

Western Australia

## **State Superannuation Amendment Regulations (No. 2) 2002**

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## State Superannuation Act 2000

**State Superannuation Amendment  
Regulations (No. 2) 2002**

Made by the Governor in Executive Council.

**Part 1 — Preliminary****1. Citation**

These regulations may be cited as the *State Superannuation Amendment Regulations (No. 2) 2002*.

**2. Commencement**

These regulations come into operation on 1 July 2002.

**3. The regulations amended**

The amendments in these regulations, other than regulation 29 are to the *State Superannuation Regulations 2001*\*.

[\* *Published in Gazette 16 February 2001, p. 921-1074.*  
*For amendments to 30 May 2002 see 2001 Index to*  
*Legislation of Western Australia, Table 4, p. 321.*]

**Part 2 — Amendments to establish the Retirement  
Access Scheme****4. Regulation 3 amended**

- (1) Regulation 3 is amended by deleting the definitions of “earning rate”; and “Member”.
- (2) Regulation 3 is amended by inserting the following definitions in the appropriate alphabetical positions —

“

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

- (a) for a West State Super Member, under regulation 69F; or
- (b) for a Retirement Access Member, under regulation 216,

for —

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

**“Member”** means, except in Part 7, a Gold State Super Member, a West State Super Member or a Retirement Access Member;

**“Retirement Access Member”** means a Member of the Retirement Access Scheme;

**“Retirement Access Scheme”** means the superannuation scheme established by regulation 200;

”.

**5. Regulation 25 amended**

Regulation 25(b) is amended by inserting after “another” —  
“ scheme or to another ”.

**6. Regulation 47 amended**

Regulation 47(1) is amended by inserting after “another” —  
“ scheme or to another ”.

**7. Regulation 53 amended**

Regulation 53(b) is amended by inserting after “another” —  
“ scheme or to another ”.

**8. Regulation 68 amended**

Regulation 68(1)(d) is deleted and the following paragraph is inserted instead —

“

- (e) amounts transferred to other schemes or to other superannuation funds in satisfaction of the Member’s entitlement to a benefit from the West State Super Scheme.

”.

**9. Regulation 69 amended**

Regulation 69(1)(b) is amended by inserting after “to” —  
“ payment ”.

**10. Regulation 69A amended**

Regulation 69A is amended in the definition of “default plan” by deleting “plan;” and inserting instead —

“ plan for West State Super Members; ”.

**11. Regulation 69B amended**

- (1) Regulation 69B(1) is amended by inserting after “plans” —  
“ for West State Super Members ”;
- (2) Regulation 69B(3) is amended by inserting after “which a” —  
“ West State Super ”.
- (3) Regulation 69B(4)(a) is amended by inserting after “new investment plan” —  
“ for West State Super Members ”.

**12. Regulation 69C amended**

Regulation 69C(1) is amended by inserting after “plans” —  
“ for West State Super Members ”.

**13. Regulation 69E amended**

- (1) Regulation 69E(1)(b) is amended by inserting after “investment of” —  
“ the ”.
- (2) Regulation 69E(2) is amended as follows:
  - (a) in paragraph (b) by inserting after “Fund,” —  
“ by or ”;
  - (b) by deleting “with asset allocation.” and inserting instead —  
“ with that asset allocation. ”.

**14. Regulation 69F amended**

- (1) Regulation 69F(1)(b) is amended by inserting after “each” —  
“ West State Super ”.
- (2) Regulation 69F(3) is amended by deleting “earning rates” in both places where it occurs and inserting instead —  
“ an earning rate ”.

**15. Regulation 79 amended**

Regulation 79(1) is amended by inserting after “another” —  
“ scheme or to another ”.

**16. Part 5 inserted (s. 200 to 219)**

The following Part is inserted before Part 6 —

“

**Part 5 — Retirement Access Scheme**

**Division 1 — Establishment and preliminary**

**200. Establishment of Retirement Access Scheme**

The Retirement Access Scheme is established as a superannuation scheme under section 28 of the Act.

**201. Interpretation**

In this Part —

“**compulsory payment age**”, in relation to a person, means the age at which a benefit to which the person is entitled from a regulated superannuation fund (within the meaning of the SIS Act) would be required to be cashed (within the meaning of that Act);

“**retirement access account**” means an account kept under regulation 207.

**Division 2 — Membership**

**202. Members**

- (1) A Gold State Super Member or West State Super Member may apply to become a Retirement Access Member if —
  - (a) the Member is entitled to immediate payment of a benefit from the Gold State Super Scheme or the West State Super Scheme; and
  - (b) the Member has not reached the compulsory payment age.
- (2) A person who is in receipt of, or is entitled to receive, a pension (other than a reversionary pension) under the Pension Scheme may apply to become a Retirement Access Member if —
  - (a) he or she has elected to commute all or part of that pension to a lump sum; and
  - (b) he or she has not reached the compulsory payment age.
- (3) The Board is to accept an application under this regulation unless the Board considers that the applicant, if accepted as a Retirement Access Member, will not be able to comply with regulation 204.

**203. Cessation of membership**

A person ceases to be a Retirement Access Member when the balance in the Member's retirement access account is reduced to zero.

**Division 3 — Contributions****204. Compulsory transfer**

- (1) When a person becomes a Retirement Access Member he or she must transfer to the Retirement Access Scheme all or part of —
  - (a) the benefit referred to in regulation 202(1)(a); or
  - (b) the lump sum referred to in regulation 202(2)(a).
- (2) The amount transferred must not be less than \$3 000 unless the Board agrees to accept a lesser amount.
- (3) The amount transferred must be transferred directly from the Gold State Super Scheme, the West State Super Scheme or the Pension Scheme (as the case requires).

**205. Voluntary contribution**

A Retirement Access Member may contribute to the Fund the amounts, at the times, and in the manner, agreed between the Member and the Board.

**206. Member may transfer benefits or other ETP's**

A Retirement Access Member may transfer to the Retirement Access Scheme —

- (a) a benefit that is immediately payable to the Member from another scheme or from another superannuation fund; or
- (b) any other eligible termination payment that is immediately payable to the Member,

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

**Division 4 — Retirement access accounts****207. Retirement access accounts**

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

**208. Amounts to be credited to retirement access accounts**

- (1) The Board is to credit to a Retirement Access Member's retirement access account —
  - (a) the benefit transferred to the Fund under regulation 204;
  - (b) any contributions made by the Member under regulation 205;
  - (c) any benefits or other eligible termination payments transferred to the Fund under regulation 206; and
  - (d) earnings in accordance with regulation 210.
- (2) The Board may temporarily keep contributions made for a Retirement Access Member, together with contributions made for other Retirement Access Members, in an account maintained for that purpose until the contributions are credited to the appropriate benefit accounts.

**209. Amounts to be debited to retirement access accounts**

- (1) The Board may debit to a Retirement Access Member's retirement access account —
  - (a) administrative costs associated with the Retirement Access Scheme;
  - (b) amounts paid as benefits to, or in respect of, the Member;
  - (c) amounts transferred to other schemes or to other superannuation funds in satisfaction of a Member's entitlement to a benefit from the Retirement Access Scheme; and
  - (d) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member.
- (2) The Board may only debit an amount to a retirement access account under subregulation (1)(a) if an actuary has advised that it is appropriate for that amount to be debited to that account.

**210. Earnings**

- (1) The Board is to credit earnings to each Member's retirement access account at a rate equal to the Member's earning rate on the balance of the account —
  - (a) at least once every year; and
  - (b) when the Member requests the payment or transfer under Division 6 of an amount from the Member's retirement access account.



- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.

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

#### **211. Interpretation**

In this Division —

“**default plan**” means the readymade investment plan selected by the Board under regulation 213 as the default plan for Retirement Access Members;

“**personalised investment plan**” means an investment plan established under regulation 212(3);

“**readymade investment plan**” means an investment plan established under regulation 212(1).

#### **212. Board to establish investment plans**

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

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

#### **213. Default plan**

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

**214. Member to select investment plan**

- (1) A Retirement Access Member is to select an investment plan to be used in determining the Member's earning rate.
- (2) A Member may change his or her selection at any time by giving notice to the Board, and the Board must give effect to the notice as soon as practicable.
- (3) Until a Retirement Access Member selects otherwise the Member is taken to have selected the plan that was the default plan at the time the person became a Retirement Access Member.

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

- (1) For each Retirement Access Member who selects a readymade investment plan the Board must, as far as is practicable —
  - (a) invest the Member's assets in accordance with the asset allocation determined under regulation 212 for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a Retirement Access Member who selects a personalised investment plan the Board must invest —
  - (a) the Member's assets as at the time the selection was made ("**selection day**"); and
  - (b) contributions made, and any benefits or other eligible termination payments transferred to the Fund, by or in respect of the Member after the selection day,

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

- (3) In this regulation —  
"**Member's assets**" means the assets of the Fund that represent the retirement access account of a Retirement Access Member.

**216. Determination of earning rates**

- (1) At the end of each financial year and at any other time when the Board considers it desirable to do so, an earning rate is to be determined for —
  - (a) each readymade investment plan; and

- (b) each Retirement Access Member who has selected a personalised investment plan.
- (2) The earning rates are to be determined —
  - (a) by the Board; or
  - (b) on behalf of the Board in accordance with procedures or formulae determined by the Board.
- (3) In determining an earning rate, or the procedures or formulae to be used to determine an earning rate, the Board must have regard to —
  - (a) the nett rate of return achieved by the investment of the assets of the Fund that represent the retirement access accounts of the Members to whom the earning rate will apply; and
  - (b) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

#### **Division 6 — Access to benefits**

##### **217. Member may request payment or transfer**

- (1) A Retirement Access Member may request the Board to —
  - (a) pay to the Member; or
  - (b) transfer to another scheme or to another superannuation fund,

a benefit of an amount equal to all or part of the balance of the Members retirement access account.

- (2) The amount requested must not be —
  - (a) less than \$1 000; or
  - (b) an amount the payment or transfer of which will reduce the balance in the Member's retirement access account to less than \$1 000,

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

- (3) On receipt of a request under subregulation (1) the Board is to pay or transfer the benefit as requested.

##### **218. Payment or transfer at compulsory payment age**

When a Retirement Access Member reaches the compulsory payment age the Board must —

- (a) pay to the Member; or

- (b) if the Member so requests, transfer to another scheme or to another superannuation fund,

a benefit of an amount equal to the balance in the Member's retirement access account.

## **219. Death of a Retirement Access Member**

- (1) If a Retirement Access Member dies while there is still an amount in the Member's retirement access account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the Member's estate.
- (2) An amount paid under subregulation (1) to the executor or administrator of a Member's estate —
  - (a) forms part of the Member's estate; but
  - (b) is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3) The Board may pay up to \$25 000 of a benefit payable under subregulation (1) in accordance with subregulation (4) if —
  - (a) 3 months have elapsed since the Member's death and the Board has not been notified of —
    - (i) the grant of probate of the Member's will or letters of administration of the Member's estate; or
    - (ii) a person's intention to apply for a grant of probate or letters of administration;
  - or
  - (b) the Board considers it desirable to do so in order to relieve or avoid hardship.
- (4) If the Board decides to pay an amount in accordance with this subregulation the Board may —
  - (a) pay the amount to one or more of the people who were, immediately before the Member died, a spouse, de facto partner, relative or dependant of the Member, in proportions determined by the Board;
  - (b) use the amount to pay the Member's funeral expenses or reimburse a person who has paid those expenses, and pay the balance in accordance with paragraph (c); or
  - (c) in special circumstances, pay the amount, or the balance referred to in paragraph (b), to some other person.

**17. Regulation 225 amended**

Regulation 225 is amended in the definition of “Member” as follows:

- (a) after paragraph (c) by deleting “or”;
- (b) after paragraph (d) by inserting —

“

or

- (e) a Retirement Access Member;

”.

**18. Regulation 243 amended**

Regulation 243(a)(i) is amended by inserting after “Super Member” —

“ or a Retirement Access Member ”.

**19. Regulation 244 amended**

After regulation 244(2) the following subregulation is inserted —

“

- (3) This regulation does not apply to, or in relation to, a Retirement Access Member.

”.

**Part 3 — Amendment to allow acceptance of eligible termination payments****20. Regulation 3 amended**

Regulation 3 is amended by inserting the following definition in the appropriate alphabetical position —

“

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

”.

**21. Regulation 65 amended**

Regulation 65 is amended by deleting from and including “Scheme a benefit” to the end of the regulation and inserting instead —

“

Scheme —

- (c) a benefit accrued in respect of the Member in another superannuation fund; or

(d) any other eligible termination payment,  
by paying, or arranging the payment of, the amount of  
that benefit or payment to the Fund.

”

**22. Regulation 65A amended**

- (1) After regulation 65A(1) the following subregulation is inserted —

“

- (1a) If a Member has transferred any other eligible termination payment to the West State Super Scheme, the Member may at any time request that the transferred payment be paid or transferred to another scheme or to another superannuation fund.

”

- (2) Regulation 65A(2) is amended as follows:

- (a) by inserting after “subregulation (1)” —  
“ or (1a) ”;
- (b) by deleting “to the other superannuation fund”;
- (c) in paragraph (a) by inserting after “benefit” —  
“ or payment ”.

**23. Regulation 67 amended**

Regulation 67(1)(e) is deleted and the following paragraph is inserted instead —

“

- (e) any benefits or other eligible termination payments transferred to the Fund under regulation 65 for the Member;

”

**24. Regulation 69E amended**

Regulation 69E(2)(b) is amended by deleting “benefits” and inserting instead —

“ any benefits or other eligible termination payments ”.

**25. Regulation 223 amended**

Regulation 223(2)(b)(ii) is amended by deleting “benefits” and inserting instead —

“ any benefits or other eligible termination payments ”.

## Part 4 — Amendments relating to payment of contributions tax

### 26. Regulation 49A inserted

After regulation 49 the following regulation is inserted in Part 2 Division 5 —

“

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

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

- (c) pay to the Member —
  - (i) the lump sum resulting from the commutation of the pension; and
  - (ii) the balance (if any) of the withheld amount.
- (5) The Board may reject an application made under subregulation (1) if it is not satisfied that, if the application were accepted, the lump sum benefit that would become payable under subregulation (4)(c)(i) will be used to pay the contributions tax.
- (6) In this regulation —
  - “**actual tax amount**” means the amount stated in the Member’s assessment notice as the amount of contributions tax payable by the Member;
  - “**assessment notice**” means a notice given by the Commissioner of Taxation to a Member under section 15(7) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;
  - “**contributions tax**” means the tax imposed by the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;
  - “**withheld amount**” means the amount withheld under subregulation (2)(b) plus interest on that amount accrued under subregulation (3).

”.

## 27. Regulation 68 amended

Regulation 68(1) is amended as follows:

- (a) after paragraph (c) by deleting “and”;
- (b) after paragraph (c) by inserting the following —
  - “
  - (d) amounts withheld under regulation 81A(2); and

”.

## 28. Regulation 81A inserted

After regulation 81 the following regulation is inserted in Part 3 Division 6 —

“

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

- (1) A West State Super Member who will become liable to pay contributions tax as a result of a benefit becoming payable to the Member from the West State Super



- Scheme may, at any time before the benefit is paid, apply to the Board —
- (a) to receive part of the benefit in the form of a commutable pension; and
  - (b) to fully commute that pension.
- (2) Subject to subregulation (5) when a benefit becomes payable to a Member who has made an application under subregulation (1) the Board is to —
- (a) estimate the amount of contributions tax the Member will become liable to pay (the **“estimated tax amount”**);
  - (b) withhold from the Member’s benefit an amount equal to the estimated tax amount; and
  - (c) pay the balance of the benefit to the Member.
- (3) Interest accrues on an amount withheld under subregulation (2)(b) —
- (a) at a rate equal to the CPI rate plus 2%;
  - (b) from the day on which the benefit became payable to the day on which the withheld amount is paid under subregulation (4)(c); and
  - (c) in a manner determined by the Board.
- (4) On receipt of a copy of the Member’s assessment notice the Board is to —
- (a) convert into a pension —
    - (i) if the actual tax amount is less than the withheld amount — a portion of the withheld amount equal to the actual tax amount; or
    - (ii) otherwise — the whole of the withheld amount;
  - (b) commute that pension; and
  - (c) pay to the Member —
    - (i) the lump sum resulting from the commutation of the pension; and
    - (ii) the balance (if any) of the withheld amount.
- (5) The Board may reject an application made under subregulation (1) if it is not satisfied that, if the application were accepted, the lump sum benefit that would become payable under subregulation (4)(c)(i) will be used to pay the contributions tax.
- (6) In this regulation —
- “actual tax amount”** means the amount stated in the Member’s assessment notice as the amount of contributions tax payable by the Member;

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

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

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

”.

**29. Superannuation and Family Benefits Act 1938 amended**

- (1) The amendments in this regulation are to the provisions of the *Superannuation and Family Benefits Act 1938\** as continued in force by section 26 of the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.

[\* Reprinted 20 July 1999.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 438 and Act No. 42 of 2000 and Gazette 16 Feb and 29 Jun 2001.]*

- (2) After section 60E the following section is inserted —

“

**60F. Pensioner liable to pay contributions tax may commute part of State share of pension**

- (1) A pensioner who —
- (a) is in receipt of a pension; and
  - (b) is liable to pay contributions tax as a result of becoming entitled to that pension,

may apply to the Board to commute part of the State share of that pension.

- (2) On receipt of an application under subsection (1) and a copy of the pensioner’s assessment notice the Board is to —
- (a) commute so much of the State share of the pension as the Board, on the advice of an actuary, determines is necessary to provide a lump sum of an amount equal to the amount of contributions tax payable by the pensioner;
  - (b) pay the commuted amount to the pensioner as a lump sum benefit; and

- (c) adjust the amount of the pensioner's pension accordingly.
- (3) The Board may reject an application under subregulation (1) if it is not satisfied that, if the application were accepted, the lump sum benefit that would become payable under subregulation (2)(b) will be used to pay the contributions tax.
- (4) In this section —
- “**assessment notice**” means a notice given by the Commissioner of Taxation to a pensioner under section 15(7) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth;
- “**contributions tax**” means the tax imposed by the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth.

”.

## Part 5 — Miscellaneous amendments

### 30. Regulation 51 amended

Regulation 51(1) is amended by deleting “subregulations” and inserting instead —

“ subregulation ”.

### 31. Regulation 69 amended

Regulation 69(2) is amended by deleting “earnings” and inserting instead —

“ earning ”.

### 32. Regulation 230 amended

Regulation 230(1) is amended by deleting “Member” in the first place where it occurs and inserting instead —

“ person ”.

### 33. Regulation 246A inserted

After regulation 246 the following regulation is inserted —

“

#### 246A. Transfers to other superannuation funds

The Board is not required to comply with a Member's request that a benefit be transferred to another superannuation fund if the trustee of that other fund (or if there is no such trustee, the person who manages that fund) does not agree to accept the transfer.

”.

**34. Regulation 249 amended**

Regulation 249(2) is amended by deleting “enquires” and inserting instead —

“ enquiries ”.

**35. Regulation 251 amended**

Regulation 251(1) is amended by inserting after “report,” —

“ request, ”.

Certified under section 38(4)(b) of the Act —

W. M. MERCER

Actuary appointed by the Board

5/6/2002

Date

Approved under section 38(5)(a) of the Act —

Hon. ERIC RIPPER

Treasurer

18/6/2002

Date

By Command of the Governor,

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

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