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STATE SUPERANNUATION ACT 2000

STATE SUPERANNUATION AMENDMENT REGULATIONS (No. 6) 2008

State Superannuation Act 2000

State Superannuation Amendment Regulations (No. 6) 2008

Made by the Governor in Executive Council.

1. Citation

These regulations are the *State Superannuation Amendment Regulations (No. 6) 2008*.

2. Commencement

These regulations come into operation on the day on which they are published in the *Gazette*.

3. The regulations amended

The amendments in these regulations are to the *State Superannuation Regulations 2001*.

4. Regulation 3 amended

Regulation 3(1) is amended as follows:

- (a) in the definition of “contributions-split transfer” —
 - (i) after “from another” by inserting —
“ scheme or ”;
 - (ii) after “transferring” by inserting —
“ scheme or ”;

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- (b) by deleting the definition of “total and permanent disablement”.

5. Regulation 11 amended

Regulation 11(1) is amended by deleting “regulations 45(5) and 76(5)” and inserting instead —

“ regulation 45(5) ”.

6. Regulation 12 amended

Regulation 12 is amended by inserting in the appropriate alphabetical position —

“

“total and permanent disablement” means physical or mental incapacity to an extent that the Board considers that a Member is, and until turning 60 will remain, unable to perform the duties of any job (in either the public sector or the private sector) for which the Board considers the Member —

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

”.

7. Regulation 50 amended

(1) Regulation 50(1) is amended as follows:

- (a) by deleting the definition of “compulsory contribution”;
- (b) by inserting in the appropriate alphabetical positions —

“

“gainfully employed” has the meaning given in the SIS Regulations;

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

”.

(2) After regulation 50(1) the following subregulation is inserted —

“

(2) For the purposes of this Part a person who has at any time been gainfully employed is taken to “**retire**” if —

- (a) the person, having been gainfully employed after he or she turned 60 years of age, ceases to be gainfully employed; or
- (b) all of the following apply —
 - (i) the person is at least the preservation age;
 - (ii) the person is not gainfully employed;
 - (iii) the Board is reasonably satisfied that the person intends never to again become gainfully employed for 10 hours or more a week.

”.

8. Regulation 54A inserted

After regulation 53A the following regulation is inserted in Subdivision 1A —

“

54A. Restriction on contributions and transfers

Despite anything else in this Part the Board must not accept a contribution or transfer for a person if the trustee of a regulated superannuation fund would be

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prevented by the SIS Regulations from accepting such a contribution or transfer.

”

9. Regulations 54, 55 and 56 replaced by regulations 54 and 55

Regulation 54, 55 and 56 are repealed and the following regulations are inserted instead —

“

54. Employers to make minimum SG contributions

- (1) In this regulation —
 - “**employee**” has the meaning given in the SGA Act section 12;
 - “**individual superannuation guarantee shortfall**” has the meaning given in the SGA Act section 19;
 - “**superannuation guarantee charge**” means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Commonwealth).
- (2) An Employer must make contributions to the Fund for each of its employees who is an eligible statutory WSS Member such that the Employer will avoid incurring an individual superannuation guarantee shortfall for the Member.
- (3) The Employer must make a contribution for each of the Member’s contribution periods.
- (4) The amount of the contribution for a contribution period must be equal to the amount that the Employer would be required under subregulation (2) to contribute for the Member if —
 - (a) that contribution period were the only period during which the Member was an employee of the Employer; and

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r. 9

- (b) the Employer had not previously made any contributions for the Member.
- (5) A contribution for a contribution period must be paid to the Fund —
 - (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or
 - (b) otherwise — within 28 days after the end of the contribution period.
- (6) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for a Member for a period, the Employer's obligation under this regulation to contribute for that Member for that period ceases.

55. Compulsory contributions for over-OTE items

- (1) In this regulation —
 - “over-OTE item”**, for a Member, means a payment, benefit or allowance that —
 - (a) is part of the Member's remuneration; but
 - (b) is not part of the Member's ordinary time earnings within the meaning given in the SGA Act section 6(1);
 - “SG-Member”** means a Member for whom an Employer is required by regulation 54 to make contributions;
 - “SG-exempt Member”** means an eligible statutory WSS Member who is not an SG-Member because of the SGA Act sections 26 to 29.
- (2) For each contribution period of an SG-Member in which the Member receives an over-OTE item the

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Employer must make a contribution to the Fund for the Member of an amount equal to 9% of the monetary value, determined by the Employer, of that over-OTE item.

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

”.

10. Regulation 62 amended

Regulation 62(1) is amended by deleting “compulsory contributions under regulation 54(1)” and inserting instead —
“ contributions under regulation 54 or 55 ”.

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r. 11**11. Regulation 65A repealed**

Regulation 65A is repealed.

12. Regulations 65BA and 65BB inserted

Before regulation 65B the following regulations are inserted in Subdivision 4 —

“

65BA. Meaning of “partner”

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

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

65BB. Member may split contributions with partner

- (1) A West State Super Member for whom splittable contributions have been made to the West State Super Scheme may apply to the Board to transfer some or all of those contributions for the benefit of the Member’s partner, and subject to this regulation the Board is to accept the application.
- (2) The Member may apply to transfer those contributions —
 - (a) if the partner is a West State Super Member, to the partner’s west state account; or
 - (b) to the partner’s GESB Super account (within the meaning given in regulation 83); or
 - (c) if the Member’s partner is a member of another scheme or superannuation fund that is able to accept the transfer, to that other scheme or fund.

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- (3) A Member cannot apply to transfer contributions under subregulation (2)(b) if the Member's partner is a West State Super Member, other than a partner for whom a transfer to the West State Super Scheme cannot be made because of regulation 53A.
- (4) The Board must not accept an application under this regulation unless the Board is satisfied that, if the West State Super Scheme were a regulated superannuation fund, the Board would be entitled under the SIS Regulations Division 6.7 to accept the application.
- (5) If it accepts an application under subregulation (1) the Board must transfer the contributions to which the application relates within 90 days of accepting the application.

”

13. Regulation 67 amended

Regulation 67(1)(cb) and “and” after it are deleted and the following is inserted instead —

“

- (da) any splittable contributions transferred for the benefit of the Member under regulation 65BB(2)(a) or 65B; and
- (db) any amounts received from an insurer in respect of the Member under insurance provided under Division 5A; and

”

14. Regulation 68 amended

Regulation 68(1) is amended as follows:

- (a) at the end of paragraph (d) by deleting the full stop and inserting instead —

“ ; and ”;

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r. 15

(b) after paragraph (d) by inserting —

“

(e) any splittable contributions transferred by the Member under regulation 65BB.

”

15. Regulation 69GA inserted

Before regulation 69G the following regulation is inserted in Division 4B —

“

69GA. Meaning of “Div. 5A insurance”

In this Division —

“**Div. 5A insurance**” means any insurance provided under regulation 70A(a) or (b) that is provided on the basis that the Member is covered by the insurance unless the Member elects to not be covered.

”

16. Regulation 69G amended

(1) Regulation 69G(1) is amended by deleting “not to be entitled to benefits under regulation 70, 71 or 72” and inserting instead —

“

to not be entitled to benefits under regulations 70, 71 and 72

”

(2) After regulation 69G(2) the following subregulations are inserted —

“

(3) An election under subregulation (1) also has effect as an election by the Member to not be covered by Div. 5A insurance.

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- (4) If a Member elects under the terms of the Div. 5A insurance to not be covered by that insurance, that election also has effect as an election under this regulation to not be entitled to benefits under regulations 70, 71 and 72.

”.

17. Regulation 69H amended

- (1) After regulation 69H(1) the following subregulation is inserted —

“

- (2A) An application under subregulation (1) also has effect as an application to again be covered by Div. 5A insurance.

”.

- (2) Regulation 69H(2) is amended after “regulation 69I” by inserting —

“ and subregulation (3) ”.

- (3) After regulation 69H(2) the following subregulation is inserted —

“

- (3) The Board may refuse an application under subregulation (1) if under the terms of the Div. 5A insurance the Member’s application to again be covered by that insurance may be refused.

”.

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r. 18**18. Part 3 Division 5A inserted**

After regulation 69K the following Division is inserted —

“

Division 5A — Insurance**70A. Board may provide insurance**

The Board may provide all or any of the following kinds of insurance for all West State Super Members or such classes of those Members as the Board considers appropriate —

- (a) life insurance;
- (b) total and permanent disability insurance;
- (c) salary continuance insurance.

70B. Terms of insurance

- (1) The Board must decide the terms of any insurance provided under regulation 70A.
- (2) The Board may decide on different terms for different classes of Members.
- (3) The terms of the insurance may include terms in relation to all or any of the following —
 - (a) eligibility to be insured;
 - (b) levels of cover;
 - (c) requirements for changing the level of cover;
 - (d) benefits;
 - (e) information and documents to be given to and by the Board;
 - (f) premiums to be paid by Members;
 - (g) claims procedures and evidentiary requirements;
 - (h) cessation, termination or cancellation of cover;

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- (i) procedural and administrative matters relating to the provision of the insurance.
- (4) The terms of the insurance must include terms to the effect that —
 - (a) a Member may choose to not be covered by the insurance; and
 - (b) the insurance expires no later than immediately before the separation time (within the meaning given in section 75B of the Act).

70C. Insurance policies

The Board may enter into one or more policies of insurance, including policies of group life assurance, to provide for any of —

- (a) the insurance provided under regulation 70A; and
- (b) the benefits that may become payable under regulations 70, 71 and 72.

”.

19. Regulation 71 amended

- (1) Before regulation 71(1) the following subregulation is inserted —

“

- (1A) In this regulation —

“permanent incapacity” has the meaning given in the SIS Regulations regulation 6.01(2).

”.

- (2) Regulation 71(1) is amended by deleting “total and permanent disablement,” and inserting instead —

“ permanent incapacity, ”.

Note: The heading to regulation 71 will be changed by deleting “Total and permanent disability” and inserting instead **“Permanent incapacity”**.

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r. 20**20. Regulation 74 amended**

- (1) Regulation 74(1) is amended as follows:
- (a) at the end of paragraph (c) by deleting the full stop and inserting a semicolon instead;
 - (b) after paragraph (c) by inserting —
“
(d) a West State Super Member reaches 65 years of age.
”
- (2) Regulation 74(3) is amended by inserting after “to the Member” —
“ when requested by the Member to do so ”.
- (3) After regulation 74(4) the following subregulation is inserted —
“
(5) If a Member is entitled to a benefit under this regulation and regulation 75A, the benefit under regulation 75A is to be paid first.
”

21. Regulation 75A inserted

After regulation 74 the following regulation is inserted —

“

75A. Temporary incapacity — salary continuance benefit

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

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

- (2) If—
- (a) a West State Super Member for whom salary continuance insurance is provided under regulation 70A(c) is temporarily incapacitated; and
 - (b) an amount is paid in respect of the Member under that insurance (the **“insurance amount”**),

the Board is to pay the Member a benefit of an amount equal to the lesser of the insurance amount and the SIS amount.

”

22. Regulation 76A inserted

Before regulation 76 the following regulation is inserted in Division 6 —

“

76A. Term used in this Division

In this Division other than regulation 79AA —

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

”

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r. 23**23. Regulation 76 amended**

- (1) Regulation 76(1) and (2) are repealed and the following subregulations are inserted instead —

“

- (1) Unless permitted to do so by another provision of this Division the Board must not pay a West State Super Member's WSS withdrawal benefit unless the Member —
- (a) is retired; or
 - (b) is suffering permanent incapacity; or
 - (c) is partially and permanently disabled; or
 - (d) is at least 65 years of age; or
 - (e) has died.
- (1A) If a West State Super Member —
- (a) satisfies the Board that he or she is retired; and
 - (b) subsequently ceases to be retired,
- the benefit to which the Member was entitled immediately before he or she ceased to be retired remains payable notwithstanding that the Member is no longer retired.
- (2) A West State Super Member who is entitled to a WSS withdrawal benefit may request payment of the benefit if —
- (a) the benefit has become payable under subregulation (1)(a), (b), (c) or (d) or subregulation (1A); or
 - (b) all of the following apply —
 - (i) the Member is a statutory WSS Member or a voluntary WSS Member;
 - (ii) the benefit is less than \$200;

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- (iii) the Member has ceased to work for the Employer for whom he or she worked immediately before he or she became entitled to the benefit.

”

- (2) Regulation 76(2a) is amended by deleting “under regulation 78”.
- (3) Regulation 76(3) is amended as follows:
 - (a) by deleting “subregulation (1)(c),” and inserting instead —
“ subregulation (1)(e), ”;
 - (b) by deleting “under regulation 78”.
- (4) Regulation 76(5) is repealed and the following subregulation is inserted instead —

“

- (4) For the purposes of subregulation (1)(b) a Member is “**suffering permanent incapacity**” if —
 - (a) the Member is not gainfully employed; and
 - (b) the Board is reasonably satisfied that the Member is unlikely, because of ill-health (whether physical or mental), ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

”

Note: The heading to regulation 76 will be changed by deleting “Restriction on payment” and inserting instead “**Payment**”.

24. Regulation 78 repealed

Regulation 78 is repealed.

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r. 25**25. Regulation 79 amended**

Regulation 79(2) is amended by deleting “under regulation 78”.

26. Regulations 79AA and 79AB inserted

After regulation 79 the following regulations are inserted —

“

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

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

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

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

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

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

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

”

27. Regulation 79B amended

Regulation 79B(1) is amended by deleting “is at least 55 years of age” and inserting instead —

“ has reached the preservation age ”.

28. Regulation 80A inserted

After regulation 79B the following regulation is inserted —

“

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

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

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r. 29

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

”.

29. Regulation 80 amended

- (1) Regulation 80(3) and (3a) are repealed and the following
subregulation is inserted instead —

“

- (3) If the Board —
- (a) has been unable, after making reasonable
enquires, to find an administrator or executor of
the Member's estate; or
- (b) considers it desirable to do so in order to relieve
or avoid hardship,

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

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

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Member, to one or more other individuals in proportions determined by the Board.

”.

(2) Regulation 80(4) is amended as follows:

- (a) at the end of the definition of “death benefit” be deleting the full stop and inserting a semicolon instead;
- (b) at the end of the subsection by inserting —

“

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

”.

30. Regulation 81 amended

Regulation 81(2)(b) and (3) are amended by deleting “regulation 76(1)(b)” and inserting instead —

“ regulation 76(1)(b) or (c) ”.

31. Regulation 83 amended

Regulation 83(1) is amended by deleting the definition of “compulsory contribution”.

32. Regulation 86 amended

Regulation 86(1)(b) is amended by deleting “regulation 98(2)(a)” and inserting instead —

“ regulation 65BB(2)(b), 98(2)(a) ”.

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r. 33

33. Regulations 88, 89 and 90 replaced by regulations 88 and 89

- (1) Regulation 88, 89 and 90 are repealed and the following regulations are inserted instead —

“

88. Employers to make minimum SG contributions

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

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- (5) A contribution for a contribution period must be paid to the Fund —
 - (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or
 - (b) otherwise — within 28 days after the end of the contribution period.
- (6) If an Employer becomes liable to pay the superannuation guarantee charge as a result of incurring an individual superannuation guarantee shortfall for a Member for a period, the Employer's obligation under this regulation to contribute for that Member for that period ceases.

89. Compulsory contributions for over-OTE items

- (1) In this regulation —
 - “**over-OTE item**”, for a Member, means a payment, benefit or allowance that —
 - (a) is part of the Member's remuneration; but
 - (b) is not part of the Member's ordinary time earnings within the meaning given in the SGA Act section 6(1);
 - “**SG-Member**” means a Member for whom an Employer is required by regulation 88 to make contributions;
 - “**SG-exempt Member**” means an eligible statutory GESB Super Member who is not an SG-Member because of the SGA Act sections 26 to 29.
- (2) For each contribution period of an SG-Member in which the Member receives an over-OTE item the Employer must make a contribution to the Fund for the Member of an amount equal to 9% of the monetary value, determined by the Employer, of that over-OTE item.

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r. 34

- (3) For each contribution period of an SG-exempt Member the Employer must make a contribution to the Fund for the Member of an amount equal to the contributions that the Employer would have been required under regulation 88 and subregulation (2) to make for that Member for that contribution period had the SGA Act sections 26 to 29 not been in force.
- (4) A contribution required under this regulation to be made for a contribution period must be paid to the Fund —
 - (a) if the contribution period is the Member's pay period — within 7 days after the end of that period; or
 - (b) otherwise — within 28 days after the end of the contribution period.
- (5) A determination by an Employer as to the value of a non-monetary over-OTE item that would reduce the value of the item for a person who was an eligible statutory GESB Super Member at the time the determination was made, does not apply to the person unless he or she gives notice to the Employer consenting to its application to him or her.

”.

34. Regulation 91 amended

Regulation 91(3) is amended by deleting “regulation 88.” and inserting instead —

“ regulation 88 or 89. ”.

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35. Regulation 100 replaced

Regulation 100 is repealed and the following regulation is inserted instead —

“

100. Restriction on contributions and transfers

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

”

36. Regulation 114 amended

Regulation 114(1) is amended as follows:

- (a) at the end of paragraph (c) by deleting the comma and inserting a semicolon instead;
- (b) after paragraph (c) by inserting —

“

or

- (d) a GESB Super Member reaches 65 years of age,

”

37. Regulation 118 amended

Regulation 118(1) is amended by deleting “Subject to subregulation (2) and regulations 123, 124 and 125” and inserting instead —

“

Unless permitted to do so by another provision of this Division

”

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r. 38**38. Regulation 122 amended**

- (1) Regulation 122(1) is amended as follows:
- (a) at the end of paragraph (b) by deleting the comma and inserting a full stop instead;
 - (b) by deleting “and the Board is to comply with that request.”.
- (2) Regulation 122(2) and (3) are repealed and the following subregulations are inserted instead —
- “
- (2) The Board must comply with a request under subregulation (1)(a) unless the Board is satisfied that, if the West State Super Scheme were a regulated superannuation fund, the Board would be prevented by the SIS Regulations from paying the benefit as requested.
 - (3) The Board must comply with a request under subregulation (1)(b).

”.

39. Regulation 178A inserted

After regulation 177A the following regulation is inserted in Division 3 —

“

178A. Restriction on contributions and transfers

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

”.

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r. 40

40. Regulation 196EA inserted

After regulation 196D the following regulation is inserted in Division 2 —

“

196EA. Restriction on transfers

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

”

41. Regulation 207A inserted

After regulation 206B the following regulation is inserted in Division 3 —

“

207A. Restriction on contributions and transfers

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

”

Certified by the Treasurer under section 38(4)(a) of the Act —

JOHN KOBELKE,
A/Treasurer.

Date: 7 July 2008.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.