation Guarantee Charge Act 1992* (Cwlth) for not making certain superannuation contributions;

**supplementary disablement benefit** means a benefit payable under regulation 23B or 23BA;

**temporary or casual employee** means an eligible FES employee or an associated employee who is determined by the Superannuation Board to be a temporary or casual employee;

**the employer**, in relation to a member, means —

- (a) in the case of an eligible FES employee, the FES Commissioner;
  - (b) in the case of an associated employee, the associated employer which employs him.
- (2) Regulations 3A to 9B shall have effect for the purposes of the application and interpretation of these regulations.

*[Regulation 3 amended in Gazette 18 Aug 1989 p. 2766; 15 Dec 1992 p. 6021; 29 Jun 1994 p. 3206-7; 21 Nov 1995 p. 5356; 17 Apr 1998 p. 2098; 22 Dec 1998 p. 6850 and 6852-3; 23 Jul 1999 p. 3386; 18 Aug 2000 p. 4783; 30 Mar 2001 p. 1761; 2 May 2003 p. 1492; 15 Jul 2003 p. 2832; 1 Apr 2008 p. 1271-2; 21 Aug 2009 p. 3268; 31 Oct 2012 p. 5245, 5248 and 5249.]*

### **3A. Eligible FES employees**

For the purposes of the definition of **eligible FES employee** in section 3(1) of the Act —

- (a) a person holds a prescribed office if the person holds office as the FES Commissioner; and
- (b) a person is of a prescribed class if the person is employed or engaged as described in the FES Act section 20.

*[Regulation 3A inserted in Gazette 31 Oct 2012 p. 5246.]*

## **4. Membership**

A reference to the membership of a member is a reference to the most recent uninterrupted period commencing not earlier than 1 October 1946 during which the member has been —

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- (a) consecutively a member of the previous superannuation fund and a member of the Superannuation Fund; or
- (b) a member of the Superannuation Fund,

as the case may be.

**5. Total permanent disablement**

A member shall be regarded as being totally and permanently disabled —

- (a) in the event that the Superannuation Board has pursuant to section 9 of the Act effected a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement and that policy is in force for the time being in respect of the member if the member is totally and permanently disabled within the meaning of and for the purposes of that policy;
- (b) in the event that the Superannuation Board has pursuant to section 9 of the Act effected a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement and that policy is not in force for the time being in respect of the member by reason only of the refusal of insurance by the insurer with which that policy has been effected, if in the opinion of the Superannuation Board, after consideration of material evidence satisfactory to it, the member is totally and permanently disabled within the terms of the definition of total and permanent disablement contained in that policy; or
- (c) in any other event if —
  - (i) the member has been absent from the employment of the employer through illness or injury for 6 consecutive months or for such shorter period as in the circumstances the Superannuation Board considers appropriate; and

- (ii) in the opinion of the Superannuation Board, after consideration of material evidence satisfactory to it, the member has become incapacitated to such an extent as to render the member unlikely ever to engage in, or work for reward in, any occupation or work for which the member is reasonably qualified by education, training or experience.

**6. Partial permanent disablement**

A member shall be regarded as partially and permanently disabled if he is not totally and permanently disabled and —

- (a) in the case of an eligible FES employee to whom regulation 132B of the *Fire Brigades Regulations 1943* applies, if his employment is terminated on medical grounds by the FES Commissioner on the basis of the report of a medical panel under that regulation; or
- (b) in the case of an eligible FES employee to whom regulation 132B of the *Fire Brigades Regulations 1943* does not apply or an associated employee if —
  - (i) the member has been absent from the employment of the employer through illness or injury for 6 consecutive months or for such shorter period as in the circumstances the Superannuation Board considers appropriate; and
  - (ii) in the opinion of the Superannuation Board, after consideration of material evidence satisfactory to it, the member has become incapacitated to such an extent as to render the member unlikely ever to engage in, or work for reward in, any occupation or work in the employment of the employer for which he is reasonably qualified by education, training or experience.

*[Regulation 6 amended in Gazette 22 Dec 1998 p. 6850; 31 Oct 2012 p. 5248 and 5249.]*

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**7. Superannuation salary**

- (1) In this regulation *normal rate of remuneration*, in relation to a member —
- (a) includes any remuneration or benefit by way of salary or wages that is ordinarily payable to the member in the member's capacity as an eligible FES employee or an associated employee;
  - (b) includes any contributions that are paid to the Superannuation Fund by the member's employer on behalf of the member pursuant to an agreement between the member and the employer;
  - (c) includes —
    - (i) a service allowance;
    - (ii) an industry allowance;
    - (iii) a shift penalty;
    - (iv) a leading hand allowance;
    - (v) a tool allowance; and
    - (vi) any other allowance that the FES Commissioner and the Superannuation Board agree should be included in the superannuation salary of the member;
  - (d) does not include —
    - (i) an amount paid for overtime or as a bonus; or
    - (ii) any allowance not referred to in paragraph (c).
- (2) Subject to subregulations (3), (3a) and (4) the superannuation salary of a member, during a period of his membership, is his normal rate of remuneration during the period.
- (3) Subject to subregulation (4) where the normal rate of remuneration of a member (in this subregulation called *the original rate*) is reduced, the superannuation salary of the member, during the period of his membership for which his



normal rate of remuneration remains below the original rate, is the original rate.

- (3a) Subject to subregulation (4), where the salary or wages of a member (in this subregulation called the *original salary*) is increased as a consequence of the member being appointed to a position for a specified period of time and, in the opinion of the Superannuation Board and the employer, there is a reasonable expectation that at the end of that period the salary or wages of the member will be reduced to the original salary or to a salary or wages lower than the increased salary or wages, the superannuation salary of the member during that period is the original salary.
- (4) Where a member, the Superannuation Board and the employer agree, in any special case, that the superannuation salary of the member during a period of his membership shall be a rate other than the rate determined under subregulation (2), (3) or (3a), whichever is applicable, the superannuation salary of the member, during that period, is the rate so agreed.

*[Regulation 7 amended in Gazette 29 Jun 1994 p. 3208-9; 22 Dec 1998 p. 6851 and 6852; 31 Oct 2012 p. 5248 and 5249.]*

## **8. Final average salary**

- (1) In this regulation *the relevant date* in relation to a member means —
- (a) the date on which he ceases to be in the employment of the employer; or
  - (b) the date on which he reaches the age of 65 years,
- whichever is the earlier.
- (2) The final average salary of a member who has completed 3 years of membership before the relevant date is the weighted average (calculated on a daily basis) of his superannuation salary during the period of 3 years of his membership immediately preceding the relevant date.

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- (3) The final average salary of a member who has not completed 3 years of membership before the relevant date is the weighted average (calculated on a daily basis) of his superannuation salary during the period of his membership preceding the relevant date.

**9. Dependants**

- (1) In this regulation —  
**child**, in relation to a member, includes —
- (a) a step-child of the member;
  - (b) an adopted child of the member irrespective of the date of adoption;
  - (c) a child of a spouse or de facto partner of the member;
  - (d) a child recognized by the Superannuation Board as an adopted child of the member;
  - (e) an illegitimate child of the member; and
  - (f) a child of the member born after the death of the member.
- (2) The dependants of a member are —
- (a) any spouse or de facto partner of the member;
  - (b) any child of the member; and
  - (c) any other person who, in the opinion of the Superannuation Board, is, or was at the time of the death of the member, wholly or partially dependent on the member or has, or had at that time, a legal or moral right to look to the member for support or a reasonable expectation of receiving support from the member.

*[Regulation 9 amended in Gazette 2 May 2003 p. 1493.]*

*[9A. Deleted in Gazette 23 Jul 1999 p. 3386.]*

**9B. Earnings rate**

- (1) From time to time the Superannuation Board, on the advice of an actuary, is to determine an earnings rate for members.
- (2) The Superannuation Board may determine different earnings rates for different members or different classes of members.
- (3) An earnings rate may be positive or negative.
- (4) In determining an earnings rate the Superannuation Board is to have regard to —
  - (a) the net earnings income derived from the investment of assets in the Superannuation Fund; and
  - (b) costs and expenses; and
  - (c) the desirability of averaging earnings in order to reduce fluctuations in earnings rates; and
  - (d) investment choices made by members; and
  - (e) any other matters that appear to the Superannuation Board to be relevant.

*[Regulation 9B inserted in Gazette 1 Apr 2008 p. 1272-3.]*

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## **Part III — Membership of the Superannuation Fund**

[10.     *Deleted in Gazette 31 Oct 2012 p. 5246.*]

### **11.     Membership of eligible FES employee**

- (1) A person becomes a Category A member when he or she becomes an eligible FES employee unless he or she —
  - (a) is already a Category A member;
  - (b) is a temporary or casual employee as defined in regulation 12A;
  - (c) is a person to whom regulation 12B applies; or
  - (d) is not covered by the Western Australian Fire Services Award 1996 and, at the time of becoming an eligible FES employee —
    - (i) elects to become a Category B member; or
    - (ii) being a GES member, elects to remain a GES member.
- (2) A person who makes an election under subregulation (1)(d)(i) is taken to have become a Category B member when he or she became an eligible FES employee.
- (3) A person who became a Category B member under subregulation (2) may, by giving notice to the employer, become a Category A member.
- (4) If an eligible FES employee who made an election under subregulation (1)(d)(ii) ceases to be a GES member, subregulation (1) applies as if the employee had become an eligible FES employee when he or she ceased to be a GES member.
- (5) A person who becomes a member under this regulation remains a member while he or she remains an eligible FES employee or an associated employee.
- (6) In this regulation —

**GES member** means a Gold State Super Member or a West State Super Member, within the meaning of the *State Superannuation Regulations 2001*.

*[Regulation 11 inserted in Gazette 18 Aug 2000 p. 4783-4; amended in Gazette 15 Jul 2003 p. 2832; 31 Oct 2012 p. 5246 and 5248.]*

**12. Associated employees**

- (1) Upon a body becoming an associated employer each person who thereby becomes an associated employee shall, by virtue of this subregulation, become a member of the Superannuation Fund and shall remain a member of the Superannuation Fund so long as he continues in the employment of an associated employer or the FES Commissioner.

*[(2) deleted]*

- (3) Where a person who is not already a Category A member of the Superannuation Fund becomes an associated employee after his employer has become an associated employer he shall, by virtue of this subregulation, become a member of the Superannuation Fund when he becomes an associated employee and shall remain a member of the Superannuation Fund so long as he continues in the employment of an associated employer or the FES Commissioner.

- (4) In subregulations (1) and (3) —

**associated employee** does not include a temporary or casual employee or a person to whom regulation 12B applies;

**employment** does not include temporary or casual employment or employment as a person to whom regulation 12B applies.

*[Regulation 12 amended in Gazette 29 Jun 1994 p. 3210; 22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

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**12A. Temporary and casual employees**

- (1) A person who became a member of the Superannuation Fund pursuant to regulation 11(3), 12(2) or 12(5) as in force before the coming into operation of the *Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1994*<sup>1</sup> shall remain a member of the Superannuation Fund so long as that person continues in the employment of the FES Commissioner or an associated employer.
- (2) Where a person becomes a temporary or casual employee after the coming into operation of the *Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1994*<sup>1</sup>, that person shall, by virtue of this subregulation, become a Category B member of the Superannuation Fund when that person becomes a temporary or casual employee and shall remain a Category B member of the Superannuation Fund so long as he or she remains a temporary or casual employee.
- (3) In subregulation (2) ***temporary or casual employee*** means a temporary or casual employee —
  - (a) who is an “employee” (within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cwlth)) of the FES Commissioner or an associated employer, in relation to whom the Superannuation Guarantee Charge would be payable if there were a superannuation guarantee shortfall, within the meaning of that Act, in respect of that employee; and
  - (b) in respect of whom the employer has not agreed to make contributions to another complying superannuation fund or complying superannuation scheme.

*[Regulation 12A inserted in Gazette 29 Jun 1994 p. 3210-11; amended in Gazette 22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

**12B. Board members etc.**

- (1) This regulation applies to a person who is —

- (a) a member of the Superannuation Board or the executive body (whether described as the board of directors or otherwise) of an associated employer;
  - (b) an “employee” (within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cwlth)) of the FES Commissioner or an associated employer, in relation to whom the Superannuation Guarantee Charge would be payable if there were a superannuation guarantee shortfall, within the meaning of that Act, in respect of that employee;
  - (c) not a Category A member of the Superannuation Fund; and
  - (d) not a person in respect of whom the employer has agreed to make contributions to another complying superannuation fund or complying superannuation scheme.
- (2) A person to whom this regulation applies on the coming into operation of the *Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1994*<sup>1</sup> shall, by virtue of this regulation, become a Category B member of the Superannuation Fund on the coming into operation of those regulations and shall remain a Category B member of the Superannuation Fund so long as that person continues to be a person to whom this regulation applies.
- (3) Where a person who is not already a Category B member of the Fund becomes a person to whom this regulation applies after the coming into operation of the *Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1994*<sup>1</sup> that person shall, at the same time and by virtue of this regulation, become a Category B member of the Superannuation Fund and shall remain a Category B member of the Superannuation Fund so long as that person continues to be a person to whom this regulation applies.

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*[Regulation 12B inserted in Gazette 29 Jun 1994 p. 3211-12;  
amended in Gazette 22 Dec 1998 p. 6851; 31 Oct 2012  
p. 5247.]*

**12C. Spouses and de facto partners of members**

- (1) A non-C member (the *nominator*) may nominate his or her spouse or de facto partner as a Category C member by giving notice to that effect to the Superannuation Board.
- (2) However, a person cannot nominate his or her spouse or de facto partner if that person is already a member.
- (3) When making a nomination the nominator must give to the Superannuation Board whatever information the Board reasonably requires to satisfy itself that the nominator and the person nominated are married or de facto partners.
- (4) A Category C member may withdraw from the Superannuation Fund by giving written notice to that effect to the Superannuation Board.
- (5) If a Category C member becomes a Category A member or a Category B member he or she ceases to be a Category C member.
- (6) A Category C member remains a member until —
  - (a) he or she withdraws from the Superannuation Fund under subregulation (4);
  - (b) he or she ceases to be a Category C member under subregulation (5); or
  - (c) all benefits payable to or in respect of the person have been paid or transferred under regulation 21B(2) or (3).
- (7) A Category C member does not cease to be a member merely because the nominator —
  - (a) ceases to be a member; or
  - (b) ceases to be the Category C member's spouse or de facto partner.



*[Regulation 12C inserted in Gazette 2 May 2003 p. 1493-4;  
amended in Gazette 15 Jul 2003 p. 2832.]*

**13. Transfer of employment**

- (1) If a member —
- (a) leaves the employment of the FES Commissioner to enter the employment of an associated employer;
  - (b) leaves the employment of one associated employer to enter the employment of another associated employer; or
  - (c) leaves the employment of an associated employer to enter the employment of the FES Commissioner,

he shall remain a member so long as he continues in the second-mentioned employment.

- (2) The transfer of employment of a member —
- (a) from the FES Commissioner to an associated employer;  
or
  - (b) from an associated employer to another associated employer or to the FES Commissioner,

shall not be regarded as a cessation of employment for the purposes of these regulations.

*[Regulation 13 amended in Gazette 4 Nov 1988 p. 4371;  
22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

**14. Category transfers**

- (1) If —
- (a) a Category A member who has not made an election under regulation 14A becomes a Category B member;  
and
  - (b) the balance of the member's accumulation account is less than the benefit (in this subregulation called ***the member's notional benefit***) to which the member would have been entitled if, on the day the member ceased to

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be a Category A member, the member had ceased to be in the employment of the employer in a case to which regulation 21(1) applied,

the Superannuation Board is to credit to the member's accumulation account the amount by which the accumulation account balance is less than the member's notional benefit.

*[(2), (3) deleted]*

- (4) A Category B member who becomes a Category A member shall, as a Category A member, be granted such rights to benefits additional to those otherwise provided under these regulations as are determined by the Superannuation Board on the advice of the actuary.

*[Regulation 14 inserted in Gazette 29 Jun 1994 p. 3212; amended in Gazette 23 Jul 1999 p. 3387; 18 Aug 2000 p. 4784-5.]*

**14A. Category A member may elect to transfer notional defined benefit to accumulation account**

- (1) A Category A member who is under 65 years of age and —
- (a) has reached 55 years of age; or
  - (b) has completed a membership period of 30 years as a Category A member,

may elect to transfer the member's notional defined benefit to the credit of the member's accumulation account.

- (2) An election under subregulation (1) is irrevocable.
- (3) If a Category A member makes an election under subregulation (1), the Superannuation Board is to credit to the member's accumulation account the member's notional defined benefit.
- (4) In this regulation —  
***member's notional defined benefit*** means —

- (a) if, on the election day, the member has reached 55 years of age — an amount calculated in accordance with Schedule 1A as if the member had ceased to be in the employment of the employer on the election day; or
- (b) if, on the election day, the member is under 55 years of age — an amount calculated in accordance with Schedule 4 as if the member had ceased to be in the employment of the employer on the election day;

***the election day*** means the day on which the member makes an election under subregulation (1).

*[Regulation 14A inserted in Gazette 18 Aug 2000 p. 4785;  
amended in Gazette 29 Jun 2004 p. 2521.]*

## **Part IV — Contributions to the Fund**

### **15. Contributions by members**

- (1) A Category A member who has not reached the age of 65 years —
- (a) must contribute 6.25%; and
  - (b) may contribute a further 3.5%,
- of his or her superannuation salary to the Superannuation Fund.
- (1aa) A Category A member may elect to contribute under subregulation (1)(b), or may cancel an election, by giving written notice to the Superannuation Board.
- (1ab) An election —
- (a) takes effect on the 1 July after notice of it is received by the Superannuation Board; and
  - (b) remains in force until the 1 July after notice of its cancellation is received by the Superannuation Board.
- (1a) The following members may contribute to the Superannuation Fund —
- (a) a Category B member who has not reached the age of 70 years;
  - (b) a Category A member who has reached the age of 65 years but has not reached the age of 70 years.
- (1b) Where a member has entered into an agreement whereby the member's employer pays contributions to the Superannuation Fund on behalf of the member —
- (a) for the purposes of these regulations those contributions are taken to be contributions of the member under this regulation or regulation 37(1), as the case requires; and
  - (b) any tax payable in respect of the contribution under a law of the Commonwealth shall be deducted from the amount of the contribution.

- (2) The contributions payable by a member under subregulation (1) or (1a) shall be —
- (a) deducted from his salary by the employer when each payment of salary is made; and
  - (b) paid to the Superannuation Fund on his behalf within 3 working days of deduction.

*[Regulation 15 amended in Gazette 18 Aug 1989 p. 2766; 15 Dec 1992 p. 6022; 29 Jun 1994 p. 3212-14; 21 Nov 1995 p. 5357; 17 Apr 1998 p. 2098; 23 Jul 1999 p. 3387; 21 Jan 2005 p. 260-1.]*

**15A. Contributions for Category C member**

- (1) Contributions may be made to the Superannuation Fund for a Category C member by either or both of —
- (a) the Category C member;
  - (b) a non-C member who is the Category C member's spouse or de facto partner.
- (2) A person may contribute under subregulation (1)(b) even if he or she is not the person who nominated the Category C member under regulation 12C.
- (3) The amount of the contributions, and when and how they are to be paid, is to be agreed between the person contributing and the Superannuation Board.

*[Regulation 15A inserted in Gazette 21 Jan 2005 p. 261.]*

**16. Contributions by employers — Category A members**

- (1) In this regulation and regulations 16A and 16B —
- actuarial amount** means —
- (a) the amount equal to the amount or rate of contribution last advised by the actuary to the Superannuation Board under subregulation (2); or

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- (b) the amount equal to any other amount or rate of contribution agreed on (instead of the amount referred to in paragraph (a)) by the FES Commissioner, the Superannuation Board and the actuary;

**employer** means the FES Commissioner or an associated employer;

**salary day** in relation to an employer means a day on which salary becomes payable by the employer to members employed by it.

- (2) The actuary shall —
  - (a) as soon as practicable after the commencement of the Act; and
  - (b) whenever he reports to the Superannuation Board the result of an actuarial review conducted under section 17(1) of the Act,

advise the Superannuation Board of the amounts or rates of contributions required, respectively, from the FES Commissioner and each associated employer in order to ensure the stability of the Superannuation Fund and secure the rights of Category A members.

- (3) An employer shall, on or as soon as practicable after each salary day, contribute to the Superannuation Fund —
  - (a) the actuarial amount for each employee who is a Category A member to whom salary becomes payable on that day and who has not reached the age of 65 years; and
  - (b) if the employer's total contributions to the fund under paragraph (a) for that salary day for all such employees is less than 8.75% of the total amount of the employees' superannuation salaries for the salary day — an additional amount not less than the difference between the amount of the total contributions under paragraph (a) for the salary day and the amount equal to 8.75% of the

total amount of the superannuation salaries of those employees for the salary day.

- (4) An employer shall, on or as soon as practicable after each salary day, contribute to the Superannuation Fund for each employee who is a Category A member to whom salary becomes payable on that day, and who has reached the age of 65 years —
- (a) an amount equal to the minimum percentage of the salary required to be contributed by the employer to avoid the Superannuation Guarantee Charge; or
  - (b) if a greater amount is agreed between the employee and the employer — the greater amount.
- [(5) *deleted*]
- (6) Notwithstanding subregulation (3) the FES Commissioner is not obliged to pay amounts or rates of contribution to the Superannuation Fund that would result in the amounts or rates of contribution payable by it to the Superannuation Fund in relation to a salary day exceeding 1.5 times the amounts or rates of contribution payable to the Superannuation Fund under regulation 15 in relation to that salary day by Category A members in the employment of the FES Commissioner.
- (7) Notwithstanding subregulation (3) an associated employer is not obliged to pay amounts or rates of contribution to the Superannuation Fund that would result in the amounts or rates of contribution payable by it in relation to a salary day bearing a higher proportion to the amounts or rates of contribution payable under regulation 15 in relation to that salary day by Category A members in the employment of that associated employer than the proportion that the amounts or rates of contribution payable by the FES Commissioner in relation to that salary day bear to the amounts or rates of contribution payable under regulation 15 in relation to that salary day by Category A members in the employment of the FES Commissioner.

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- (8) Where pursuant to subregulation (6) or (7), an employer elects to pay amounts or rates of contribution to the Superannuation Fund that are less than the amounts or rates referred to in subregulation (3)(a) the Superannuation Board shall obtain from the actuary, and furnish to the Minister, a report as to the extent (if any) to which the benefits prescribed in these regulations should be reduced having regard to the amounts or rates of contributions that the employer has elected to pay and the capacity of the Superannuation Fund to meet claims for the payment of benefits.
- (9) Regulation 48(3) does not apply to the making of a regulation amending these regulations after a report has been received under subregulation (8) so long as the reductions in benefits effected by the amending regulation do not exceed the reductions recommended in the report.

*[Regulation 16 amended in Gazette 15 Dec 1992 p. 6022; 29 Jun 1994 p. 3214; 17 Apr 1998 p. 2098-9; 22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

**16A. Contributions by employers — Category B members**

Each employer shall in relation to, and on or as soon as practicable after, each salary day contribute to the Superannuation Fund in respect of the Category B members of the Superannuation Fund employed by it to whom salary becomes payable on that day —

- (a) the minimum percentage of the salary required to be contributed by the employer to avoid the Superannuation Guarantee Charge; or
- (b) in the case of a temporary or casual employee, if a greater amount than the amount referred to in paragraph (a) has been agreed between the temporary or casual employee and the employer, that greater amount.

*[Regulation 16A inserted in Gazette 29 Jun 1994 p. 3215.]*



**16B. Contributions by employers — supplementary disablement benefits**

- (1) An employer shall, on or as soon as practicable after each salary day, contribute to the Superannuation Fund an amount equal to 1% of the total amount of the superannuation salaries payable on that salary day to employees who are Category A members who have not reached the age of 65.
- (2) If, after considering the advice contained in an actuarial report, the Superannuation Board is of the opinion that the supplementary disablement benefits to be provided under these regulations may be provided by contributions of less than 1% of the total amount of the superannuation salaries of Category A members, the Superannuation Board may advise the employers of the percentage to which contributions may be reduced, and the employers may reduce their contributions to a percentage not less than that percentage.
- (3) Where the contributions of employers have previously been reduced under subregulation (2) and, after considering the advice contained in an actuarial report, the Superannuation Board is of the opinion that the contributions are insufficient to maintain the supplementary disablement benefits to be provided under these regulations, the Superannuation Board shall advise the employers of the percentage, not exceeding 1%, to which contributions should be increased and the employers shall increase their contributions to that percentage.

*[Regulation 16B inserted in Gazette 29 Jun 1994 p. 3215; amended in Gazette 17 Apr 1998 p. 2099.]*

**16BA. Acceptance of Commonwealth payments**

The Superannuation Board may accept from the Commonwealth Commissioner of Taxation payment of any of the following in respect of a member —

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- (a) a shortfall component under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;
- (b) an amount equal to the balance of the member's account in the Superannuation Holding Accounts Reserve under the *Small Superannuation Accounts Act 1995* of the Commonwealth;
- (c) a Government co-contribution under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* of the Commonwealth.

*[Regulation 16BA inserted in Gazette 21 Jan 2005 p. 261.]*

**16BB. Contribution splitting**

- (1) A member —
  - (a) for whom splittable contributions have been made to the Superannuation Fund; and
  - (b) whose partner is also a member,

may apply to the Superannuation Board to transfer some or all of those contributions to the partner's accumulation account in accordance with Division 6.7 of the SIS Regulations.

- (2) The Superannuation Board may accept an application under subregulation (1) if it is satisfied that the application complies with Division 6.7 of the SIS Regulations.
- (3) On acceptance of an application under subregulation (1) the Superannuation Board is to transfer the contributions as requested.

*[Regulation 16BB inserted in Gazette 1 Apr 2008 p. 1273.]*

**16C. Accumulation accounts**

- (1) The Superannuation Board is to establish and maintain an accumulation account for each member.

- (2) The Superannuation Board is to credit to a member's accumulation account —
- (a) any amounts to be credited to the member's accumulation account under regulation 14, 14A, or 20; and
  - (aa) the amount of any splittable contributions transferred to the member under regulation 16BB; and
  - (b) any contributions made by the member under an agreement under regulation 37; and
  - (c) any surplus funds allocated to the member under regulation 37A; and
  - (d) any amounts transferred from other superannuation funds under regulation 38 that the Superannuation Board determines are to be credited to the member's accumulation account; and
  - (da) for a Category A member who has made an election under regulation 14A, all contributions made by or for the member after the election is made except contributions under regulation 16B; and
  - (e) for any other Category A member, all contributions made by or for the member after the member has reached 65 years of age; and
  - (f) for a Category B member, all contributions made by or for the member; and
  - (fa) for a Category B member, the proceeds received by the Superannuation Board from any insurance policies taken out under regulation 16D in respect of the member; and
  - (fb) for a Category C member, all contributions made under regulation 15A by or for the member; and
  - (fc) payments accepted from the Commonwealth Commissioner of Taxation under regulation 16BA in respect of the member; and
  - (g) earnings in accordance with subregulation (4).

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- (3) The Superannuation Board may debit to a member's accumulation account —
- (a) any tax payable by the Superannuation Board in respect of contributions credited to the account; and
  - (aa) for a Category B member, the costs and premiums payable by the Superannuation Board for any insurance policies taken out under regulation 16D in respect of the member; and
  - (ab) if the member is a Category A member who has made an election under regulation 14A, any fee that the Superannuation Board, on the advice of its actuary, considers it is appropriate to charge for insuring for the cost of paying any benefit under regulation 17 or 18 in excess of the balance of the member's accumulation account; and
  - (ac) the amount of any splittable contribution transferred by the member under regulation 16BB; and
  - (b) amounts paid as benefits to, or in respect of, the member; and
  - (c) amounts transferred to other funds in satisfaction of the member's entitlement to a benefit.
- (4) At least once every year the Superannuation Board must, for each member —
- (a) calculate the member's earnings for the period since earnings were last credited to the member's accumulation account (or if no earnings have been credited, since the account was opened) by applying the member's earnings rate to the balance in the account; and
  - (b) credit the amount of the member's earnings to the member's accumulation account.
- (5) When making a calculation under subregulation (4)(a) the Superannuation Board may apply the earnings rate to daily

balances, average balances or on such other basis as it considers appropriate.

*[Regulation 16C inserted in Gazette 23 Jul 1999 p. 3387; amended in Gazette 18 Aug 2000 p. 4786; 2 May 2003 p. 1494; 21 Jan 2005 p. 262; 1 Apr 2008 p. 1273-4.]*

**16D. Insurance for Category B members**

- (1) The Superannuation Board may take out such policies of insurance in respect of a Category B member who became a Category B member under regulation 11(2) as the Superannuation Board considers appropriate.
- (2) In addition to any policies taken out under subregulation (1) the Superannuation Board may take out such policies of insurance in respect of a Category B member as the Board and member agree.
- (3) In this regulation —  
**insurance** means life insurance, disability insurance or life and disability insurance.

*[Regulation 16D inserted in Gazette 18 Aug 2000 p. 4786-7.]*

## **Part V — Benefits**

### **Division 1 — Entitlement to benefits**

#### **17. Death benefit — Category A**

- (1) If a Category A member who has not made an election under regulation 14A dies while still in the employment of the employer and before reaching 65 years of age, the Superannuation Board is to pay a benefit equal to —
  - (a) an amount calculated in accordance with Schedule 1 using a membership period determined in accordance with Schedule 2; and
  - (b) the balance of the member's accumulation account.
- (2) If a Category A member who has made an election under regulation 14A dies while still in the employment of the employer and before reaching 65 years of age, the Superannuation Board is to pay a benefit equal to —
  - (a) the balance of the member's accumulation account; and
  - (b) if the accumulation account balance is less than the benefit that would have been payable under subregulation (1) had the member not made the election, the amount by which the accumulation account balance is less than that benefit.

*[Regulation 17 inserted in Gazette 23 Jul 1999 p. 3388; amended in Gazette 18 Aug 2000 p. 4787.]*

#### **18. Total and permanent disablement benefit — Category A**

If a Category A member leaves the employment of the employer as a result of total and permanent disablement before reaching 65 years of age, the member is entitled to a benefit equal to the benefit that would have been payable if the member had died on the last day on which the member received remuneration from the employer.

*[Regulation 18 inserted in Gazette 23 Jul 1999 p. 3388.]*

**19. Partial and permanent disablement benefit — Category A**

- (1) If a Category A member who has not made an election under regulation 14A leaves the employment of the employer as a result of partial and permanent disablement before reaching 65 years of age, the member is entitled to a benefit equal to —
  - (a) an amount calculated in accordance with Schedule 1A; and
  - (b) the balance of the member's accumulation account.
- (2) If a Category A member who has made an election under regulation 14A leaves the employment of the employer as a result of partial and permanent disablement before reaching 65 years of age, the member is entitled to a benefit equal to the balance of the member's accumulation account.

*[Regulation 19 inserted in Gazette 23 Jul 1999 p. 3389; amended in Gazette 18 Aug 2000 p. 4787-8; 29 Jun 2004 p. 2521.]*

**20. Continuing in employment after 65 — Category A**

If a Category A member who has not made an election under regulation 14A remains in the employment of the employer on the member's 65th birthday, the Superannuation Board is to credit to the member's accumulation account an amount calculated in accordance with Schedule 1A as if the member had ceased employment with the employer on that day.

*[Regulation 20 inserted in Gazette 23 Jul 1999 p. 3389; amended in Gazette 18 Aug 2000 p. 4788; 29 Jun 2004 p. 2521.]*

**21. Leaving service benefit — Category A**

- (1) If a Category A member who has not made an election under regulation 14A ceases to be in the employment of the employer in a case to which neither regulation 17, 18, nor 19 applies, the member is entitled to a benefit equal to —
  - (a) if the member is 65 years of age or older, the balance of the member's accumulation account;

- (b) if the member is over 55, but under 65, years of age —
    - (i) an amount calculated in accordance with Schedule 1A; and
    - (ii) the balance of the member's accumulation account;or
  - (c) if the member is under 55 years of age —
    - (i) an amount calculated in accordance with Schedule 4; and
    - (ii) the balance of the member's accumulation account.
- (1a) If a Category A member who has made an election under regulation 14A ceases to be in the employment of the employer in a case to which neither regulation 17, 18, nor 19 applies, the member is entitled to a benefit equal to the balance of the member's accumulation account.
- (2) For the purposes of subregulation (1) or (1a) a Category A member is taken to have left the employment of the employer if the member —
- (a) is over 65 years of age and works for less than 10 hours a week; or
  - (b) is over 70 years of age and works for less than 30 hours a week.

*[Regulation 21 inserted in Gazette 23 Jul 1999 p. 3389; amended in Gazette 18 Aug 2000 p. 4788; 29 Jun 2004 p. 2521]*

**21A. Benefit — Category B**

- (1) If a Category B member dies while still in the employment of the employer the Superannuation Board is to pay a benefit equal to the balance of the member's accumulation account.
- (2) If a Category B member —
  - (a) ceases to be in the employment of the employer other than as a result of death;



- (b) is over 65 years of age and works for less than 10 hours a week; or
- (c) is over 70 years of age and works for less than 30 hours a week,

the member is entitled to a benefit equal to the balance of the member's accumulation account.

*[Regulation 21A inserted in Gazette 23 Jul 1999 p. 3390;  
amended in Gazette 18 Aug 2000 p. 4788.]*

**21AA. Benefit — Category C**

- (1) If a Category C member —
  - (a) withdraws from the Superannuation Fund under regulation 12C(4); or
  - (b) satisfies a condition of release within the meaning of Part 6 of the SIS Regulations in respect of which the cashing restriction specified in the SIS Regulations Schedule 1 is nil,

the member is entitled to a benefit equal to the balance of the member's accumulation account.

- (2) If a Category C member dies while there is still an amount in the member's accumulation account the Superannuation Board is to pay a benefit equal to the balance of the member's accumulation account.

*[Regulation 21AA inserted in Gazette 2 May 2003 p. 1494-5;  
amended in Gazette 1 Apr 2008 p. 1274.]*

**21AB. Phased retirement benefit**

- (1) A member who —
  - (a) is at least the preservation age; and
  - (b) applies to the Superannuation Board for payment of a benefit under this regulation,

is entitled to a benefit of the amount specified in the member's application, which must not exceed the balance of the member's accumulation account.

- (2) A benefit under this regulation is to be paid —
- (a) under regulation 22 as a pension benefit; and
  - (b) on terms and conditions that ensure that the benefit is —
    - (i) a non-commutable allocated annuity; or
    - (ii) a non-commutable allocated pension; or
    - (iii) a non-commutable annuity; or
    - (iv) a non-commutable pension,(all as defined in the SIS Regulations).
- (3) For the purposes of regulation 22, an application under subregulation (1)(b) for payment of a benefit is taken to also be an application under regulation 22(1) for the benefit to be paid as a pension benefit.

*[Regulation 21AB inserted in Gazette 1 Apr 2008 p. 1275.]*

**21AC. Increased death benefit in certain cases**

If —

- (a) a death benefit becomes payable; and
- (b) the Superannuation 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 Superannuation Board may, if it considers it appropriate to do so, increase the amount of the death benefit by an amount not exceeding the amount of the deduction to which the Superannuation Board would be entitled.

*[Regulation 21AC inserted in Gazette 21 Aug 2009 p. 3268.]*

**21B. Payment of benefits**

- (1) Subject to this regulation and regulations 21C, 22, 23B and 23BA, when a member becomes entitled to a benefit the Superannuation Board is to pay it to the member as a lump sum.
- (2) The Superannuation Board may, at the request of a member, transfer a benefit to which the member is entitled to another complying superannuation fund.
- (3) The Superannuation Board may transfer a benefit that is payable to or in respect of a member to an eligible rollover fund (as defined in the SIS Act) if that complies with the SIS standards.
- (3a) The Board must not transfer a supplementary disablement benefit under subregulation (2) or (3) unless the benefit is to be paid as a lump sum and has become payable to the member.
- (4) If the Superannuation Board transfers a benefit under subregulation (2) or (3) —
  - (a) the receipt of the trustee of the fund to which it is transferred is a sufficient discharge to the Superannuation Board; and
  - (b) neither the Superannuation Board nor the employer is responsible for the payment, application or disposal of the benefit by that trustee.
- (5) In subregulation (2) —

***complying superannuation fund*** means —

  - (a) a regulated superannuation fund (as defined in the SIS Act);
  - (b) an exempt public sector superannuation scheme (as defined in the SIS Act);
  - (c) a regulated approved deposit (as defined in the SIS Act);  
or
  - (d) a retirement savings account (as defined in the *Retirement Savings Accounts Act 1997* (Commonwealth)).

*[Regulation 21B inserted in Gazette 23 Jul 1999 p. 3390-1;  
amended in Gazette 30 Mar 2001 p. 1761.]*

**21C. Preservation**

- (1) Despite any other provision in these regulations, the Superannuation Board must not pay a benefit to a member if that would be contrary to the SIS standards.

*[(2) deleted]*

*[Regulation 21C inserted in Gazette 23 Jul 1999 p. 3391;  
amended in Gazette 2 May 2003 p. 1495; 1 Apr 2008 p. 1275.]*

**21D. Delay in payment of benefit**

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

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

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

*[Regulation 21D inserted in Gazette 1 Apr 2008 p. 1275-6.]*

**22. Retirement benefits — pension option**

- (1) A member or the spouse or de facto partner of a member who is entitled to a lump sum benefit under these regulations may apply to the Superannuation Board to receive a pension benefit in lieu of all or part of that lump sum benefit (in this regulation called *the amount commuted*).
- (2) Subject to regulation 21AB(2)(b), if an application under subregulation (1) is approved by the Superannuation Board a pension benefit shall be payable on such terms and conditions and to such persons as are approved by the Superannuation Board and the Superannuation Board shall —
  - (a) pay the pension benefit directly from the Superannuation Fund; or
  - (b) apply the amount commuted to purchase an annuity policy or contract providing for the payment of the pension.
- (2a) A person who ceased to be a member of the Superannuation Fund after 1 January 1989 and before 1 July 1993 may apply to the Superannuation Board to receive a pension benefit paid from the Superannuation Fund.
- (2b) If —
  - (a) an application by a person under subregulation (2a) is approved by the Superannuation Board; and
  - (b) that person pays into the Superannuation Fund an amount as approved by the Superannuation Board,a pension benefit shall be payable on such terms and conditions and to such persons as are approved by the Superannuation Board and the Superannuation Board shall pay the pension benefit directly from the Superannuation Fund.
- [(3) deleted]*
- (4) Upon the application of the amount commuted in the manner referred to in subregulation (2)(b) neither the member, the

spouse or de facto partner receiving the pension nor any person claiming through them shall have any further claim on the Superannuation Fund or the Superannuation Board or the employer in respect of the amount so applied.

- (5) Benefits that are due and payable under this regulation after the death of the member or the spouse or de facto partner receiving the pension shall (unless the terms and conditions on which such benefits were granted provide otherwise) be paid by the Superannuation Board in the manner set out in regulation 25.

*[Regulation 22 amended in Gazette 29 Jun 1994 p. 3204-5; 21 Nov 1995 p. 5357-8; 2 May 2003 p. 1495; 1 Apr 2008 p. 1276.]*

*[23. Deleted in Gazette 1 Apr 2008 p. 1276.]*

*[23A. Deleted in Gazette 23 Jul 1999 p. 3391.]*

**23B. Supplementary disablement benefits**

- (1) A member who is entitled to a partial and permanent disablement benefit is also entitled to a supplementary disablement benefit if —
- (a) the member's salary was taken into account for the purposes of calculating the amount of his or her employer's contribution to the Superannuation Fund under regulation 16B;
  - (b) there is no determination in force under regulation 33 that reduces the partial and permanent disablement benefit payable to the member; and
  - (c) the member was not offered satisfactory alternative employment (as defined in subregulation (10)) before his or her employment was terminated as a result of disablement.
- (2) If a member's maximum benefit is \$20 000 or less, the member's supplementary disablement benefit is an amount equal to the maximum benefit and is payable to the member in a

lump sum as soon as practicable after the member becomes entitled to the supplementary disablement benefit.

- (3) If a member's maximum benefit is more than \$20 000, the member's supplementary disablement benefit is payable to the member —
- (a) under subregulation (3a) if the member is over 55 years of age and has at least 20 years membership when he or she becomes entitled to the benefit; or
  - (b) otherwise, under subregulation (3b).
- (3a) A benefit payable under this subregulation is to be paid in one of the following ways, at the election of the member —
- (a) in monthly instalments payable on the first day of each month for 60 months starting with the month following the relevant month;
  - (b) in annual instalments payable on the first day of the month following the month one year after the relevant month and on the anniversary of that day in each of the 4 following years;
  - (c) in a lump sum payable 5 years after the end of the relevant month;
  - (d) if the Superannuation Board agrees, in a lump sum payable as soon as possible after the member becomes entitled to the partial and permanent disablement benefit.
- (3b) A benefit payable under this subregulation is to be paid —
- (a) in the way described in subregulation (3a)(a) or (b), at the election of the member; or
  - (b) if the Board is satisfied that there are special circumstances, in the way described in subregulation (3a)(d).

- (4) The supplementary disablement benefit is not payable to the member until the member has given written notice to the Superannuation Board of the method of payment elected.
- (5) The amount of a monthly instalment of supplementary disablement benefit payable to a beneficiary under this regulation is calculated in accordance with Schedule 5.
- (6) The amount of an annual instalment of supplementary disablement benefit payable to a beneficiary under this regulation is calculated in accordance with Schedule 6.
- (7) The amount of the lump sum of supplementary disablement benefit payable to a beneficiary under an election under subregulation (3)(c) is calculated in accordance with Schedule 6A.
- (7a) The amount of the lump sum of supplementary disablement benefit payable to a beneficiary under an election under subregulation (3)(d) is an amount equal to the member's maximum benefit.
- (8) The Superannuation Board may, after considering the advice of the actuary, determine a rate of interest for the purposes of the formulas in Schedules 5, 6 and 6A.
- (9) A determination of a rate of interest does not affect the amount of an instalment or lump sum calculated by reference to a rate of interest applicable under an earlier determination.
- (10) In this regulation —  
*satisfactory alternative employment*, in relation to a member, means alternative employment by the FES Commissioner or any other employer for which, in the opinion of the Superannuation Board, the member is reasonably suited by education, training and experience and which, in the opinion of the Superannuation Board, provides satisfactory remuneration having regard to the member's previous salary.



*[Regulation 23B inserted in Gazette 17 Apr 1998 p. 2100; amended in Gazette 22 Dec 1998 p. 6852-3; 23 Jul 1999 p. 3391; 30 Mar 2001 p. 1761-2; 22 May 2001 p. 2576; 21 Jan 2005 p. 262-3; 31 Oct 2012 p. 5249.]*

**23BA. Electing another method of payment — supplementary disablement benefits**

- (1) A beneficiary who elected under regulation 23B(3a)(c) to be paid a supplementary disablement benefit in a lump sum may, at any time after the relevant month and before the lump sum is due for payment, elect instead to be paid —
  - (a) in monthly instalments payable on the first day of each month from the month after the month in which the election is made until the end of the 5 year period referred to in regulation 23B(3a)(c); or
  - (b) if the Superannuation Board agrees, in a lump sum payable as soon as practicable after the election is made.
- (2) The amount of a monthly instalment payable to a beneficiary who elects to be paid monthly instalments under subregulation (1)(a) is calculated in accordance with Schedule 6B.
- (2a) The amount of the lump sum payable to a beneficiary who elects to be paid a lump sum under subregulation (1)(b) is calculated in accordance with Schedule 9.
- (3) A beneficiary who elected under regulation 23B(3a)(a) to be paid a supplementary disablement benefit in monthly instalments may, at any time before the 60th instalment is paid, elect to be paid the remainder of the benefit —
  - (a) in a lump sum payable 5 years after the end of the relevant month; or
  - (b) if the Superannuation Board agrees, in a lump sum payable as soon as practicable after the election is made.

- (4) The amount of the lump sum payable to a beneficiary who elects to be paid a lump sum under subregulation (3)(a) is calculated in accordance with Schedule 6C.
- (4a) The amount of the lump sum payable to a beneficiary who elects to be paid a lump sum under subregulation (3)(b) is calculated in accordance with Schedule 7.
- (5) A beneficiary who elected under regulation 23B(3a)(b) to be paid a supplementary disablement benefit in annual instalments may —
  - (a) at any time before the fourth instalment is paid, elect to be paid the remainder of the benefit in a lump sum payable 5 years after the end of the relevant month; or
  - (b) at any time before the last instalment is paid and if the Superannuation Board agrees, elect to be paid the remainder of the benefit in a lump sum payable as soon as practicable after the election is made.
- (6) The amount of the lump sum payable to a beneficiary who elects to be paid a lump sum under subregulation (5)(a) is calculated in accordance with Schedule 6D.
- (6a) The amount of the lump sum payable to a beneficiary who elects to be paid a lump sum under subregulation (5)(b) is calculated in accordance with Schedule 8.
- (7) A beneficiary may make an election under this regulation by giving written notice of the election to the Superannuation Board.
- (8) A beneficiary is not entitled to make more than one election under this regulation.
- (9) In subregulations (1), (3) and (5), a reference to an election under regulation 23B(3a) is to be read as including a reference to regulation 23B as in force at any time before the commencement of the *Fire Brigades (Superannuation Fund) Amendment Regulations 1998*<sup>1</sup>.

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*[Regulation 23BA inserted in Gazette 17 Apr 1998 p. 2100-1;  
amended in Gazette 30 Mar 2001 p. 1762-3; 22 May 2001  
p. 2577; 1 Apr 2008 p. 1276.]*

**23C. Benefit on death of supplementary disablement beneficiary**

- (1) If a member entitled to a supplementary disablement benefit dies before all of the benefit has been paid, a lump sum shall be paid from the Superannuation Fund in the manner provided in regulation 25.
- (2) The amount of the lump sum payable under subregulation (1) is an amount calculated in accordance with —
  - (a) if the member's last election was an election under regulation 23B(3a)(a) or 23BA(1)(a) for the benefit to be paid in monthly instalments — Schedule 7;
  - (b) if the member's last election was an election under regulation 23B(3a)(b) for the benefit to be paid in annual instalments — Schedule 8; or
  - (c) if the member's last election was an election under regulation 23B(3a)(c) or 23BA(3)(a) or (5)(a) for the benefit to be paid as a lump sum after 5 years — Schedule 9.
- (3) In this regulation —

***last election*** of a member, means the last election made by the member under regulation 23B or 23BA as to the manner in which the member's supplementary disablement benefit was to be paid.

*[Regulation 23C inserted in Gazette 30 Mar 2001 p. 1763-4;  
amended in Gazette 1 Apr 2008 p. 1276-7.]*

**23D. Review of supplementary disablement benefits**

- (1) If, after considering the advice contained in an actuarial report, the Superannuation Board is of the opinion that contributions by employers of 1% of the total amount of the superannuation salaries of Category A members are insufficient to maintain the

benefits to be provided under regulations 23B, 23BA and 23C the Superannuation Board shall, subject to subregulation (3) —

- (a) reduce the benefits payable by way of a reduction in —
  - (i) the maximum percentage to a level determined by the Superannuation Board with the advice of the actuary; and
  - (ii) all instalment benefits which are in the course of payment at the date of the reduction, or which commence to be paid after the date of the reduction, to a level determined by a recalculation under regulation 23B(5), 23B(6) or 23BA(2) (as the case requires), as the case may require, using the new maximum percentage determined under subparagraph (i);

or

- (b) reduce the benefits payable in such other manner as the Superannuation Board, after considering the advice of the actuary, considers equitable.
- (2) Where the benefits to be provided under regulations 23B, 23BA and 23C have previously been reduced under subregulation (1) and, after considering the advice contained in an actuarial report, the Superannuation Board is of the opinion that the benefits should be increased, the Superannuation Board shall, subject to subregulation (3) —
- (a) where the benefits have been reduced under subregulation (1)(a), increase the benefits payable by way of an increase in —
    - (i) the maximum percentage to a level determined by the Superannuation Board with the advice of the actuary being a level not exceeding 100%; and
    - (ii) all instalment benefits which are in the course of payment at the date of the increase, or which commence to be paid after the date of the

increase, to a level determined by a recalculation under regulation 23B(5), 23B(6) or 23BA(2) (as the case requires), as the case may require, using the new maximum percentage determined under subparagraph (i);

or

- (b) where the benefits have been reduced under subregulation (1)(b), increase the benefits payable in such other manner as the Superannuation Board, after considering the advice of the actuary, considers equitable but not in a manner that would make the benefits exceed the benefits that were payable before the reduction under subregulation (1)(b) took place.
- (3) Any reduction in benefits under subregulation (1) or increase in benefits under subregulation (2) shall not apply to benefits that have been paid to a beneficiary before the reduction or increase occurs.

*[Regulation 23D inserted in Gazette 29 Jun 1994 p. 3220-1; amended in Gazette 21 Nov 1995 p. 5358; 30 Mar 2001 p. 1764.]*

## **Division 2 — Payment of benefits**

### **24. Term used in this Division and Division 3**

In this Division and Division 3, unless the contrary intention appears, *benefit* means a benefit payable under these regulations.

### **25. Payment of benefits in respect of deceased members**

- (1) A death benefit shall be paid from the Superannuation Fund by the Superannuation Board —
  - (a) to or for the benefit of the dependants of the member; or
  - (b) to the legal personal representative of the member.

- (2) Unless the SIS Regulations require otherwise, a death benefit may, at the discretion of the Superannuation Board, be paid —
- (a) to either the dependants of the member or his legal personal representative or both; and
  - (b) to any one or more of the dependants of the member to the exclusion of the others of them; and
  - (c) in such shares or proportions as the Superannuation Board thinks fit and without the Board being under any obligation to ensure equality between the persons to whom payment is made.
- (3) Before exercising its discretion pursuant to subregulation (2) the Superannuation Board shall consider —
- (a) the will (if available) of the member; and
  - (b) any request made by the member as to the payment of his death benefit, other than a notice under regulation 26 that the SIS Regulations require the Superannuation Board to comply with; and
  - (c) such other matters as the Superannuation Board considers relevant.
- (4) Where under this regulation any sum is payable to or for the benefit of a minor —
- (a) the Superannuation Board may pay that sum (without being responsible to see to its application) —
    - (i) to the parent or guardian of the minor or to any other person who appears to have the custody or control of the minor or with whom the minor resides; or
    - (ii) to a trustee corporation to be held in trust under such terms and conditions as determined by the Superannuation Board for the benefit of the minor until he ceased to be a minor;
- and

- (b) the receipt of that parent or guardian, or that other person, or the trustee corporation for any sum so paid shall be a good discharge to the Superannuation Board for that sum.
- (5) In subregulation (4) *trustee corporation* means the Public Trustee in and of a State or any company authorised by an Act of a State to administer the estates of deceased persons and other trust estates.

*[Regulation 25 amended in Gazette 21 Aug 2009 p. 3268-9.]*

**26. Nomination of dependants to receive benefits**

The Superannuation Board shall when a person becomes a member, and thereafter at such intervals as the Superannuation Board thinks fit, invite the member to nominate —

- (a) the dependants to whom he wishes benefits that may be payable upon or after his death to be paid; and
- (b) the proportions in which he wishes the benefits to be paid.

**26. Death benefits — direction as to payment**

- (1) A member may give written notice to the Superannuation Board requiring the Superannuation Board to pay any death benefit that becomes payable in respect of the member to the legal personal representative or a dependant of the member.

Note: The SIS Regulations r. 6.17A to 6.17B make provision in respect of notices and as to their effect.

- (2) A member cannot give a notice under subregulation (1) unless the Superannuation Board has given to the member any information that the SIS Regulations require to be given to the member before he can give a notice of that kind.
- (3) The Superannuation Board must give the information mentioned in subregulation (2) to a member —
  - (a) when he becomes a member; and

- (b) at the request of the member; and
- (c) at such other times as the Superannuation Board thinks fit.

*[Regulation 26 inserted in Gazette 21 Aug 2009 p. 3269-70.]*

**27. Time and mode of payment of benefits**

- (1) Notwithstanding anything contained in these regulations, the Superannuation Board may —
  - (a) make an interim payment in respect of any benefit;
  - (b) postpone the payment of the whole or part of any benefit for any period not exceeding 6 months after the happening of the event upon which the benefit became payable;
  - (c) with the agreement of the person to whom the benefit is payable, postpone the payment of the whole or part of any benefit for any period;
  - (d) make payment of any benefit itself or cause or arrange for such payment to be made for or on its behalf.

*[(2), (2a) deleted]*

- (3) Where, after a benefit has been paid to a member under a regulation, it is established that the member was eligible for a benefit under another regulation, the Superannuation Board may pay to or in respect of that member the benefit payable under the latter regulation but any amount previously paid to the member shall be deducted from the benefit payable under the latter regulation.
- (4) Where a person who is or may be entitled to any benefit is, in the opinion of the Superannuation Board, unable by reason of mental incapacity to manage his own affairs, the Superannuation Board may pay that benefit —
  - (a) to a person appointed under the *Guardianship and Administration Act 1990* as the guardian of the first-mentioned person or, if no guardian has been



appointed, to any other person, for or on behalf of the first-mentioned person; or

(b) to the dependants of the first-mentioned person.

- (5) A payment under subregulation (4) shall, without any thing more, be a sufficient discharge to the Superannuation Board.

*[Regulation 27 amended in Gazette 15 Dec 1992 p. 6024; 29 Jun 1994 p. 3221; 23 Jul 1999 p. 3391; 1 Apr 2008 p. 1277.]*

**28. Proofs**

- (1) A person appearing, purporting or claiming to be qualified for or entitled to any benefit shall on request produce to the Superannuation Board such evidence and do and execute such acts and documents as the Superannuation Board may reasonably require.
- (2) Whenever it becomes necessary for the Superannuation Board to decide questions of fact the Superannuation Board may act upon such proofs and presumptions, or either, as it considers satisfactory irrespective of whether they are strictly legal proofs or presumptions.

**Division 3 — Miscellaneous**

*[Heading inserted in Gazette 1 Apr 2008 p. 1277.]*

**29. Unclaimed benefits**

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

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

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

*[Regulation 29 inserted in Gazette 1 Apr 2008 p. 1277.]*

**30. Assignment or charge of benefit prohibited**

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

*[Regulation 30 inserted in Gazette 1 Apr 2008 p. 1277.]*

**31. Deduction of tax from benefits**

- (1) The Superannuation Board may deduct from any benefit any taxes, levies or duties payable in respect of that benefit to the Commonwealth or any State and pay the relevant authority the amount so deducted on behalf of the person to whom the benefit is payable.
- (2) The Superannuation Board may deduct from a member's account in the Superannuation Fund amounts payable under the *Superannuation Contribution Tax (Assessment and Collection) Act 1997* of the Commonwealth.
- (3) If funds in the member's account are insufficient to cover the amounts payable, the Superannuation Board may reduce the member's benefit entitlement by an amount equal to the shortfall plus interest on the amount calculated at a rate to be determined by the Superannuation Board on the advice of the actuary.

*[Regulation 31 inserted in Gazette 29 Jun 1994 p. 3222; amended in Gazette 17 Apr 1998 p. 2101.]*

**32. Reduction of benefits to the extent of any amount not insured**

- (1) Subject to subregulations (2) and (3) a benefit payable to or in respect of a Category A member under regulation 17(1) shall be reduced by —
  - (a) the amount of any insurance sought by the Superannuation Board in respect of the death or the total

and permanent disablement of the member (as the case may be) that has been —

- (i) refused by an insurer; or
- (ii) offered by an insurer at other than normal rates and not effected by the Superannuation Board;

and

- (b) the amount of any claim not paid by an insurer under the terms of any policy effected by the Superannuation Board in respect of the death or the total and permanent disablement of the member (as the case may be).

(2) Notwithstanding subregulation (1) the benefit payable in respect of a Category A member under regulation 17(1) shall not be less than the benefit that would have been payable to or in respect of that member if the amount under regulation 17(1)(a) were calculated in accordance with Schedule 1A without applying Schedule 2.

(2a) Subregulation (2) does not apply for the purposes of calculating the benefit that would have been payable under regulation 17(1) in order to determine —

- (a) a benefit under regulation 17(2); or
- (b) an amount calculated by direct or indirect reference to a benefit under regulation 17(2).

(3) The Superannuation Board may determine in any particular case that the reduction referred to in subregulation (1) or any part of that reduction shall not be applied and that determination shall have effect.

*[Regulation 32 amended in Gazette 29 Jun 1994 p. 3222; 23 Jul 1999 p. 3392; 18 Aug 2000 p. 4789; 29 Jun 2004 p. 2521.]*

**33. Reduction of benefits in case of previous disease or disability**

(1) Where a person who suffers from any disease or has any disability becomes a Category A member, the Superannuation

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Board may by notice in writing to that person, determine that, in the event of his death, total and permanent disablement, or partial and permanent disablement arising out of that disease or disability, the benefits to be payable to or in respect of him shall be reduced in such manner as is set out in the notice and, notwithstanding any other provision of these regulations, on the death, total and permanent disablement or partial and permanent disablement of that member the benefit payable in respect of him shall be ascertained in accordance with the notice.

- (2) A notice in writing under subregulation (1) shall be given to the person concerned when, or as soon as practicable after, he becomes a Category A member.

*[Regulation 33 amended in Gazette 29 Jun 1994 p. 3222.]*

## **Part VI — Associated employers**

### **34. Superannuation Board is an associated employer**

The Superannuation Board is, for the purposes of the Act, an associated employer and employees of that body shall participate in the Superannuation Fund under terms determined by the Superannuation Board.

*[Regulation 34 inserted in Gazette 14 Aug 1987 p. 3162.]*

### **34A. Admission of other associated employers**

- (1) The FES Commissioner, the Superannuation Board and a body mentioned in Schedule 1 to the Act other than the Superannuation Board, may at any time enter into an agreement for that body and employees of that body to participate in the Superannuation Fund and that body shall become an associated employer for the purposes of the Act and these regulations on and from a date specified in the agreement.
- (2) An agreement under subregulation (1) shall be in such form as is determined by the Superannuation Board.

*[Regulation 34A inserted in Gazette 14 Aug 1987 p. 3162; amended in Gazette 4 Nov 1988 p. 4371; 22 Dec 1998 p. 6852; 31 Oct 2012 p. 5249.]*

### **35. Release of associated employers**

- (1) The Superannuation Board, with the approval of the FES Commissioner, may release a body that is an associated employer under regulation 34A and the members employed by it from participation in the Fund and —
  - (a) that body shall cease to be an associated employer; and
  - (b) the members employed by that body shall cease to be members,

on a date specified by the Superannuation Board and upon terms and conditions determined by the Superannuation Board.

- (2) Where a body and the members employed by it are released from participation in the Superannuation Fund pursuant to subregulation (1) the interest in the Superannuation Fund of that body and those members shall be —
- (a) ascertained by the Superannuation Board on the advice of the actuary; and
  - (b) dealt with in such manner as the Superannuation Board and that body consider equitable taking into account the membership of and the amounts contributed by and in respect of each of those members and any other circumstances which the Superannuation Board and that body consider relevant,

but no provision shall be made for the payment of a benefit to any of those members while he remains in the employment of that body other than for the support and maintenance of that member and his dependants in the case of hardship.

*[Regulation 35 amended in Gazette 14 Aug 1987 p. 3162; 22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

**36. Dissolution of associated employers**

- (1) Subject to subregulation (4) and regulation 39(2) and (3), where an associated employer —
- (a) is wound up or dissolved; or
  - (b) amalgamates with or transfers the whole of its engagements to any other person or body,

the interest in the Superannuation Fund of that associated employer and the members employed by it at the time of the winding up, dissolution, amalgamation or transfer, as the case may be, shall be ascertained by the Superannuation Board on the advice of the actuary and applied by the Superannuation Board in the manner set out in subregulation (2).

- (2) Where subregulation (1) applies in relation to an associated employer the interest in the Superannuation Fund referred to in

subregulation (1) shall be applied by the Superannuation Board in the following order —

- (a) in providing as far as possible through the Superannuation Fund or otherwise the benefits to which the members referred to in subregulation (1) would have been entitled had they voluntarily retired from the employment of that associated employer; and
  - (b) by distributing any balance then remaining for the benefit of those members in such manner as the Superannuation Board on the advice of the actuary considers equitable.
- (3) The benefits referred to in subregulation (2) shall be —
- (a) in such form and provided by such arrangements as are determined by the Superannuation Board; and
  - (b) paid to the members referred to in subregulation (1) in full discharge of all claims by or in respect of them in relation to any rights or benefits under these regulations or in connection with or arising out of the Superannuation Fund.
- (4) Where a member employed by an associated employer enters the employment of another associated employer or the FES Commissioner as from the time of the winding up, dissolution, amalgamation or transfer of engagements of the first-mentioned associated employer this regulation does not apply to or in relation to that member.

*[Regulation 36 amended in Gazette 22 Dec 1998 p. 6852-3;  
31 Oct 2012 p. 5249.]*

## **Part VII — Miscellaneous**

### **37. Contributions for additional benefits**

- (1) A Category A member or a Category B member may enter into an agreement with the Superannuation Board to contribute to the Superannuation Fund such contributions, additional to the contributions payable by him under regulation 15, as are specified in the agreement.
- (2) An agreement under subregulation (1) shall specify —
  - (a) the amounts or rates of contributions to be payable under the agreement;
  - (b) the intervals at which, or manner in which, contributions payable under the agreement are to be varied;
  - (c) the method of payment of contributions under the agreement; and
  - (d) the period of notice required for the variation or cancellation of the agreement.

*[Regulation 37 amended in Gazette 15 Dec 1992 p. 6024; 29 Jun 1994 p. 3222; 21 Nov 1995 p. 5358; 17 Apr 1998 p. 2101; 23 Jul 1999 p. 3392; 2 May 2003 p. 1495.]*

### **37A. Distribution of surplus funds**

If the actuary advises that any funds accumulated in the Superannuation Fund in respect of Category A members who have not made elections under regulation 14A are surplus to the Fund's commitments, the Superannuation Board may allocate the surplus funds proportionally to the credit of the members who were Category A members on 1 July in the financial year in which the distribution is made and who had not made elections under regulation 14A before that day.

*[Regulation 37A inserted in Gazette 17 Apr 1998 p. 2101; amended in Gazette 23 Jul 1999 p. 3392; 18 Aug 2000 p. 4789.]*

*[37B. Deleted in Gazette 23 Jul 1999 p. 3392.]*



**38. Transfers from other funds**

- (1) The Superannuation Board may make and carry into effect arrangements —
- (a) with a person who becomes a member of the Superannuation Fund and who is or has been a member of another superannuation or like fund; or
  - (b) in respect of him, with the trustees of or other persons controlling that other fund; or
  - (c) with him and them,
- under which an agreed sum or agreed assets shall be paid by or transferred from that other fund to the Superannuation Fund.
- (2) A member in respect of whom arrangements have been made for the transfer to the Superannuation Fund of an agreed sum or agreed assets pursuant to subregulation (1) shall, as a member, be granted such rights to benefits additional to those otherwise provided under these regulations as are determined by the Superannuation Board on the advice of the actuary.
- (3) If all or any of the sum or assets transferred pursuant to subregulation (1) are required as a condition of the transfer to be preserved pursuant to subregulation (4), then that part of the additional benefit granted to the member pursuant to subregulation (2) which is attributable to the sum or assets required to be preserved shall not be paid to the member unless payment is permitted under the SIS standards.

*[Regulation 38 amended in Gazette 15 Dec 1992 p. 6024;  
23 Jul 1999 p. 3392.]*

**39. Transfers to other funds**

*[(1) deleted]*

- (2) If —
- (a) an associated employer enters into arrangements to amalgamate with, or transfer any part of its engagements to, a person or body; and

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- (b) pursuant to those arrangements a member ceases to be employed by the employer but enters into the employment of that other person or body,

the Superannuation Board may with the written consent of that member and subject to such conditions as the Superannuation Board thinks fit (and in lieu of paying the benefit which would otherwise be payable under these regulations) pay or transfer to a superannuation fund established or operated for the benefit of any employees of that other person or body such amount as in the opinion of the Superannuation Board on the advice of the actuary represents the interest of the member in the Superannuation Fund, to be applied by the trustees of that other superannuation fund for the benefit of that member.

- (3) If the interest of a member in the Superannuation Fund is paid or transferred pursuant to subregulation (2) —
- (a) the receipt of the trustees of or other persons controlling the fund to which the benefit or the interest of the member (as the case may be) is paid or transferred shall be a sufficient discharge to the Superannuation Board; and
- (b) neither the Superannuation Board nor the employer shall be responsible for the payment, application or disposal by the trustees or other persons controlling that fund of the benefit or the interest so paid or transferred.

*[Regulation 39 amended in Gazette 29 Jun 1994 p. 3222; 17 Apr 1998 p. 2102; 23 Jul 1999 p. 3392.]*

**40. Temporary cessation of employment and leave without pay**

- (1) If a member ceases to be in the employment of the employer in circumstances in which it is reasonable to expect that the cessation may be of a temporary nature and that he may re-enter the employment of the employer the Superannuation Board may with the consent of the employer allow him to continue to be a member on such terms and conditions as may be agreed upon by the Superannuation Board, the employer and the member.

- (2) If a member is absent from the employment of the employer on leave without pay the Superannuation Board, the employer and the member may enter into an agreement as to the terms and conditions on which the member shall continue to be a member during his absence.
- (3) The terms and conditions agreed upon under subregulation (1) or (2) may include terms or conditions inconsistent with the other provisions of these regulations.
- (4) Subject to anything to the contrary contained in terms and conditions agreed upon under subregulation (1) or (2), as the case may be —
  - (a) any period during which a member has —
    - (i) continued to be a member under subregulation (1); or
    - (ii) been absent from the employment of the employer on leave without pay,shall unless otherwise agreed by the employer and the Superannuation Board be deducted from the membership of the member for the purposes of calculating any benefit payable under the Act or these regulations;
  - (b) for the purposes of calculating any benefit that becomes payable under these regulations to or in respect of a member who has during any period —
    - (i) continued to be a member under subregulation (1); or
    - (ii) in the opinion of the Superannuation Board been absent from the employment of the employer on leave without pay for any reason other than medical grounds,the superannuation salary of the member immediately before the commencement of that period shall be deemed to have continued to be the superannuation salary of the member during that period; and

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- (ba) for the purposes of calculating any benefit that may become payable under these regulations to or in respect of a member who has during any period, in the opinion of the Superannuation Board, been absent from the employment of the employer on leave without pay on medical grounds, then the superannuation salary of the member during any such period of absence shall be the superannuation salary applicable to an equivalent position, as determined by the Superannuation Board, to that position in which the member was employed immediately before the commencement of that period; and
- (c) for the purpose of calculating any benefit that becomes payable to a member under regulation 18 or 19 at a time when the member —
  - (i) is continuing to be a member under subregulation (1); or
  - (ii) is absent from the employment of the employer on leave without pay,the member shall be deemed to have received salary on the last salary day of the employer before the benefit became payable; and
- (d) no contributions shall be made by or in respect of a member to the Superannuation Fund during any period during which the member has —
  - (i) continued to be a member under subregulation (1); or
  - (ii) been absent from the employment of the employer on leave without pay.
- (5) In subregulation (4)(c) *salary day* has the meaning given by regulation 16(1).

*[Regulation 40 amended in Gazette 15 Dec 1992 p. 6024-5;  
23 Jul 1999 p. 3392.]*

**41. Application of regulations to members employed part-time**

- (1) If at any time a member (in this regulation called a *prescribed member*) is or has been classified by the employer as being employed part-time, these regulations shall apply to that prescribed member with the modifications and variations set out in this regulation.
- (2) The employer shall in respect of any period during which a prescribed member is classified as being employed part-time, determine the percentage (in this regulation called *the service percentage*) of full-time employment being worked by that member during that period.
- (3) The service percentage in respect of any period during which a prescribed member is not classified as being employed part-time shall be 100%.
- (4) Whenever there is a change in the service percentage of a prescribed member the employer shall advise the Superannuation Board and the member of that change.
- (5) For the purposes of determining the superannuation salary of a prescribed member the annual rate of remuneration of the member shall be deemed to be the actual annual rate of remuneration adjusted in the ratio that 100% bears to the service percentage of the member.
- (6) During any period of membership during which the service percentage of a prescribed member is less than 100% the contributions that would otherwise have been payable by the member under regulation 15 or by the employer under regulation 16 shall be reduced in the ratio that the service percentage of the member bears to 100%.
- (7) Where any benefit calculated under Schedule 1, Schedule 1A or Schedule 4 is payable under these regulations to or in respect of a prescribed member in respect of any period of membership during which the service percentage of the member was less than 100%, that benefit shall be reduced in the ratio that the

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service percentage of the member during that period bears to 100%.

- (8) Where an amount has to be calculated using a membership period determined under Schedule 2 in order to determine a benefit under or by reference to regulation 17 that is payable under these regulations to or in respect of a prescribed member and, immediately before the benefit became payable, the member was classified by the employer as being employed part-time, that amount shall be reduced in the ratio that the service percentage of the member immediately before the benefit became payable bears to 100%.

*[Regulation 41 amended in Gazette 29 Dec 1989 p. 4681; 1 Nov 1991 p. 5609; 15 Dec 1992 p. 6025; 23 Jul 1999 p. 3393; 18 Aug 2000 p. 4789-90; 29 Jun 2004 p. 2521; 1 Apr 2008 p. 1277.]*

**41A. Application of regulations to members reduced in rank**

- (1) In this regulation —

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

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

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

***relevant percentage***, in relation to a member, means —

- (a) in respect of any period during which a prescribed member is classified as being employed at a rank lower than the member's highest rank, the member's actual annual rate of remuneration for that period expressed as a percentage of the member's highest rank salary for that period;
- (b) in respect of any other period, 100%.

- (2) If at any time a member is or has been classified by the employer as being employed at a rank lower than that at which the member was previously employed these regulations shall apply to that member with the modifications and variations set out in this regulation.
- (3) The employer shall advise the Superannuation Board and the member of a relevant percentage of a prescribed member —
  - (a) when the member becomes a prescribed member; and
  - (b) whenever there is any change in that percentage.
- (4) For the purposes of determining the superannuation salary of a prescribed member the annual rate of remuneration of the member shall be deemed to be the actual annual rate of remuneration adjusted in the ratio that 100% bears to the relevant percentage of the member.
- (5) During any period of membership during which the relevant percentage of a prescribed member is less than 100% the contributions that would otherwise have been payable by the member under regulation 15 or by the employer under regulation 16 shall be reduced in the ratio that the relevant percentage of the member bears to 100%.
- (6) Where any benefit calculated under Schedule 1, Schedule 1A or Schedule 4 is payable to or in respect of a prescribed member in respect of any period of membership during which the relevant percentage of the member was less than 100%, that benefit shall be reduced in the ratio that the relevant percentage of the member during that period bears to 100%.
- (7) Where an amount has to be calculated using a membership period determined under Schedule 2 in order to determine a benefit under or by reference to regulation 17 that is payable to or in respect of a prescribed member and, immediately before the benefit became payable, the member was classified as being employed at a rank lower than the member's highest rank, that amount shall be reduced in the ratio that the relevant percentage

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of the member immediately before the benefit became payable bears to 100%.

*[Regulation 41A inserted in Gazette 1 Apr 2008 p. 1277-9.]*

**42. Requirements for insurance**

- (1) For the purposes of effecting, increasing or otherwise varying any policy of insurance or assurance as provided in section 9 of the Act, the Superannuation Board may from time to time require a member —
  - (a) to be medically examined;
  - (b) to submit other evidence of health;
  - (c) to provide proof of age to the satisfaction of the insurer; and
  - (d) to take such other steps as may be required for any of those purposes.
- (2) If a member refuses to undergo the medical examination or to undertake any other step that may reasonably be required by the Superannuation Board for the purposes of effecting, increasing or otherwise varying any policy of insurance or assurance or if he does or omits to do anything that would or may prejudice the policy or result in any of the policy proceeds not becoming payable, the Superannuation Board may adjust the benefits to be payable from the Superannuation Fund to or in respect of that member in such manner as the Superannuation Board considers appropriate.
- (3) The Superannuation Board shall not effect a group life insurance or assurance policy that contains provision for payment of benefits in respect of total and permanent disablement unless in the opinion of the Superannuation Board the definition of total and permanent disablement contained in that policy is such that a member of the Superannuation Fund covered by that policy would be considered by the insurer with which the policy is effected to be totally and permanently disabled if —



- (a) the member has been absent from the employment of the FES Commissioner or an associated employer through illness or injury for 6 consecutive months or such shorter period as in the circumstances the insurer considers appropriate; and
  - (b) in the opinion of the insurer, after consideration of material evidence satisfactory to it, the member has become incapacitated to such an extent as to render the member unlikely ever to engage in or work for reward in any occupation or work for which the member is reasonably qualified by education, training or experience.
- (4) In subregulation (3) *effect* includes acquire or take by assignment.

*[Regulation 42 amended in Gazette 22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

**42A. Medical examinations**

- (1) For the purpose of determining a benefit to be paid to a member under these regulations the Superannuation Board may from time to time require a member —
- (a) to be medically examined;
  - (b) to submit other evidence of health; and
  - (c) to take such other steps as may be required for any of those purposes.
- (2) If a member refuses to undergo the medical examination or to undertake any other step that may reasonably be required by the Superannuation Board for the purposes of determining a benefit to be paid to the member, the Superannuation Board may adjust the benefits to be payable from the Superannuation Fund to or in respect of that member in such manner as the Superannuation Board considers appropriate.

*[Regulation 42A inserted in Gazette 29 Jun 1994 p. 3223.]*

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**43. No personal claim**

No member or person claiming through him or on his behalf or as his dependant shall be entitled to require payment of that member's interest in the Superannuation Fund except as provided in these regulations.

**44. Notices**

- (1) A notice may be given by the Superannuation Board to any member either personally or by sending it by post to him at his last known address or to his normal place of employment.
- (2) Any notice sent by post under subregulation (1) shall be deemed to have been served on the day following the day on which the envelope or wrapper containing that notice is posted and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put in the post office.

**45. General meetings of members**

Schedule 3 applies to and in relation to general meetings of members held under section 29 of the Act.

**46. Provision of information to members**

- (1) As soon as practicable after the Superannuation Board submits its annual report under section 66 of the *Financial Administration and Audit Act 1985*, and not later than 14 days before the next annual general meeting of members is held under clause 5(1) of Schedule 3, the Superannuation Board shall provide each member with a copy of a summary of —
  - (a) the annual report; and
  - (b) any actuarial report received by the Superannuation Board under section 17(3) of the Act since the previous annual general meeting of members.

- (2) The Superannuation Board shall ensure that copies of the full reports of the summaries referred to in subregulation (1) are made available to members on request.
- (3) The Superannuation Board will provide or make available to each member within the time required by the SIS standards any information required by the SIS standards in relation to the following matters —
  - (a) information to members on an annual basis regarding their benefits in the Superannuation Fund;
  - (b) information to members on a regular basis regarding the operation of the Superannuation Fund;
  - (c) information to employees becoming members;
  - (d) information to members ceasing in the employment of the employer;
  - (e) information relating to any amendment to these regulations;
  - (f) any returns and certificates which the Superannuation Board is required by law to provide to the Australian Prudential Regulation Authority established by the *Australian Prudential Regulation Authority Act 1998* (Commonwealth) and any notices which the Commissioner may provide to the Superannuation Board in relation to those returns and certificates;
  - (g) information relating to actuarial reports, audited accounts and audit reports in respect of the Superannuation Fund; and
  - (h) any other information specified in the SIS standards.
- (4) Notwithstanding subregulation (3) the Superannuation Board shall give written notice to each person who becomes a member informing the member of his or her rights and those of his or her dependants and legal personal representatives in respect of benefits from the Superannuation Fund.

*[Regulation 46 inserted in Gazette 15 Dec 1992 p. 6025-6;  
amended in Gazette 23 Jul 1999 p. 3393; 1 Apr 2008 p. 1279.]*

**47. Elections of members of the Superannuation Board**

- (1) Elections under clause 2 of Schedule 2 to the Act to elect members of the Superannuation Board shall be conducted by the FES Commissioner by secret ballot using an optional preferential system of voting.
- (2) The FES Commissioner may, instead of conducting the election, engage the Electoral Commissioner under the *Electoral Act 1907* or any other independent person to conduct the election on behalf of the FES Commissioner.
- (3) The vacancy that occurs during a year in one of the offices of the elected members of the Superannuation Board and vacancies that occur during that year in the offices of the elected alternate members of the Superannuation Board shall be filled by separate ballots conducted at the one election.
- (4) For an election referred to in subregulation (3), a person may nominate for —
  - (a) the office of elected member of the Superannuation Board;
  - (b) an office of elected alternate member of the Superannuation Board; or
  - (c) both the office referred to in paragraph (a) and an office referred to in paragraph (b).
- (5) Notwithstanding subregulation (4)(c), a person shall not at the same time hold both the office of elected member of the Superannuation Board and the office of elected alternate member of the Board.
- (6) The ballot for the office of elected member of the Superannuation Board shall be counted before the ballot for an office of elected alternate member of the Board is counted.

- (7) Where a person elected in the ballot for an office of alternate member of the Superannuation Board has also been elected to the office of member of the Board, the second person elected in the ballot shall hold an office of alternate member.
- (8) Where only one person nominates for the office of elected member of the Superannuation Board that person shall be deemed to have been elected to the office.
- (9) Where only one person nominates for an office of elected alternate member of the Superannuation Board that person shall be deemed to have been elected to the office unless he or she has also been elected to the office of member of the Board in which case that office of elected alternate member shall remain vacant.

*[Regulation 47 amended in Gazette 13 Jul 1990 p. 3375-6; 29 Jun 1994 p. 3223-4; 22 Dec 1998 p. 6853; 23 Jul 1999 p. 3393; 31 Oct 2012 p. 5247.]*

**47A. Removal of elected member**

- (1) An elected member of the Superannuation Board may be removed from office by a majority vote passed in a secret ballot of all members.
- (2) A secret ballot for the purposes of subregulation (1) shall be conducted by the FES Commissioner at the written request of not less than 5% of all members.
- (2a) The FES Commissioner may, instead of conducting the ballot, engage the Electoral Commissioner under the *Electoral Act 1907* or any other independent person to conduct the ballot on behalf of the FES Commissioner.
- (3) A ballot shall not be conducted under this regulation in respect of an elected member more than once during the term of office of that member.

*[Regulation 47A inserted in Gazette 29 Jun 1994 p. 3224;  
amended in Gazette 22 Dec 1998 p. 6853; 23 Jul 1999 p. 3393;  
31 Oct 2012 p. 5248.]*

**48. Amendments to these regulations**

- (1) A regulation that amends these regulations in such a way as will increase the contributions payable by the FES Commissioner and associated employers (if any) to the Superannuation Fund shall not be made under the Act unless the FES Commissioner has consented to the amendment.
- (2) A regulation that amends these regulations in such a way as will increase a benefit payable under these regulations shall not be made under the Act unless —
  - (a) the actuary has certified that the amendment will not or is not likely to result in an increase in the contributions payable by the FES Commissioner and associated employers (if any) to the Superannuation Fund; or
  - (b) the FES Commissioner has consented to the amendment.
- (3) Without limiting the operation of subregulations (1) and (2), and subject to subregulation (4) and regulation 16(9), a regulation that amends these regulations shall not be made under the Act unless —
  - (a) the actuary has certified that the total value of the rights of members and their dependants accrued at the time the amendment takes effect will not be reduced by the amendment; or
  - (b) at least two-thirds in number of the members for the time being have given their written consent to the amendment.
- (4) Subregulation (3) does not apply to the making of a regulation that amends these regulations in order to ensure that these regulations conform with, or obtain the benefit of, a law of the State or Commonwealth governing, regulating or affecting the

operation or maintenance of superannuation, pension or like funds.

*[Regulation 48 amended in Gazette 22 Dec 1998 p. 6852-3; 31 Oct 2012 p. 5249.]*

**Schedule 1 — Defined benefit: death or total and permanent disablement**

*[Heading inserted in Gazette 29 Jun 2004 p. 2521.]*

[r. 17 and 18]

The amount calculated in accordance with this Schedule is B in the formula —

$$B = \frac{S}{365 \cdot 25} \times 0.215 \times M$$

where —

S is the member's final average salary;

M is the number of days in the member's membership period.

*[Schedule 1 inserted in Gazette 23 Jul 1999 p. 3394; amended in Gazette 29 Jun 2004 p. 2521.]*



**Schedule 1A — Defined benefit: partial and permanent  
disablement or leaving service**

[r. 14A and 19 — 21]

The amount calculated in accordance with this Schedule is B in the formula —

$$B = \frac{S}{365.25} \times [(0.215 \times M1) + (0.18 \times M2)]$$

where —

S is the member's final average salary;

M1 is —

- (a) the number of days in the member's membership period before 1 July 2004; plus
- (b) the number of days for which the member contributes under regulation 15(1)(b);

M2 is the number of days in the member's membership period not included in M1.

*[Schedule 1A inserted in Gazette 29 Jun 2004 p. 2521; amended by 21 Jan 2005 p. 263.]*

## **Schedule 2 — Membership period for death benefits**

[r. 17]

The number of days in a Category A member's membership period to be used for calculating the member's death benefit is —

- (a) if the member was a member on 1 November 1991 the greater of —
  - (i) M;
  - (ii) the lesser of —
    - (A) M + F; and
    - (B) 12 783 days;and
  - (iii) the lesser of —
    - (A) 3 x F; and
    - (B) 12 783 days;

or

- (b) otherwise, the greater of —
  - (i) M; and
  - (ii) the lesser of —
    - (A) M + F; and
    - (B) 12 783 days,

where —

- M is the number of days in the member's membership period up to the day before the member died;
- F is the number of days from the day the member died to the day before the day that would have been the member's 65th birthday.

*[Schedule 2 inserted in Gazette 23 Jul 1999 p. 3394; amended in Gazette 1 Apr 2008 p. 1279.]*

### **Schedule 3**

[Regulation 45]

#### **General meetings of members of the Superannuation Fund**

**1. Notice of meeting**

Not less than 7 and not more than 30 days' notice in writing of a general meeting shall be given but the accidental omission to give notice to or the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

[2. Deleted in Gazette 29 Jun 1994 p. 3225.]

**3. Chairman**

The chairman of any general meeting shall be appointed by the Superannuation Board.

**4. Board members may attend**

Members of the Superannuation Board shall be entitled to be present at general meetings but a member of the Superannuation Board who is not a member of the Superannuation Fund shall not be entitled to vote at a general meeting.

**5. Annual general meeting**

- (1) An annual general meeting shall be held not later than 90 days after the annual report of the Superannuation Board is submitted under section 66 of the *Financial Administration and Audit Act 1985*.
- (2) An annual general meeting —
  - (a) shall consider the annual report of the Superannuation Board submitted under section 66 of the *Financial Administration and Audit Act 1985* in respect of the preceding financial year;
  - (b) shall consider any business of which notice has been given in the notice of meeting; and
  - (c) may consider any other business that may be relevant to the operation of the Superannuation Fund.

[Clause 5 amended in Gazette 15 Dec 1992 p. 6026.]

**cl. 6**

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**6. Special general meeting**

A special general meeting —

- (a) shall consider any business of which notice has been given in the notice of meeting; and
- (b) may consider any other business that may be relevant to the purpose of the meeting.

**7. Mode of voting on motions**

- (1) Subject to subclause (3), at a general meeting a motion put to the vote of the meeting shall be decided —
  - (a) by a simple majority of the votes of the members present and voting; and
  - (b) on a show of hands unless before or on the declaration of the result of the show of hands a poll is demanded by a member present.
- (2) A demand for a poll under subclause (1)(b) may be withdrawn.
- (3) Where a poll on a motion is demanded under subclause (1)(b) the vote of a member not present at the general meeting shall be counted if it was lodged, in writing, with the secretary of the Superannuation Board not less than 24 hours before the general meeting.

**8. Voting rights**

- (1) Each member present at a general meeting, or whose vote is counted at a general meeting under clause 7(3), shall have one vote.
- (2) The chairman of a general meeting shall not have a second or casting vote.

**9. Minutes**

Minutes shall be kept of each general meeting and such minutes if purporting to be signed by the chairman of the general meeting or of the next succeeding general meeting shall be *prima facie* evidence of the matters contained in those minutes.

**10. Procedure**

Except as provided in this Schedule a general meeting may determine its own procedure.

**Schedule 4 — Leaving service benefit — Category A**

[r. 21(1)(c)]

The amount calculated in accordance with this Schedule is B in the formula —

$$B = \frac{S}{365 \cdot 25} \times [(0.215 \times M1) + (0.18 \times M2)] \times \frac{1}{(1 + r)^{\frac{n}{365 \cdot 25}}}$$

where —

- S is the member's final average salary;
- M1 is —
- (a) the number of days in the member's membership period before 1 July 2004; plus
  - (b) the number of days for which the member contributes under regulation 15(1)(b);
- M2 is the number of days in the member's membership period not included in M1.
- r is the discount factor determined by the Superannuation Board on the advice of an actuary to be appropriate to reflect the fact that the member has become entitled to a benefit under regulation 21(1) before the member reaches 55 years of age;
- n is the number of days from the day the member ceased employment with the employer to the member's 55th birthday, but not more than the number of days (if any) determined by the Superannuation Board on the advice of the actuary to be necessary to ensure that the employer will not incur an individual superannuation guarantee shortfall (within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth) in respect of the member.

*[Schedule 4 inserted in Gazette 23 Jul 1999 p. 3395; amended in Gazette 30 Mar 2001 p. 1764; 29 Jun 2004 p. 2521-2; 21 Jan 2005 p. 263; 1 Apr 2008 p. 1279.]*

## **Schedule 5**

[Regulation 23B(5)]

### **Calculation of monthly benefit**

The formula for calculating a monthly instalment benefit in respect of a beneficiary is —

$$\text{MIB} = \frac{\text{MB}}{1} \times \frac{i}{1 - v^{60}}$$

where —

- MIB** is the monthly instalment benefit to be determined, (expressed in dollars);
- MB** is the beneficiary's maximum benefit (expressed in dollars);
- i** is one-twelfth of the rate of interest (expressed as a percentage per annum) that is applicable on the date of payment of the beneficiary's partial and permanent disablement benefit under a determination under regulation 23B(8); and

$$v = \frac{1}{1 + i}$$

*[Schedule 5 inserted in Gazette 29 Jun 1994 p. 3225; amended in Gazette 17 Apr 1998 p. 2102.]*

## **Schedule 6**

[Regulation 23B(6)]

### **Calculation of annual benefit**

The formula for calculating an annual instalment benefit in respect of a beneficiary is —

$$\text{AIB} = \frac{\text{MB}}{1} \times \frac{i}{1 - v^5}$$

where —

**AIB** is the annual instalment benefit to be determined, (expressed in dollars);

**MB** is the beneficiary's maximum benefit (expressed in dollars);

**i** is the rate of interest (expressed as a percentage per annum) that is applicable on the date of payment of the beneficiary's partial and permanent disablement benefit under a determination under regulation 23B(8); and

$$v = \frac{1}{1 + i}$$

*[Schedule 6 inserted in Gazette 29 Jun 1994 p. 3226; amended in Gazette 17 Apr 1998 p. 2102.]*

## **Schedule 6A**

[Regulation 23B(7)]

### **Calculation of lump sum benefit**

The formula for calculating a lump sum benefit in respect of a beneficiary is —

$$\text{LSB} = \text{MB} \times (1 + i)^5$$

where —

**LSB** is the benefit to be determined, (expressed in dollars);

**MB** is the beneficiary's maximum benefit (expressed in dollars);  
and

**i** is the rate of interest (expressed as a percentage per annum)  
that is applicable on the date of payment of the beneficiary's  
partial and permanent disablement benefit under a  
determination under regulation 23B(8).

*[Schedule 6A inserted in Gazette 17 Apr 1998 p. 2103.]*



## **Schedule 6B**

[Regulation 23BA(2)]

### **Calculation of monthly benefit instead of lump sum benefit**

The formula for calculating a monthly instalment benefit in respect of a beneficiary who had previously elected a lump sum benefit is —

$$\text{MIB} = \frac{\text{DB}}{1} \times \frac{i}{1 - v^n}$$

where —

- MIB** is the monthly instalment benefit to be determined, (expressed in dollars);
- DB** is the beneficiary's benefit as calculated in Schedule 9 (expressed in dollars);
- i** is one-twelfth of the rate of interest (expressed as a percentage per annum) used in the initial calculation of the beneficiary's lump sum benefit for the purposes of regulation 23B(7);
- n** is the number of complete months from the date the beneficiary's benefit (DB) is calculated to the end of the 5 year period used in Schedule 9; and

$$v = \frac{1}{1 + i}$$

*[Schedule 6B inserted in Gazette 17 Apr 1998 p. 2103.]*

## **Schedule 6C**

[Regulation 23BA(4)]

### **Calculation of a lump sum benefit instead of monthly benefits**

The formula for calculating a lump sum benefit in respect of a beneficiary who has elected to transfer from a monthly instalment benefit is —

$$\text{LSB} = \frac{\text{MIB}}{1} \times \frac{(1 + i)^n - 1}{i}$$

where —

- LSB** is the lump sum benefit to be determined (expressed in dollars);
- MIB** is the monthly instalment benefit payable to the beneficiary (expressed in dollars);
- n** is the difference between 60 and the number of monthly instalment benefit payments which the beneficiary had received up to the time of his or her election;
- i** is one-twelfth of the rate of interest expressed as a percentage per annum used in the initial calculation of the beneficiary's monthly instalment benefit for the purposes of regulation 23B(5).

*[Schedule 6C inserted in Gazette 17 Apr 1998 p. 2103; amended in Gazette 23 Jul 1999 p. 3395.]*

## **Schedule 6D**

[Regulation 23BA(6)]

### **Calculation of a lump sum benefit instead of annual benefits**

The formula for calculating a lump sum benefit in respect of a beneficiary who has elected to transfer from an annual instalment benefit is —

$$\text{LSB} = \frac{\text{AIB}}{1} \times \frac{(1 + i)^n - 1}{i}$$

where —

- LSB** is the lump sum benefit to be determined (expressed in dollars);
- AIB** is the annual instalment benefit payable to the beneficiary (expressed in dollars);
- n** is the difference between 5 and the number of annual instalment benefit payments which the beneficiary had received up to the time of his or her election;
- i** is the rate of interest expressed as a percentage per annum used in the initial calculation of the beneficiary's instalment benefit pursuant to regulation 23B(6).

*[Schedule 6D inserted in Gazette 17 Apr 1998 p. 2104; amended in Gazette 23 Jul 1999 p. 3395.]*

## **Schedule 7**

[rr. 23BA(4a) and 23C(2)(a)]

### **Calculation of lump sum or death benefit after election of monthly benefits**

The formula for calculating a lump sum or death benefit in respect of a beneficiary who elected to receive a monthly instalment benefit is —

$$DB = \frac{MIB}{1} \times \frac{1 - v^n}{i}$$

where —

DB is the lump sum or death benefit to be determined (expressed in dollars);

MIB is —

- (a) where a monthly instalment benefit became payable to the beneficiary on the day on which he died or made the election under regulation 23BA(3)(b), the amount of that instalment benefit (expressed in dollars); or
- (b) in any other case, the amount of the instalment benefit that would have been payable to the beneficiary on the day on which he died or made the election under regulation 23BA(3)(b) if a monthly instalment benefit had become payable to him on that day (expressed in dollars);

n is the difference between 60 and the number of monthly instalment benefit payments which the beneficiary had received before he died or made the election under regulation 23BA(3)(b);

i is one-twelfth of the rate of interest expressed as a percentage per annum used in the initial calculation of the beneficiary's

monthly instalment benefit for the purposes of regulation 23B(5) or 23BA(2); and

$$v = \frac{1}{1 + i}$$

*[Schedule 7 inserted in Gazette 29 Jun 1994 p. 3227; amended in Gazette 17 Apr 1998 p. 2104; 30 Mar 2001 p. 1765.]*

## Schedule 8

[rr. 23BA(6a) and 23C(2)(b)]

### Calculation of lump sum or death benefit after election of annual benefits

The formula for calculating a lump sum or death benefit in respect of a beneficiary who elected to receive an annual instalment benefit is —

$$DB = \frac{AIB}{1} \times \frac{1 - v^n}{i}$$

where —

DB is the lump sum or death benefit to be determined (expressed in dollars);

AIB is —

- (a) where an annual instalment benefit became payable to the beneficiary on the day on which he died or made the election under regulation 23BA(5)(b), the amount of that instalment benefit (expressed in dollars); or
- (b) in any other case, the amount of the instalment benefit that would have been payable to the beneficiary on the day on which he died or made the election under regulation 23BA(5)(b) if an annual instalment benefit had become payable to him on that day (expressed in dollars);

n is the difference between 5 and the number of annual instalment benefit payments which the beneficiary had received before he died or made the election under regulation 23BA(5)(b);

i is the rate of interest expressed as a percentage per annum used in the initial calculation of the beneficiary's instalment benefit pursuant to regulation 23B(6); and

$$v = \frac{1}{1 + i}$$

*[Schedule 8 inserted in Gazette 29 Jun 1994 p. 3228; amended in Gazette 17 Apr 1998 p. 2104 (correction in Gazette 28 Apr 1998 p. 2177); 30 Mar 2001 p. 1765-6.]*

**Schedule 9**

[rr. 23BA(2a) and 23C(2)(c)]

**Calculation of lump sum or death benefit after election of lump sum benefit after 5 years**

The formula for calculating a lump sum or death benefit in respect of a beneficiary who had elected to receive a lump sum benefit after the 5 year period is —

$$DB = \frac{LSB}{(1 + i)^{\frac{n}{365 \cdot 25}}}$$

where —

**DB** is the lump sum or death benefit to be determined (expressed in dollars);

**LSB** is the lump sum benefit that would have been payable to the beneficiary at the end of the 5 year period (as calculated in Schedule 6A) had the beneficiary not died or made the election under regulation 23BA(1)(b);

**n** is the number of days from the date the member died or made the election under regulation 23BA(1)(b) to the date the benefit would have become payable; and

**i** is the rate of interest expressed as a percentage per annum used in the initial calculation of the beneficiary's benefit for the purposes of regulation 23B(7) or 23BA(3)(a) or 23BA(5)(a).

*[Schedule 9 inserted in Gazette 17 Apr 1998 p. 2104; amended in Gazette 30 Mar 2001 p. 1766.]*

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## Notes

- <sup>1</sup> This is a compilation of the *Fire and Emergency Services (Superannuation Fund) Regulations 1986* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint <sup>1a</sup>.

### Compilation table

Citation	Gazettal	Commencement
<i>Fire Brigades (Superannuation Fund) Regulations 1986</i> <sup>2</sup>	29 Oct 1986 p. 3991-4016	3 Nov 1986 (see r. 2 and <i>Gazette</i> 24 Oct 1986 p. 3938)
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1987</i>	14 Aug 1987 p. 3162	14 Aug 1987
<i>Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1987</i>	23 Oct 1987 p. 3941	23 Oct 1987
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1988</i> <sup>3</sup>	4 Nov 1988 p. 4370-1	4 Nov 1988
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1989</i>	18 Aug 1989 p. 2766-8	18 Aug 1989
<i>Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1989</i>	29 Dec 1989 p. 4681-2	29 Dec 1989
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1990</i>	13 Jul 1990 p. 3375-6	13 Jul 1990
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1991</i>	1 Nov 1991 p. 5608-11	1 Nov 1991
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1992</i>	15 Dec 1992 p. 6021-7	15 Dec 1992
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1994</i>	29 Jun 1994 p. 3204-5	29 Jun 1994 (see r. 2 and <i>Gazette</i> 29 Jun 1994 p. 3201)
<i>Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1994</i>	29 Jun 1994 p. 3206-28	1 Jul 1994 (see r. 2 and <i>Gazette</i> 29 June 1994 p. 3201)
<b>Reprint of the <i>Fire Brigades (Superannuation Fund) Regulations 1986</i> as at 11 Oct 1994</b> (includes amendments listed above)		
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1995</i>	21 Nov 1995 p. 5356-9	21 Nov 1995

**Fire and Emergency Services (Superannuation Fund) Regulations 1986**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1998</i>	17 Apr 1998 p. 2097-104 (correction 28 Apr 1998 p. 2177)	17 Apr 1998
<i>Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 1998</i>	22 Dec 1998 p. 6849-53	1 Jan 1999 (see r. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 1999</i>	23 Jul 1999 p. 3385-95	23 Jul 1999
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 2000</i>	18 Aug 2000 p. 4782-90	18 Aug 2000
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 2001</i>	30 Mar 2001 p. 1760-6	30 Mar 2001
<i>Fire Brigades (Superannuation Fund) Amendment Regulations (No. 2) 2001</i>	22 May 2001 p. 2576-7	22 May 2001
<b>Reprint of the <i>Fire Brigades (Superannuation Fund) Regulations 1986</i> as at 7 Sep 2001</b> (includes amendments listed above)		
<i>Fire Brigades (Superannuation Fund) Amendment Regulations 2003</i>	2 May 2003 p. 1492-5	2 May 2003
<i>Fire and Emergency Services (Superannuation Fund) Amendment Regulations (No. 2) 2003</i>	15 Jul 2003 p. 2831-2	15 July 2003
<i>Fire and Emergency Services (Superannuation Fund) Amendment Regulations 2004</i>	29 Jun 2004 p. 2520-2	1 Jul 2004 (see r. 2)
<i>Fire and Emergency Services (Superannuation Fund) Amendment Regulations (No. 2) 2004</i>	21 Jan 2005 p. 260-3	21 Jan 2005
<b>Reprint 3: The <i>Fire and Emergency Services (Superannuation Fund) Regulations 1986</i> as at 11 Jan 2008</b> (includes amendments listed above)		
<i>Fire and Emergency Services (Superannuation Fund) Amendment Regulations 2008</i>	1 Apr 2008 p. 1271-9	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>Fire and Emergency Services (Superannuation Fund) Amendment Regulations 2009</i>	21 Aug 2009 p. 3267-70	r. 1 and 2: 21 Aug 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Aug 2009 (see r. 2(b))

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Fire and Emergency Services (Superannuation Fund) Amendment Regulations (No. 2) 2012</i>	31 Oct 2012 p. 5245-9	r. 1 and 2: 31 Oct 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Nov 2012 (see r. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255)

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<sup>2</sup> Now known as the *Fire and Emergency Services (Superannuation Fund) Regulations 1986*; citation changed (see note under r. 1).

<sup>3</sup> The *Fire Brigades (Superannuation Fund) Amendment Regulations 1988* r. 5 reads as follows:

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**5. Saving and transitional**

- (1) A person whose membership of the Superannuation Fund terminated prior to the commencement of these regulations only by reason of the transfer of his employment from the Fire Brigades Board to the Senior Executive Service of the Public Service Commissioner and whose employment by the Public Service Commissioner in the Senior Executive Service continues until the day on which the Public Service Commissioner commences to be an associated employer, shall be deemed to have remained a member from the day of such transfer of employment until the day the Public Service Commissioner commences to be an associated employer, and the principal regulations shall apply to and in relation to that person in respect of that period as if he had continued to be an employee of the Fire Brigades Board.
- (2) In subregulation (1) —  
**Public Service Commissioner** means the Public Service Commissioner within the meaning of the *Public Service Act 1978*;  
and  
**Senior Executive Service** means the Senior Executive Service within the meaning of the *Public Service Act 1978*.

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**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
accumulation account.....	3(1)
actuarial amount.....	16(1)
actuarial report .....	3(1)
associated employee.....	12(4)
benefit .....	24
Category A member .....	3(1)
Category B member .....	3(1)
Category C member .....	3(1)
child .....	9(1)
complying superannuation fund.....	3(1), 21B(5)
complying superannuation scheme .....	3(1)
death benefit.....	3(1)
effect .....	42(4)
eligible FES employee .....	3A
employer .....	16(1)
employment .....	12(4)
GES member.....	11(6)
instalment benefit.....	3(1)
insurance .....	16D(3)
last election .....	23C(3)
maximum benefit .....	3(1)
maximum percentage .....	3(1)
member .....	3(1)
member's notional defined benefit .....	14A(4)
nominator .....	12C(1)
non-C member .....	3(1)
normal rate of remuneration.....	7(1)
original salary .....	7(3a)
partial and permanent disablement benefit .....	3(1)
prescribed member.....	41(1)
preservation age .....	3(1)
previous superannuation fund .....	3(1)
relevant month .....	3(1)
salary day .....	16(1), 40(5)
satisfactory alternative employment .....	23B(10)
SIS Act.....	3(1)
SIS standards.....	3(1)
Superannuation Guarantee Charge.....	3(1)
supplementary disablement benefit.....	3(1)

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**Defined Terms**

temporary or casual employee .....	3(1), 12A(3)
the amount commuted.....	22(1)
the election day .....	14A(4)
the employer .....	3(1)
the member's notional benefit.....	14(1)(b)
the original rate .....	7(3)
the relevant date .....	8(1)
the service percentage .....	41(2)
trustee corporation .....	25(5)

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