

Western Australia

## **State Superannuation Regulations 2001**

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# State Superannuation Regulations 2001

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## State Superannuation Regulations 2001

### Part 1 — Preliminary

**1. Citation**

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

**2. Commencement**

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

**3. Interpretation**

(1) In these regulations —

“**accumulation account**” means —

- (a) for a West State Super Member, the Member’s benefit account (as defined in regulation 50);
- (b) for a Retirement Income Member, the Member’s retirement income account (as defined in regulation 171);
- (c) for a Term Allocated Pension Member, the Member’s term allocated pension account (as defined in regulation 196A); and
- (d) for a Retirement Access Member, the Member’s retirement access account (as defined in regulation 201);

“**charge percentage**” means the Employer’s charge percentage for the relevant Member, calculated in accordance with section 20 or 21 of the SGA Act before applying any reduction under section 22 or 23 of that Act;

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

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

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

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

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

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

where —

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

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

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

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

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

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

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

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

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

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

**“Gold State Super Member”** means a Member of the Gold State Super Scheme;

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

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

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

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

- (a) unable to perform the duties of the Member’s job; but

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

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

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

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

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

**“phased retirement benefit”** means a benefit from a superannuation fund that is only payable if it is paid as a benefit of a kind referred to in Schedule 1 item 109A column 3 of the SIS Regulations;

**“preserved benefit”** means a benefit under regulation 44, 73, 74(2)(a) or 74B(2);

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

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

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

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

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

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

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

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

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

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

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

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

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

**“superannuation fund”** means —

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

providing of a benefit that is an annuity for the purposes of the SIS Act;

**“Term Allocated Pension Member”** means a Member of the Term Allocated Pension Scheme;

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

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

**“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;

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

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

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

**“worker”** means a person who is —

- (a) appointed under Part 3 of the *Public Sector Management Act 1994*;
- (b) the holder of an office or position established or continued under a written law, other than a parliamentarian;
- (ba) a parliamentarian;
- (c) appointed to an office or position by the Governor, a Minister, an Employer or another worker;

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

**r. 3A**

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

*[Regulation 3 amended in Gazette 29 Jun 2001 p. 3079-80; 28 Jun 2002 p. 3011-12, 3021 and 3031; 19 Mar 2003 p. 816 and 836; 13 Jun 2003 p. 2105; 25 Jun 2004 p. 2228; 1 Dec 2004 p. 5705-6; 10 Dec 2004 p. 5894-5; 26 May 2006 p. 1918 and 1929-30; 21 Jul 2006 p. 2651.]*

**3A. Trading name**

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

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

**4. Selection of contribution period**

- (1) The Board is to select a period to be the contribution period for each Employer and its workers.
- (2) The Board may select different contribution periods for different classes of workers of an Employer.
- (3) The Board may change the contribution period or periods for an Employer provided the change is not detrimental to any Member.
- (4) The Board is to notify the Employer of the period or periods selected under this regulation and any change in the selection.
- (5) Until the Board selects otherwise the contribution period for an Employer is —
- (a) in respect of workers who are Gold State Super Members — the fortnight commencing on the commencement day;
  - (b) in respect of workers who are West State Super Members and who are paid periodically at intervals of less than 3 months — the workers’ pay period; and



- (c) in respect of workers who are West State Super Members not covered by paragraph (b) — a quarter.

**5. Meaning of “remuneration”**

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

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

- (a) a Member is entitled to in his or her capacity as a worker; and
  - (b) the Employer, or a person authorised by the Employer, has certified that the Member —
    - (i) is likely to continue to be entitled to while the Member continues to hold the job held at the time of the certification; or
    - (ii) would be likely to continue to be entitled to if the Member were to continue to hold that job,other than amounts excluded by subregulation (2) or (3).
- (1a) The “payments, benefits and allowances” referred to in the definition of “remuneration” include a payment, benefit or allowance that is payable only in particular circumstances if —
    - (a) it will be paid to the Member whenever those circumstances arise; and
    - (b) the Employer reasonably expects those circumstances to arise in relation to the Member from time to time.
  - (2) The remuneration of a Member does not include —
    - (a) payments for overtime (but not payments instead of overtime);
    - (b) bonuses;
    - (c) payments in lieu of leave;
    - (d) allowances for rent, accommodation, subsistence, travelling or expenses;

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- (e) equipment allowances;
  - (f) climatic allowances;
  - (g) payments as a consequence of the termination of a job;  
or
  - (h) payments, benefits or allowances that the Board determines are to be regarded as not being part of the Member's remuneration because they are of a similar nature to those referred to in paragraphs (a) to (g).
- (3) The remuneration of a Gold State Super Member also does not include —
- (a) special allowances (as defined in regulation 12);
  - (b) annual leave loading;
  - (c) compensation in lieu of the opportunity for private practice;
  - (d) benefits under the Act;
  - (e) contributions to the Fund, other than contributions made under a salary sacrifice agreement; or
  - (f) payments, benefits or allowances that the Treasurer determines for the time being are not part of a Member's remuneration.
- (4) A certificate for the purposes of paragraph (b) of the definition of "remuneration" may —
- (a) express the payment, benefit or allowance as a monetary amount or as a percentage of all or part of the remuneration; and
  - (b) be given in relation to one Member or a class of Members.
- (5) A determination —
- (a) under subregulation (3)(f); or
  - (b) by an Employer as to the value of any non-money payment, benefit or allowance,

that would reduce the remuneration of a person who was a Member at the time the determination was made does not apply to the Member unless the Member gives notice to the Board consenting to its application to the Member.

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

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

- (c) the Member's remuneration before it was reduced;
  - (d) an amount representing the notional remuneration from time to time attributable to the job held by the Member immediately before the reduction; or
  - (e) some other notional remuneration that the Board considers appropriate.
- (7) A determination under subregulation (6) ceases to be in force if the Member's actual remuneration increases to more than the amount of remuneration specified in the determination.

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

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

- (1) The remuneration of a Member who works on a part-time basis is the actual remuneration received by the Member, not the remuneration of a comparable full-time worker.
- (2) Subject to regulation 16(4), for the purposes of these regulations the remuneration of a Member who is seconded is —
- (a) for a Gold State Super Member — the Member's remuneration for the job from which the Member is seconded;

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- (b) for a West State Super Member who is seconded to a person who is an Employer — the Member's remuneration for the job to which the Member is seconded; or
  - (c) for a West State Super Member who is seconded to a person who is not an Employer — the higher of —
    - (i) the Member's remuneration for the job from which the Member is seconded; and
    - (ii) the Member's remuneration for the job to which the Member is seconded.
- (3) If a Member does not receive his or her remuneration on a regular basis throughout the year, the Board may treat the Member as having received that remuneration on a regular basis by —
- (a) averaging the remuneration received over all the contribution periods in the year;
  - (b) determining the Member's remuneration to be a notional regular remuneration equal to the remuneration that a notional person holding the job held by the Member would receive if he or she were paid on a regular basis; or
  - (c) calculating a notional regular remuneration for the Member by some other means that the Board considers appropriate.

**6A. Remuneration for certain parliamentarians**

- (1) This regulation applies if there is a Ministerial determination under section 29(4) of the *Parliamentary Superannuation Act 1970* in force that nominates the West State Super Scheme as a superannuation fund to which section 29 contributions are to be, or may be, made.
- (2) When this regulation applies the remuneration of a relevant parliamentarian is the salary, allowances and benefits of the parliamentarian by reference to which the amount of section 29

contributions is calculated in accordance with the Salaries and Allowances Tribunal's determination under section 29(3)(a) of the *Parliamentary Superannuation Act 1970*.

(3) In this regulation —

**“relevant parliamentarian”** means a parliamentarian in respect of whom section 29 contributions are made to the West State Super Scheme;

**“section 29 contributions”** means contributions required to be made under section 29 of the *Parliamentary Superannuation Act 1970*.

*[Regulation 6A inserted in Gazette 29 Jun 2001 p. 3081.]*

## 7. Prescribed Employers

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

## 8. Who does a worker work for

- (1) A worker who is appointed under Part 3 of the *Public Sector Management Act 1994* and to whom subsections (2), (3) and (7) do not apply, is taken to work for the Employer for, within, or for the purposes of, which or whom the worker works.
- (2) A worker who is the holder of an office or position established or continued under a written law, other than a parliamentarian, is taken to work for the Government of Western Australia.
- (2a) A worker who is a parliamentarian is taken to work for the Government of Western Australia.
- (3) A worker who is appointed to an office or position by the Governor, a Minister, an Employer or another worker is taken to work for the Government of Western Australia.
- (4) A worker who is appointed under section 64(1) or 100(2) of the *Public Sector Management Act 1994* is taken to work for the

Employer for, within, or for the purposes of, which or whom the worker works.

- (5) A worker who is appointed under Part I of the *Police Act 1892* is taken to work for —
  - (a) in the case of the Commissioner of Police, the Government of Western Australia; and
  - (b) otherwise, the Commissioner of Police.
- (6) A worker who is a member of the Governor's Establishment (as defined in the *Governor's Establishment Act 1992*) is taken to work for the Governor.
- (7) A worker who is a member of a department of the staff of Parliament referred to in the *Parliamentary and Electorate Staff (Employment) Act 1992* is taken to work for whichever of —
  - (a) the President of the Legislative Council;
  - (b) the Speaker of the Legislative Assembly; or
  - (c) the President of the Legislative Council and the Speaker of the Legislative Assembly acting jointly,is specified in that Act as the worker's employer.
- (8) A worker who is otherwise appointed by the Governor or a Minister under an Act as an officer, servant or member of staff, of, for, or for the purposes of, an Employer and to whom subregulations (1) to (7) do not apply, is taken to work for that Employer.
- (9) A worker who is otherwise employed under a contract of employment to work for, within, or for the purposes of, an Employer, and to whom subregulations (1) to (8) do not apply, is taken to work for that Employer.
- (10) A worker who is engaged under a contract for services to provide services to, or for the purposes of, an Employer where at least 50% of the person's remuneration under the contract is for the person's labour, is taken to work for that Employer.

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- (11) A worker who is employed or engaged by a person who is not an Employer but who is seconded to work for, within, or for the purpose of, an Employer under an agreement that requires the Employer to provide superannuation for the person is taken to work for that Employer.
- (12) If a worker is on secondment from one Employer to another, the worker is taken to work for the Employer to whom he or she is seconded.

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

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

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

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obligations of the department or organisation as the Employer of the worker are to be discharged by the employing authority of the department or organisation.

- (5) In this regulation —  
“**employing authority**” and “**organisation**” have the same meanings as they have in the *Public Sector Management Act 1994*.

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

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

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

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

- (1) Subject to regulations 45(5) and 76(5) and subregulation (3), if a person works in more than one job for one or more Employers, these regulations apply as if the person were, in respect of each job, a separate person.
- (2) Without limiting subregulation (1), the fact that a person is, in respect of one job, ineligible to be a Member does not prevent the person from being a Member in respect of another job.
- (3) If, in a particular case, the application of subregulation (1) in relation to a person produces a result that the Board considers to be inequitable, the Board may, to the extent necessary to avoid the inequality, apply these regulations in relation to that person as if all of the person’s jobs were one combined job.



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## Part 2 — Gold State Super Scheme

### Division 1 — Preliminary

#### 12. Interpretation

In this Part —

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

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

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

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

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

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

“**employer contribution**” means a contribution under regulation 29;

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

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

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

“**member contribution**” means a contribution under regulation 32;

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

**“recognised unpaid leave”** means unpaid leave if —

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

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

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

**“special allowance”** means —

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

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

- (a) leave without pay; or

- (b) leave taken under an agreement between a Gold State Super Member and the Employer under which the Member is entitled to an additional period of paid leave in return for a proportionate reduction in the Member's pay over the period covered by the agreement;

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

**13. Meaning of “average contribution rate”**

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

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

where —

- S is the sum of the member contribution rates applying for each day of the Member's contributory membership period; and
- D is the number of days in the Member's contributory membership period.
- (2) If, in order to comply with a condition imposed under regulation 14(4), a Gold State Super Member's member contribution rate for a day is greater than 5%, then for the purposes of the definition of “average contribution rate” the Member's member contribution rate for that day is taken to be 5%.
- (3) If, in a particular case, the use of the formula in the definition of “average contribution rate” to calculate a Gold State Super Member's average contribution rate produces a result that the Board considers to be inequitable, the Board may, to the extent necessary to avoid the inequality, calculate the Member's average contribution rate in a different manner.

**14. Meaning of “contributory membership period”**

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

**15. Meaning of “eligible Gold State worker”**

(1) In this Part —

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

- (a) at all times on and from 30 December 1995 to the commencement day, was, or was taken to have been —
    - (i) a member of the 1987 scheme under the GES Act; or
    - (ii) eligible to be a member of that scheme;
  - (b) did not terminate his or her membership of the 1987 scheme under section 19A of the GES Act;
  - (c) subject to regulations 22 and 23, has been a worker continuously since the commencement day;
  - (d) is not excluded by subregulation (2); and
  - (e) has not voluntarily withdrawn from the Gold State Super Scheme under regulation 24.
- (2) A person is excluded by this subregulation if the person —
- (a) is a judge or other person with an entitlement, or an expectation of an entitlement, to a benefit under the *Judges’ Salaries and Pensions Act 1950*;
  - (b) is a Pension Scheme Member or a Provident Scheme Member, unless regulation 19(1)(b) or (c) applies to the person;
  - (c) is in receipt of a pension under the Pension Scheme, other than a reversionary pension;
  - (d) works on a part-time basis for less than one hour a week;
  - (e) is a casual worker whose remuneration for that casual job is less than \$250 a month;

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

**16. Meaning of “final remuneration”**

- (1) In this Part —
- “final remuneration”**, for a Gold State Super Member, means the amount of FR in the formula —

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

where —

- R is the Member’s daily rate of remuneration as at —
  - for R<sub>1</sub> the day on which the Member ceased to be an eligible Gold State worker;
  - for R<sub>2</sub> the Member’s last selection day; and

- for R<sub>3</sub> the Member's second last selection day,  
or if the Member's contributory membership period  
does not include that day, the day on which the  
Member became a Gold State Super Member;
- D is the number of days on which the Member was a  
Gold State Super Member —
- for D<sub>1</sub> on and after the Member's last selection day;
- for D<sub>2</sub> on and after the Member's second last  
selection day but before the Member's last  
selection day; and
- for D<sub>3</sub> on and after the first day of the last 2 years of  
the Member's contributory membership  
period but before the Member's second last  
selection day,  
or if the Member's contributory membership period  
does not include the first day referred to in each case,  
the day on which the Member became a Gold State  
Super Member;
- M is the lesser of —
- (a) 730; and
  - (b) the number of days in the Member's  
contributory membership period.
- (2) If a Gold State Super Member worked on a part-time basis on a  
day mentioned in the definition of "final remuneration", then for  
the purposes of that definition the Member's remuneration on  
that day is taken to be the amount that would have been the  
remuneration on that day of a comparable full-time worker.
- (3) If a Gold State Super Member —
- (a) receives a special allowance for a day mentioned in the  
definition of "final remuneration"; and

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

then for the purposes of the definition of “final remuneration” the Member’s remuneration on that day is taken to include that allowance.

- (4) If a Gold State Super Member —

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

then for the purposes of the definition of “final remuneration” the Member’s remuneration on that day is taken to be the higher of —

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

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

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

then for the purposes of the definition of “final remuneration” the Member’s remuneration for that day is taken to have been the Member’s normal remuneration.

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

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



(b) starts working on a full-time basis,

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

(c) for the purpose of calculating the amount of contributions payable by or for the Member, the change of working hours is taken to have occurred on the Member's next adjustment day; and

(d) for all other purposes, the change is taken to have occurred on the day it actually occurred.

(2) If a Gold State Super Member —

(a) who was working on a full-time basis, starts working on a part-time basis; or

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

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

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

(d) for all other purposes, the change is taken to have occurred on the day it actually occurred.

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

(1) The Board may require a Gold State Super Member to provide medical information when —

(a) the Member first becomes a Gold State Super Member;

(b) if the Member works on a part-time basis —

(i) his or her hours of work are increased; or

- (ii) he or she starts working on a full-time basis, and the Employer and Member reasonably expect that change is not of a temporary nature;
  - (c) an application by the Member under regulation 22(2) is accepted; or
  - (d) an application by the Member under regulation 23(1) is accepted.
- (2) If a Member fails to provide medical information when required to do so under subregulation (1) the Board may impose a health condition on the Member.
- (3) If, after considering medical information provided by a Gold State Super Member, the Board is satisfied that the Member is suffering from a physical or mental condition that is likely to prevent the Member from satisfactorily performing his or her duties until the Member turns 60 the Board may impose a health condition on the Member.
- (4) If, in reliance on a statement made in medical information provided by a Gold State Super Member, the Board does not impose a health condition on the Member and the Board subsequently becomes aware that —
  - (a) the Member knew the statement was untrue; or
  - (b) the statement was misleading because it omitted material information of which the Member had knowledge,the Board may impose a health condition on the Member.
- (5) If a Member who is subject to a health condition satisfies the Board that his or her health has improved since the condition was imposed, the Board may —
  - (a) remove or vary the condition; or
  - (b) in the case of a condition of the kind described in paragraph (b) of the definition of “health condition” in regulation 12, replace it with one of the kind described in paragraph (a) of that definition.

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

## **Division 2 — Membership**

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

- (1) An eligible Gold State worker may apply to become a Gold State Super Member if —
  - (a) the Board is satisfied that the worker —
    - (i) would have been eligible to become a member of the 1987 scheme under the GES Act immediately before 30 December 1995; and
    - (ii) was not, and could not reasonably be expected to have been, aware of the closure of that scheme before 30 December 1995 because he or she has been away from his or her usual place of work;
  - (b) the worker —
    - (i) is a Provident Scheme Member or a Pension Scheme Member;
    - (ii) ceases to be an employee within the meaning of the S&FB Act as a result of ceasing to be required to give his or her whole time to the duties of his or her employment; and
    - (iii) makes the application within 6 months after the cessation referred to in paragraph (b);

or

  - (c) the worker —
    - (i) is a Provident Scheme Member or Pension Scheme Member;
    - (ii) has been, or is to be, retrenched; and
    - (iii) makes the application before being retrenched, or within such time afterwards as the Treasurer allows.
- (2) For the purpose of subregulation (1)(c) a worker is **“retrenched”** if the worker ceases to be an employee within the meaning of the S&FB Act —

- (a) in circumstances in which the worker —
    - (i) becomes eligible to receive a payment under regulations made in accordance with section 94 of the *Public Sector Management Act 1994*; or
    - (ii) would have become eligible for such a payment if the worker's service as an employee (within the meaning of the S&FB Act) had all been service in the Public Sector;
  - (b) on the expiry of the term of, or other termination of, the person's contract of employment; or
  - (c) in any other circumstances approved by the Treasurer,
- unless the worker —
- (d) retires or is retired on the grounds of ill health;
  - (e) has his or her employment terminated because of misconduct or substandard or unsatisfactory performance; or
  - (f) is dismissed under Division 3 of Part 5 of the *Public Sector Management Act 1994* or, if the worker is not subject to that Division, is dismissed on disciplinary grounds.

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

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

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

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

**22. Changing jobs**

- (1) A Gold State Super Member who ceases to be a worker and immediately again becomes a worker in a different job (whether with the same or a different Employer) without a break in service is taken not to have ceased to be an eligible Gold State worker.
- (2) A person who —
  - (a) ceases to be a worker; and
  - (b) within 12 months again becomes a worker (whether with the same or a different Employer) who is not excluded by regulation 15(2) from being an eligible Gold State worker;may apply to the Board to continue as a Gold State Super Member.
- (3) If the Board accepts an application under subregulation (2) —
  - (a) the Member is taken not to have ceased to be an eligible Gold State worker;

- (b) any benefit paid as a result of the cessation of work referred to in subregulation (2)(a) must be repaid together with interest at a rate, and calculated in a manner, determined by the Board; and
  - (c) any entitlement to a benefit that has not yet been paid arising from that cessation of work, terminates.
- (4) Despite subregulation (3)(a) no contributions may be paid by or in respect of the Member for the period from the cessation of work referred to in subregulation (2)(a) to the day on which the application under subregulation (2) is accepted.

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

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

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

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

**25. Cessation of membership**

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

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

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

**Division 3 — Contributions**

**Subdivision 1 — Preliminary**

**26. Meaning of “superannuation salary in respect of a contribution period”**

- (1) Subject to this regulation, in this Division —  
**“superannuation salary in respect of a contribution period”**  
means a Gold State Super Member's remuneration on the Member's last selection day before the Member's last adjustment day before the start of the contribution period.
- (2) A Gold State Super Member's superannuation salary in respect of a contribution period before the Member's first adjustment day is the Member's remuneration on the day on which he or she became a Member.



- (3) If a Gold State Super Member's remuneration is increased after the selection day referred to in subregulation (1) but before the adjustment day referred to in that subregulation as a result of —
  - (a) the basis of the Member's work changing from part-time to full-time; or
  - (b) the Member's hours of part-time work increasing,the Member's superannuation salary in respect of that contribution period is the increased remuneration.
- (4) If a Gold State Super Member's remuneration is reduced (for any reason) after the Member's selection day and before the start of a contribution period, the Member's superannuation salary in respect of that contribution period is the decreased remuneration.

**27. Selection of adjustment day**

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

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

- (1) For each Employer and its eligible Gold State workers the Board is to select a day to be the Employer's contribution day.
- (2) The Board may select different contribution periods for different classes of workers of an Employer.

- (3) The Board may change an Employer's contribution day provided the change is not detrimental to Members who work for the Employer.
- (4) The Board is to notify the Employer of the day selected under this regulation and any change in the selection.
- (5) Until the Board selects otherwise an Employer's contribution day is the last day of each quarter.

**Subdivision 2 — Employer contributions**

**29. Employer contributions**

- (1) A Division 2 Employer is to contribute to the Fund for a Gold State Super Member —
  - (a) if the Member works for the Employer — for each contribution period during the Member's contributory membership period;
  - (b) if the Member is seconded to the Employer from another Employer — for each contribution period during the secondment; or
  - (c) if the Member is seconded from the Employer to a person who is not an Employer — for each contribution period during the secondment.
- (2) A Division 1 Employer is to contribute to the Fund for a Gold State Super Member who works for the Employer and is seconded to a person who is not an Employer, for each contribution period during the secondment.
- (3) The amount of each contribution under this regulation is equal to E in the formula —

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

where —

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

- M is the Member's member contribution rate; and  
R is the Member's superannuation salary in respect of the contribution period.
- (4) A determination under subregulation (3) of a different rate for T —
- (a) is to be given to the Board; and
  - (b) may specify different rates for different Employers.

**30. Payment of employer contributions**

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

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

- (1) The Crown is to contribute to the Fund for a Gold State Super Member who —
  - (a) at any time during the Member's contributory membership period worked for an Employer who was, at that time, a Division 1 Employer; or
  - (b) if the Member was a member of the 1987 scheme under the GES Act, at any time during the Member's

contributory period under that Act, was an employee of an employer who was, at that time, listed, or deemed by or under that Act to be listed, in Part A of Schedule 1 to that Act.

- (2) The amount of the contribution required to be made by the Crown in respect of a Member is the amount, determined by the Board on the advice of an actuary, to be equal to so much of the Member's benefit as is not attributable to contributions made to the Fund by or in respect of the Member.
- (3) A contribution required to be made by the Crown in respect of a Member is to be paid —
  - (a) from the Consolidated Fund; and
  - (b) as soon as possible after the Treasurer receives a notice under subregulation (4) that includes the contribution required for the Member.
- (4) As soon as practicable after an Employer's contribution day the Board is to notify the Treasurer of the amounts of the contributions required to be made by the Crown for people to whom benefits have become payable since the Employer's last contribution day and who worked for the Employer immediately before becoming entitled to the benefit.

*[Regulation 31 amended in Gazette 19 Mar 2003 p. 836.]*

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

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

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

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

rounded up or down to the nearest whole dollar.

**33. Selection of member contribution rate**

- (1) A Gold State Super Member is to select a rate to be the Member's member contribution rate and give notice of that selection to the Board.
- (2) Subject to this regulation a Gold State Super Member may select a member contribution rate of 3%, 4%, 5%, 6% or 7%.
- (3) A Member's selection takes effect from the beginning of the next contribution period after the Board receives the notice of the selection.
- [(4) repealed]*
- (5) A Gold State Super Member whose average contribution rate is 5% may not select a contribution rate of 6% or 7%.
- (6) If a Gold State Super Member has selected a contribution rate of 6% or 7% and his or her average contribution rate becomes 5%, the Member's member contribution rate is reduced to 5% with effect from the next contribution period.
- (7) If the Treasurer has given a direction under regulation 14 that is conditional on the Member contributing at a rate set out in the notice —
  - (a) during the period set out in the direction, the Member's member contribution rate is the rate set out in the direction; and
  - (b) subregulation (6) does not apply while the Member is contributing in accordance with that direction.

*[(8) repealed]*

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

**34. Payment of member contributions**

- (1) A Gold State Super Member's member contributions are —
- (a) payable by the Member; and
  - (b) to be deducted from the Member's pay by the Employer,

unless they are paid by the Employer under a salary sacrifice agreement or the Member has made some other arrangement with the Board for payment of those contributions.

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

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

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

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

- (3) A Member is taken to have chosen to continue paying member contributions unless, not later than one month after the Board gives the information under subregulation (1), the Member gives notice to the Board that the Member has chosen the deferred contribution option or the reduced benefit option.
- (4) A Gold State Super Member who is on approved leave while on active duty with the Armed Forces cannot choose the reduced benefit option.
- (5) A notice under subregulation (3) cannot be revoked.
- (6) A Gold State Super Member who chooses the deferred contributions option —
  - (a) cannot make member contributions for the period of the recognised unpaid leave while the Member is on leave; and
  - (b) must, when the Member returns to work, pay the deferred contributions, together with interest at a rate (which may be zero), and calculated in a manner, determined by the Board, over a period not exceeding the length of the recognised unpaid leave, or any longer period allowed by the Board on the grounds of financial hardship.

*[Regulation 35 amended in Gazette 26 May 2006 p. 1926.]*

#### **Subdivision 4 — General**

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

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

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

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

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

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

**Division 4 — Benefits**

**38. Retirement benefit**

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

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

where —

- R is the Member's final remuneration;
- M is the number of complete months in the Member's contributory membership period; and
- C is the Member's average contribution rate.



**39. Death benefit**

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

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

where —

R is the Member's final remuneration;

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

F is —

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

P is —

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

and

C is the Member's average contribution rate.

**40. Total and permanent disablement benefit**

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

payable under regulation 39 if the Member had died on the day the Member ceased to be an eligible Gold State worker.

**41. Partial and permanent disablement benefit**

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

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

where —

R is the Member's final remuneration;

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

C is the Member's average contribution rate;

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

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

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

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

- (1) If a Gold State Super Member who is subject to a health condition dies while still an eligible Gold State worker or ceases

to be an eligible Gold State worker because of total and permanent disablement or partial and permanent disablement —

- (a) if the condition is of the kind described in paragraph (a) of the definition of “health condition” in regulation 12 — a benefit is payable under regulation 39, 40 or 41 only if the Board is satisfied that the Member’s death or disablement was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the condition; or
  - (b) if the condition is of the kind described in paragraph (b) of the definition of “health condition” in regulation 12 — no benefit is payable under regulation 39, 40 or 41.
- (2) If a health condition applies only in respect of part of the Member’s period of membership, subregulation (1) applies only in respect of that part of the period of membership.
- (3) If a Gold State Super Member dies while still an eligible Gold State worker or ceases to be an eligible Gold State worker because of total and permanent disablement or partial and permanent disablement while on unrecognised unpaid leave a benefit is payable under regulation 39, 40 or 41 only if the Member chose, under regulation 36(2), to continue the Member’s benefit entitlements and has paid the amounts required under that regulation.

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

If a Gold State Super Member —

- (a) dies while still an eligible Gold State worker; or
- (b) in the Board’s opinion —
  - (i) ceases to be an eligible Gold State worker on the ground of physical or mental incapacity to perform the Member’s duties; and

- (ii) if the Member is under 60, will continue to have that incapacity until the Member turns 60,

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

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

where —

R is the Member's final remuneration;

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

C is the Member's average contribution rate;

F is —

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

- (ii) otherwise, zero;

and

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

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

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

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

where —

- R is the Member's final remuneration;
- M is the number of complete months in the Member's contributory membership period;
- C is the Member's average contribution rate.

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

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

*[Regulation 44A inserted in Gazette 25 Jun 2004 p. 2228.]*

**Division 5 — Payment of benefits**

**45. Restriction on payment of preserved benefits**

- (1) Subject to subregulation (4) and regulations 47 and 47A the Board must not pay a Gold State Super Member's preserved benefit until the Member —
  - (a) is both —
    - (i) at least 55 years of age; and
    - (ii) no longer a worker or works for less than 10 hours a week;
  - (b) is totally and permanently disabled or partially and permanently disabled; or
  - (c) dies.
- (2) If a Gold State Super Member's preserved benefit becomes payable under subregulation (1)(a) or (b) the Board is to pay the benefit plus interest under regulation 46 to the Member.
- (3) If a Gold State Super Member's preserved benefit becomes payable under subregulation (1)(c), the Board is to pay the benefit plus interest under regulation 46 in accordance with regulation 48.

- (4) If a Gold State Super Member's preserved benefit is less than \$200 the Board is to pay the benefit to the Member when the Member becomes entitled to the benefit.
- (5) If a Gold State Super Member works in more than one job the reference in subregulation (1)(a)(ii) to the number of hours a week worked is taken to be a reference to the total number of hours worked by that Member in all of those jobs.

*[Regulation 45 amended in Gazette 25 Jun 2004 p. 2229.]*

**46. Interest on preserved benefits**

Interest accrues on a Gold State Super Member's preserved benefits —

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

*[Regulation 46 amended in Gazette 26 May 2006 p. 1926-7.]*

**46A. Reduction of preserved benefit if early payment made**

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

*[Regulation 46A inserted in Gazette 25 Jun 2004 p. 2229.]*

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

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

- (a) payment of a benefit; or
- (b) a preserved benefit that is not yet payable,

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

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

*[Regulation 47 amended in Gazette 28 Jun 2002 p. 3012.]*

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

- (1) A Gold State Super Member may apply to the Board for the early release of all or part of the Member's benefit —
  - (a) if the Member is in severe financial hardship; or
  - (b) on a compassionate ground.
- (2) On receipt of an application under subregulation (1) the Board is to determine whether, in the Board's opinion, if the SIS Regulations applied, the Member would be taken for the purposes of those regulations —
  - (a) to be in severe financial hardship; or
  - (b) to satisfy a condition of release on a compassionate ground.
- (3) If the Board determines that subregulation (2)(a) or (b) applies to the Member, the Board is also to determine the maximum amount that the SIS Regulations would permit to be paid to the Member in those circumstances.

- (4) When the Board has made a determination under subregulation (3), it is to pay the Member a benefit of an amount equal to the least of the following —
- (a) the amount applied for by the Member;
  - (b) the amount determined by the Board under subregulation (3);
  - (c) the Member's discounted benefit.
- (5) A Member making an application under subregulation (1) must give to the Board all the information required to enable it to make the determinations required under this regulation.
- (6) When a benefit is paid under this regulation the Board is to determine, on the advice of an actuary, the consequent reduction that is to be made to —
- (a) any benefit to which the Member subsequently becomes entitled under Division 4; or
  - (b) the Member's preserved benefits.
- (7) A reduction under subregulation (6) may be —
- (a) the deduction of a monetary amount, with or without interest;
  - (b) the reduction by a specified amount of the multiple of final remuneration used to calculate the benefit; or
  - (c) calculated in any other manner agreed to by the actuary.
- (8) In this regulation —
- “compassionate ground”** and **“severe financial hardship”** have the same meanings as they have in Part 6 of the SIS Regulations;
- “discounted benefit”** means the amount, as at the day on which the Board made its determination under subregulation (3) —
- (a) if the Member is an eligible Gold State worker, of the benefit to which the Member would have been



entitled under regulation 44 if the Member ceased to be an eligible Gold State worker on that day; or

- (b) otherwise, of the Member's preserved benefit, discounted to the extent that the Board, on the advice of an actuary, considers appropriate to reflect the early payment of the benefit.

*[Regulation 47A inserted in Gazette 25 Jun 2004 p. 2229-30; amended in Gazette 26 May 2006 p. 1930.]*

**48. Payment of death benefits**

- (1) Subject to subregulation (3), the Board is to pay a Gold State Super Member's death benefit to the executor or administrator of the Member's estate.
- (2) A benefit paid under subregulation (1) to the executor or administrator of a Member's estate —
  - (a) forms part of the Member's estate; but
  - (b) is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3) The Board may pay up to \$25 000 of a death benefit in accordance with subregulation (3a) if —
  - (a) 3 months have elapsed since the Member's death and the Board has not been notified of —
    - (i) the grant of probate of the Member's will or letters of administration of the Member's estate; or
    - (ii) a person's intention to apply for a grant of probate or letters of administration;or
  - (b) the Board considers it desirable to do so in order to relieve or avoid hardship.
- (3a) If the Board decides to pay an amount in accordance with subregulation (3) the Board may —

- (a) pay the amount to a person who was a partner, relative or dependant of the Member immediately before the Member's death, or to 2 or more of those people in proportions determined by the Board;
  - (b) use the amount to pay the Member's funeral expenses or reimburse a person who has paid those expenses, and pay the balance in accordance with paragraph (c); or
  - (c) in special circumstances, pay the amount, or the balance referred to in paragraph (b), to some other person.
- (4) In this regulation —
- “death benefit”** means —
- (a) a benefit payable under regulation 39 or 43(a);
  - (b) a Gold State Super Member's preserved benefit that has become payable because the Member has died; or
  - (c) a benefit that became payable to a Gold State Super Member but which was not paid or transferred under regulation 47 before the Member died.

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

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

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

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

- (3) A Gold State Super Member who applies for a disablement benefit or for payment of a preserved benefit under regulation 45(1)(b) must —
- (a) give to the Board all the information required by the Board to enable it to determine the Member's entitlement to the benefit;
  - (b) undertake any medical examinations required by the Board;
  - (c) authorise the Board to obtain any medical, personal and other information about the Member that the Board considers relevant to the application; and
  - (d) in the case of an application for a disablement benefit —
    - (i) undertake any assessment for job retraining required by the Board; and
    - (ii) assist any investigation by the Board into the Member's ability to undertake work or work of a particular kind.
- (4) A Gold State Super Member may withdraw an application for a disablement benefit by giving notice to the Board at any time before the benefit is paid.
- (5) In this regulation —  
**“disablement benefit”** means a benefit under regulation 40, 41 or 43(b).

**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

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- (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;

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

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

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

### **Division 1 — Preliminary**

#### **50. Interpretation**

(1) In this Part —

**“benefit account”** means an account kept under regulation 66(1);

**“compulsory contribution”** means —

- (a) a contribution under regulation 54; or
- (b) if notice under regulation 55 specifies a day before the day on which it was given as the day from which the increase effected by the notice applies, the extra contributions payable in respect of the period before the notice was given;

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

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

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

**“partner Member”** means a person who is a Member of the West State Super Scheme under regulation 52B;

**“protected amount”** in relation to a West State Super Member means, subject to regulations 79A and 79B —

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

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

or

- (b) otherwise — zero;

**“statutory Member”** means a person who is a Member of the West State Super Scheme under regulation 51;

**“voluntary Member”** means a person who is a Member of the West State Super Scheme under regulation 52.

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

*[Regulation 50 amended in Gazette 29 Jun 2001 p. 3082; 13 Jun 2003 p. 2106 and 2108-9; 25 Jun 2004 p. 2230; 1 Dec 2004 p. 5707; 26 May 2006 p. 1918.]*

## **Division 2 — Membership**

### **51. Statutory Members**

- (1) Every person who becomes a worker after the commencement day and who is not excluded by subregulation (2), (3) or (4) becomes a statutory Member on the day on which he or she becomes a worker.
- (2) A worker is excluded by this subregulation from becoming a statutory Member if the worker —
  - (a) is a Gold State Super Member, other than a Member who is entitled to a preserved benefit that is not yet payable;
  - (b) is a Pension Scheme Member (other than a person who has determined his or her pension under section 60AA of the *Superannuation and Family Benefits Act 1938*) or a Provident Scheme Member;
  - (c) holds a pensionable office as defined in section 2(4) of the *Judges’ Salaries and Pensions Act 1950*; or

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



the worker, he or she becomes a statutory Member on the day that exclusion ceases to so apply.

*[Regulation 51 amended in Gazette 29 Jun 2001 p. 3083; 28 Jun 2002 p. 3027; 26 May 2006 p. 1928-9<sup>8</sup>.]*

**52. Voluntary Members**

- (1) A worker (including a Gold State Super Member, Pension Scheme Member or Provident Scheme Member) who is not a statutory Member may apply to become a voluntary Member.
- (2) A Gold State Super Member, Pension Scheme Member or Provident Scheme Member who —
  - (a) contributes to the West State Super Scheme under regulation 63(2); or
  - (b) transfers an amount to the West State Super Scheme under regulation 65(b),

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

*[(3), (4) repealed]*

*[Regulation 52 amended in Gazette 13 Jun 2003 p. 2112; 26 May 2006 p. 1930.]*

**52B. Partner Members**

- (1) A person for whom a contribution is made under regulation 64A becomes a West State Super Member when that contribution is accepted by the Board, unless the person is already a West State Super Member.
- (2) If a person who is a partner Member becomes a statutory Member or voluntary Member, the person ceases to be a partner Member.
- (3) A partner Member may withdraw from the West State Super Scheme by giving notice to that effect to the Board.

*[Regulation 52B inserted in Gazette 13 Jun 2003 p. 2106.]*

**53. Cessation of membership**

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

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

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

**Division 3 — Contributions**

**Subdivision 1 — Employer contributions**

**54. Compulsory contributions for eligible statutory Members**

- (1) An Employer is to contribute to the Fund for an eligible statutory Member —
  - (a) if the Member works for the Employer — for each contribution period during which the Member works for that Employer;
  - (b) if the Member is seconded to the Employer from another Employer — for each contribution period during the secondment; and
  - (c) subject to subregulation (3), if the Member is seconded from that Employer to a person who is not an Employer — for each contribution period during the secondment.

*[(2) repealed]*

- (3) Subregulation (1)(c) does not apply if the agreement under which the Member is seconded requires the person to whom the Member is seconded to contribute to another superannuation fund for the Member not less than the amount that the Employer

would otherwise be required to contribute to the Fund under this Division.

*[(4)-(5) repealed]*

- (6) The amount of each compulsory contribution is equal to C in the formula —

$$C = R \times \frac{G}{100}$$

where —

R is the Member's remuneration for the contribution period; and

G is the number that would be the Employer's charge percentage for the quarter which included the contribution period.

- (7) If a contribution period is partly in one quarter and partly in another, the amount of the compulsory contribution is to be calculated by separately applying the formula in subregulation (6) to the amount of remuneration earned in each quarter, in each case using the charge percentage for that quarter, and adding the results together.

*[Regulation 54 amended in Gazette 29 Jun 2001 p. 3083.]*

## **55. Treasurer may increase compulsory contributions**

- (1) The Treasurer may, by giving notice to an Employer, increase the amount of the compulsory contributions to be paid for an eligible statutory Member, or a class of eligible statutory Members, who work for the Employer.
- (2) A notice under subregulation (1) is to specify the day from which the increase is to apply, which may be a day that is before the notice was given.
- (3) The Employer is to contribute the increased amount for each contribution period that ends after the day specified in the notice.

- (4) The Treasurer may revoke a notice under subregulation (1) by giving notice to the Employer.
- (5) The Treasurer is to give the Board a copy of a notice under this regulation.

**56. Payment of compulsory contributions**

- (1) Subject to subregulations (2) and (3), an Employer must pay a compulsory contribution for an eligible statutory Member for a contribution period —
  - (a) if the contribution period is the Member's pay period, within 7 days after the end of the contribution period; or
  - (b) otherwise, within 28 days after the end of the contribution period.
- (2) If a compulsory contribution for an eligible statutory Member for a contribution period is increased under regulation 55 by a notice given after the end of the contribution period, the Employer must pay the increase —
  - (a) if the contribution period was the Member's pay period, within 7 days after the notice was given; or
  - (b) otherwise, within 28 days after the notice was given.
- (3) Where an Employer is required to make a compulsory contribution under regulation 54(1)(c), the Board may allow the Employer such longer period within which to pay the contribution as the Board thinks fit.

*[Regulation 56 amended in Gazette 29 Jun 2001 p. 3084.]*

**57. Voluntary employer contributions**

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

**58. Acceptance of Commonwealth payments**

The Board may accept from the Commonwealth Commissioner of Taxation payment of any of the following in respect of a West State Super Member —

- (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 58 inserted in Gazette 1 Dec 2004 p. 5707.]*

*[59. Repealed in Gazette 1 Dec 2004 p. 5707.]*

**60. Employer's contribution returns**

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

**61. Adjustment if incorrect employer contributions are paid**

- (1) If, after receiving a contribution return under regulation 60(1), the Board considers that the Employer has paid an incorrect amount of contributions the Board is to notify the Employer of the discrepancy and —
  - (a) if the Employer has paid insufficient contributions, the Employer is to pay the difference to the Board within 7 days of receiving the notice; or
  - (b) if the Employer has paid excessive contributions —
    - (i) if the Employer so requests, refund the excess to the Employer; or
    - (ii) otherwise, hold the excess in a separate account and offset it against future contributions payable by the Employer.
- (2) An Employer given a notice under subregulation (1) may request the Board to review the calculations on which the notice was based.
- (3) On receipt of a request under subregulation (2) the Board is to review those calculations and notify the Employer.
- (4) The decision of the Board on a review is final and binding.

*[Regulation 61 amended in Gazette 29 Jun 2001 p. 3084.]*

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

- (1) The Treasurer may, on the advice of an actuary, give a direction to the Board requiring Employers who are required to make

compulsory contributions under regulation 54(1) to pay additional amounts to the Board, and Employers to whom the direction applies must comply with it.

- (2) A direction under subregulation (1) may specify —
  - (a) the time when, and the manner in which, the additional amounts are to be paid; and
  - (b) different provisions for different Employers.
- (3) Amounts paid under this regulation are not to be credited to Members' benefit accounts.
- (4) The Treasurer may, by notice to the Employer, allow an Employer to defer payment of amounts payable under this regulation on terms determined by the Treasurer and set out in the notice.
- (5) Section 43(7) and (8) of the *Interpretation Act 1984* apply to a notice under subregulation (4) as if it were subsidiary legislation.
- (6) The Treasurer is to give to the Board a copy of a notice given under subregulation (4).

*[Regulation 62 amended in Gazette 29 Jun 2001 p. 3085.]*

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

### **63. Member contributions**

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

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

**64. Payment of member contributions**

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

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

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

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

- (1) A person who is —
- (a) a Member;
  - (b) a Pension Scheme Member or a Provident Scheme Member;
  - (c) a person who is in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
  - (d) a person who is entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable,



(the “**contributor**”) may contribute to the Fund for a partner of the contributor.

- (2) The contributor is to contribute the amounts, and at the times, and make the contributions in the manner, agreed between the contributor and the Board.
- (3) When making a contribution under this regulation the contributor must give to the Board whatever information the Board reasonably requires to satisfy itself that the contributor and the person for whom the contribution is made are partners.

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

### **Subdivision 3 — Transfers**

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

A —

- (a) West State Super Member; or
- (b) Gold State Super Member, Pension Scheme Member or Provident Scheme Member who is not a West State Super Member,

may transfer to the West State Super 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.

*[Regulation 65 amended in Gazette 28 Jun 2002 p. 3021-2.]*

#### **65A. Payment or transfer out of transferred in benefits**

- (1) If a Member has transferred a benefit from another superannuation fund to the West State Super Scheme, the Member may —

- (a) if the transferred benefit is an unrestricted non-preserved benefit (within the meaning of the SIS Act), at any time request that the benefit be paid to the Member;
  - (b) at any time request that the benefit be transferred to another superannuation fund; or
  - (c) if the transferred benefit is a restricted non-preserved benefit (within the meaning of the SIS Act), at any time after the Member has ceased to be a worker, request that the benefit be paid to the Member.
- (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) On receipt of a request under subregulation (1) or (1a) the Board is to pay to the Member or transfer (as the case requires) —
- (a) the amount of the benefit or payment transferred to the Fund; and
  - (b) so much of the earnings that have been credited to the Member's benefit account as are attributable to that amount.

*[Regulation 65A inserted in Gazette 29 Jun 2001 p. 3085; amended in Gazette 28 Jun 2002 p. 3022.]*

#### **Division 4 — Benefit accounts**

##### **66. Benefit accounts**

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

**67. Amounts to be credited to benefit accounts**

- (1) The Board is to credit all of the following to a West State Super Member's benefit account —
  - (a) contributions made for the Member;
  - (b) payments accepted from the Commissioner of Taxation under regulation 58 in respect of the Member;
  - (c) any benefits or other eligible termination payments transferred to the Fund for the Member;
  - (d) earnings in accordance with regulation 69.
- (2) The Board may temporarily keep contributions made for a West State Super Member, together with contributions made for other West State Super Members, in an account maintained for that purpose until the contributions are credited to the appropriate benefit accounts.

*[Regulation 67 amended in Gazette 29 Jun 2001 p. 3086; 28 Jun 2002 p. 3022; 19 Mar 2003 p. 836; 13 Jun 2003 p. 2107; 1 Dec 2004 p. 5708.]*

**68. Amounts to be debited to benefit accounts**

- (1) The Board is to debit to a West State Super Member's benefit account —
  - (a) any amounts withheld under regulation 81A(2);
  - (b) any amounts paid as benefits to, or in respect of, the Member; and
  - (c) any amounts transferred to other schemes or to other superannuation funds in satisfaction of the Member's entitlement to a benefit from the West State Super Scheme.
- (2) The Board may debit to a West State Super Member's benefit account —
  - (a) the cost of any insurance taken out or provided by the Board in respect of the Member;

- (b) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 69F; and
  - (c) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member.
- (3) The Board may only debit an amount to a benefit account under subregulation (2)(a) or (b) if an actuary has advised that it is appropriate for that amount to be debited to that account.

*[Regulation 68 inserted in Gazette 19 Mar 2003 p. 836-7; amended in Gazette 1 Dec 2004 p. 5708.]*

**69. Interest**

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

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

**Division 4A — Member investment choice**

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

**69A. Interpretation**

In this Division —

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

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

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

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

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

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

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

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

**69C. Default plan**

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

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

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

- (1) A West State Super Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (1a) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (2) A Member may change his or her selection under subregulation (1) or (1a) at any time by giving notice to the Board, and the Board must give effect to the notice as soon as practicable.
- (3) Until a West State Super Member selects otherwise the Member is taken to have selected —
  - (a) in the case of a person who was a West State Super Member on 1 July 2001, the plan that was the default plan on that day; and
  - (b) otherwise, the plan that was the default plan at the time the person became a West State Super Member.

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

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

- (1) For each West State Super Member who selects a readymade investment plan the Board must, as far as is practicable —

- (a) invest the Member's assets in accordance with the asset allocation determined under regulation 69B for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a West State Super Member who selects a personalised investment plan the Board must invest —
- (a) the Member's assets as at the time the 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 benefit account of a West State Super Member.

*[Regulation 69E inserted in Gazette 29 Jun 2001 p. 3088-9; amended in Gazette 28 Jun 2002 p. 3013 and 3022.]*

**69F. Determination of earning rates**

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

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- (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 benefit accounts of the Members to whom the earning rate will apply;
  - (aa) administrative costs; and
  - (b) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

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

**Division 4B — Opting out of death and disability benefits**

*[Heading inserted in Gazette 1 Dec 2004 p. 5708.]*

**69G. Opting out of death and disability benefits**

- (1) An eligible statutory Member may elect not to be entitled to benefits under regulation 70, 71 or 72 by giving notice, in a form approved by the Board, to the Board.
- (2) An election under subregulation (1) —
  - (a) takes effect at the end of the month in which the notice is received by the Board; and
  - (b) remains in force until an application by the Member under regulation 69H is accepted by the Board.

*[Regulation 69G inserted in Gazette 1 Dec 2004 p. 5708-9.]*



**69H. Application to resume death and disability benefits**

- (1) An eligible statutory Member who is under 60 and has an election in force under regulation 69G may apply to the Board, in a form approved by the Board, to cancel that election.
- (2) Subject to regulation 69I, the Board is to accept an application under subregulation (1).

*[Regulation 69H inserted in Gazette 1 Dec 2004 p. 5709.]*

**69I. Medical information and health conditions**

- (1) The Board may refuse an application under regulation 69H or accept it subject to a health condition if —
  - (a) after considering the application and any further medical information provided by the Member, the Board is of the opinion that the Member is suffering from a physical or mental condition that is likely to prevent him or her from satisfactorily performing his or her duties until he or she turns 60; or
  - (b) the Member fails to comply with a requirement under subregulation (2).
- (2) In order to determine the state of health of a Member who has made an application under regulation 69H, the Board may require the Member to do all or any of the following —
  - (a) undergo one or more medical examinations and provide the resulting medical reports to the Board;
  - (b) provide to the Board —
    - (i) any other medical reports;
    - (ii) information about the Member's health and medical history;
    - (iii) any other information the Board considers relevant.
- (3) If the Board imposes a requirement under subregulation (2) the Member —

- (a) must comply with the requirement within the time specified by the Board; and
- (b) is responsible for payment of any costs involved in complying with the requirement.

*[Regulation 69I inserted in Gazette 1 Dec 2004 p. 5709-10.]*

**69J. False or misleading medical evidence**

- (1) If, in reliance on a statement made in medical information provided by a Member, the Board accepts an application under regulation 69H without imposing a health condition and the Board subsequently becomes aware that —
  - (a) the Member knew the statement was untrue; or
  - (b) the statement was misleading because it omitted material information of which the Member had knowledge,the Board may —
  - (c) impose a health condition on the Member; or
  - (d) cancel its acceptance of the application and re-instate the Member's election under regulation 69G.

- (2) The Board may take action under subregulation (1)(c) or (d) even if the Member has ceased to be a worker or has died.

*[Regulation 69J inserted in Gazette 1 Dec 2004 p. 5710-11.]*

**69K. Variation or removal of health conditions for improved health**

If a Member who is subject to a health condition satisfies the Board that his or her health has improved since the condition was imposed, the Board may remove or vary the condition.

*[Regulation 69K inserted in Gazette 1 Dec 2004 p. 5711.]*

### **Division 5 — Benefits**

#### **70. Death benefit — eligible statutory Members**

Subject to regulation 72A, if an eligible statutory Member who —

- (a) is under 60; and
- (b) does not have an election in force under regulation 69G,

dies while still a worker the Board is to pay a benefit of an amount equal to B in the formula —

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

where —

A is the greater of —

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

R is —

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

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

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

*[Regulation 70 amended in Gazette 29 Jun 2001 p. 3090;  
1 Dec 2004 p. 5711-12.]*

**71. Total and permanent disability benefit — eligible statutory Members**

- (1) Subject to regulation 81 and subregulation (2) if an eligible statutory Member who —
- (a) is under 60; and
  - (b) does not have an election in force under regulation 69G,

ceases to be a worker because of total and permanent disablement, the Board is to pay the Member a benefit equal to the benefit that would have been payable under regulation 70 if the Member had died on the day the Member ceased to be a worker.

- (2) If an eligible statutory Member entitled to a benefit under subregulation (1) has received, or is entitled to receive, another benefit from any of the superannuation schemes established or continued under the Act in respect of the same incapacity, the Board may reduce the benefit under subregulation (1) to the extent it considers appropriate (but not to an amount less than the amount of A in the formula in regulation 70).

*[Regulation 71 amended in Gazette 29 Jun 2001 p. 3090;  
1 Dec 2004 p. 5712.]*

**72. Partial and permanent disability benefit — eligible statutory Members**

- (1) Subject to regulation 81 and subregulation (3) if an eligible statutory Member who —
- (a) is under 60; and
  - (b) does not have an election in force under regulation 69G,

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

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

where —

A is the greater of —

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

R is —

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

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

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

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

- (2) For the purpose of determining the value of E in the formula in subregulation (1) the Board is to take into account the possibility of work in either the public sector or the private sector.
- (3) If the Member entitled to a benefit under subregulation (1) has received, or is entitled to receive, another benefit from any of the superannuation schemes established or continued under the

Act in respect of the same incapacity, the Board may reduce the benefit under subregulation (1) to the extent it considers appropriate (but not to an amount less than the amount of A in the formula in subregulation (1)).

*[Regulation 72 amended in Gazette 29 Jun 2001 p. 3090;  
1 Dec 2004 p. 5712.]*

**72A. Benefit restriction if Member subject to health condition**

If an eligible statutory Member is subject to a health condition no benefit is payable under regulation 70, 71 or 72 unless the Board is satisfied that the Member's death or disablement was not due to, and did not arise from, the physical or mental defect or condition that was the reason for the imposition of the health condition.

*[Regulation 72A inserted in Gazette 1 Dec 2004 p. 5712.]*

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

- (1) This regulation applies if any of the following events occur —
  - (a) a statutory Member dies while still a worker and no benefit is payable under regulation 70;
  - (b) a voluntary Member dies while still a worker;
  - (c) a partner Member dies while there is still an amount in the Member's benefit account.
- (2) If this regulation applies the Board is to pay a benefit in respect of the Member of an amount equal to the greater of —
  - (a) the balance of the Member's benefit account; and
  - (b) the Member's protected amount.

*[Regulation 73 inserted in Gazette 1 Dec 2004 p. 5713.]*

*[73A. Repealed in Gazette 25 Jun 2004 p. 2231.]*

**74. General benefit**

- (1) This regulation applies if any of the following events occur and no other benefit is payable under this Part —
  - (a) a statutory Member or voluntary Member ceases to be a worker;
  - (b) an eligible statutory Member otherwise ceases to be an eligible statutory Member;
  - (c) a partner Member —
    - (i) satisfies the criteria for payment of a preserved benefit under regulation 76; or
    - (ii) withdraws from the West State Super Scheme under regulation 52B(3).
- (2) If this regulation applies —
  - (a) if the Member satisfies the criteria for payment of a preserved benefit under regulation 76 — the Board is to pay the Member a benefit; or
  - (b) otherwise — the Member is entitled to a preserved benefit,  
  
of an amount equal to the greater of —
    - (c) the balance of the Member's benefit account; and
    - (d) the Member's protected amount.

*[Regulation 74 inserted in Gazette 1 Dec 2004 p. 5713-14.]*

*[74B. Repealed in Gazette 1 Dec 2004 p. 5712.]*

**75. Treasurer may increase benefits**

- (1) The Treasurer may, by giving notice to the Board, increase the amount of a benefit under regulation 70, 71 or 72 to, or in respect of, an eligible statutory Member or a class of eligible statutory Members.
- (2) The Treasurer may revoke a notice given under subregulation (1) by giving notice to the Board.

[75A. Repealed in Gazette 25 Jun 2004 p. 2231.]

**Division 6 — Payment of benefits**

**76. Restriction on payment of preserved benefits**

- (1) Subject to subregulation (4) and regulations 79, 79A and 79B the Board must not pay a West State Super Member's preserved benefit until —
  - (a) the Member is both —
    - (i) at least 55 years of age; and
    - (ii) not a worker or works for less than 10 hours a week;
  - (b) the Member is totally and permanently disabled or partially and permanently disabled; or
  - (c) the Member dies.
- (2) If a West State Super Member's preserved benefit becomes payable under subregulation (1)(a) or (b) the Board is to pay the benefit plus interest under regulation 78 to the Member.
- (3) If a West State Super Member's preserved benefit becomes payable under subregulation (1)(c), the Board is to pay the benefit plus interest under regulation 78 in accordance with regulation 80.
- (4) If a West State Super Member's preserved benefit is less than \$200 it is taken not to be a preserved benefit.
- (5) If a West State Super Member works in more than one job the reference in subregulation (1)(a)(ii) to the number of hours a week worked is taken to be a reference to the total number of hours worked by that Member in all of those jobs.

*[Regulation 76 amended in Gazette 19 Mar 2003 p. 839;  
13 Jun 2003 p. 2108 and 2111; 25 Jun 2004 p. 2231;  
26 May 2006 p. 1919 and 1927<sup>7</sup>.]*

[76A. Repealed in Gazette 25 Jun 2004 p. 2231.]



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

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

*[Regulation 77 inserted in Gazette 13 Jun 2003 p. 2113.]*

**78. Interest on preserved benefits**

When the Board pays or transfers a preserved benefit the amount to be paid or transferred is —

- (a) the amount of the preserved benefit; and
- (b) so much of the earnings that have been credited to the Member's benefit account since the Member became entitled to the preserved benefit as are attributable to that benefit.

*[Regulation 78 inserted in Gazette 13 Jun 2003 p. 2113.]*

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

- (1) A West State Super Member who is entitled to —
  - (a) payment of a benefit; or
  - (b) a preserved benefit that is not yet payable,

may request the Board to transfer the benefit to another scheme or to another superannuation fund and the Board is to comply with that request.

- (2) If a request under subregulation (1) relates to a preserved benefit, the amount to be transferred is the amount of the benefit plus interest under regulation 78, discounted to the extent that the Board, on the advice of an actuary, considers appropriate.
- (3) The Board may transfer a West State Super Member's benefit to an eligible rollover fund if that fund is permitted by the SIS Act to accept the benefit, whether or not the Member has requested the transfer.

*[Regulation 79 amended in Gazette 29 Jun 2001 p. 3092;  
28 Jun 2002 p. 3013; 26 May 2006 p. 1928.]*

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

- (1) A West State Super Member may apply to the Board for the early release of all or part of the balance in the Member's benefit account —
  - (a) if the Member is in severe financial hardship; or
  - (b) on a compassionate ground.
- (2) On receipt of an application under subregulation (1) the Board is to determine whether, in the Board's opinion, if the SIS Regulations applied, the Member would be taken for the purposes of those regulations —
  - (a) to be in severe financial hardship; or
  - (b) to satisfy a condition of release on a compassionate ground.
- (3) If the Board determines that subregulation (2)(a) or (b) applies to the Member, the Board is also to determine the maximum amount that the SIS Regulations would permit to be paid to the Member in those circumstances.
- (4) When the Board has made a determination under subregulation (3), it is to pay the Member a benefit of an amount equal to the least of the following —
  - (a) the amount applied for by the Member;
  - (b) the amount determined by the Board under subregulation (3);
  - (c) the greater of —
    - (i) the balance in the Member's benefit account; and
    - (ii) the Member's protected amount.

- (5) A Member making an application under subregulation (1) must give to the Board all the information required to enable it to make the determinations required under this regulation.
- (6) If a benefit is paid under this regulation to a Member who was a West State Super Member on 30 June 2001 —
- (a) the Member's protected amount is taken to be reduced, on the day on which the benefit is paid, by the amount of the benefit; and
  - (b) on and after that day, interest under paragraph (a)(ii) of the definition in regulation 50(1) of "protected amount" is to be calculated on the basis of that reduced amount.
- (7) In this regulation —
- "compassionate ground"** and **"severe financial hardship"** have the same meanings as they have in Part 6 of the SIS Regulations.

*[Regulation 79A inserted in Gazette 25 Jun 2004 p. 2231-2; amended in Gazette 26 May 2006 p. 1930.]*

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

- (1) A West State Super Member who is at least 55 years of age may request the Board to transfer all or part of the balance of the Member's benefit account to another scheme or superannuation fund for the purpose of providing a phased retirement benefit for the Member and the Board is to comply with that request.
- (2) If a Member who transfers an amount under this regulation was a West State Super Member on 30 June 2001 —
- (a) the Member's protected amount is taken to be reduced, on the day on which the amount is transferred, by the amount transferred; and
  - (b) on and after that day, the interest under paragraph (a)(ii) of the definition of "protected amount" in regulation 50(1) is to be calculated on the basis of that reduced amount.

*[Regulation 79B inserted in Gazette 26 May 2006 p. 1919.]*

**80. Payment of death benefits**

- (1) Subject to subregulation (3), the Board is to pay a West State Super Member's death benefit to the executor or administrator of the Member's estate.
- (2) A benefit paid under subregulation (1) to the executor or administrator of a Member's estate —
  - (a) forms part of the Member's estate; but
  - (b) is not an asset in the Member's estate that is applicable in payment of the Member's debts and liabilities.
- (3) The Board may pay up to \$25 000 of a death benefit in accordance with subregulation (3a) if —
  - (a) 3 months have elapsed since the Member's death and the Board has not been notified of —
    - (i) the grant of probate of the Member's will or letters of administration of the Member's estate;  
or
    - (ii) a person's intention to apply for a grant of probate or letters of administration;
  - or
  - (b) the Board considers it desirable to do so in order to relieve or avoid hardship.
- (3a) If the Board decides to pay an amount in accordance with subregulation (3) the Board may —
  - (a) pay the amount to a person who was a partner, relative or dependant of the Member immediately before the Member's death, or to 2 or more of those people in proportions determined by the Board;

- (b) use the amount to pay the Member's funeral expenses or reimburse a person who has paid those expenses, and pay the balance in accordance with paragraph (c); or
  - (c) in special circumstances, pay the amount, or the balance referred to in paragraph (b), to some other person.
- (4) In this regulation —
- “death benefit”** means —
- (a) a benefit payable because the Member has died;
  - (b) a West State Super Member's preserved benefit that has become payable because the Member has died; or
  - (c) a benefit that became payable to a West State Super Member but which, at the time of the Member's death, had not been paid or transferred under regulation 79.

*[Regulation 80 amended in Gazette 28 Jun 2002 p. 3032-3; 19 Mar 2003 p. 839; 13 Jun 2003 p. 2113; 1 Dec 2004 p. 5706.]*

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

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

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

**r. 81A**

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- (3) A West State Super Member who applies for a disablement benefit or payment of a preserved benefit under regulation 76(1)(b) must —
- (a) give to the Board all the information required by the Board to enable it to determine the Member's entitlement to the benefit;
  - (b) undertake any medical examinations required by the Board;
  - (c) authorise the Board to obtain any medical, personal and other information about the Member that the Board considers relevant to the application;
  - (d) in the case of an application for a disablement benefit —
    - (i) undertake any assessment for job retraining required by the Board; and
    - (ii) assist any investigation by the Board into the Member's ability to undertake work or work of a particular kind.
- (4) A West State Super Member may withdraw an application for a disablement benefit by giving notice to the Board at any time before the benefit is paid.
- (5) In this regulation —  
**“disablement benefit”** means a benefit under regulation 71 or 72.

**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;

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

*[Regulation 81A inserted in Gazette 28 Jun 2002 p. 3024-6; amended in Gazette 26 May 2006 p. 1930.]*



## **Part 4 — Retirement Income Scheme**

*[Heading inserted in Gazette 19 Mar 2003 p. 817.]*

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

*[Heading inserted in Gazette 19 Mar 2003 p. 817.]*

*[82 to 169. Reserved.]*

#### **170. Establishment of Retirement Income Scheme**

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

*[Regulation 170 inserted in Gazette 19 Mar 2003 p. 817.]*

#### **171. Interpretation**

In this Part —

**“allocated pension fund”** means a superannuation fund the rules of which provide for the payment of a pension but —

- (a) do not provide for the pension to be paid throughout the lifetime of the pensioner; and
- (b) do not fix the annual amount of the pension;

**“Commonwealth maximum”** means the amount prescribed under the SIS Act as the annual maximum amount that must be imposed by the rules of an allocated pension fund in relation to an allocated pension in order for it to be taken to be a pension for the purposes of the SIS Act;

**“Commonwealth minimum”** means the amount prescribed under the SIS Act as the annual minimum amount that must be imposed by the rules of an allocated pension fund in relation to an allocated pension in order for it to be taken to be a pension for the purposes of the SIS Act;

**“pension day”** means —

- (a) for a Member who has selected monthly pension payments — the 15th of each month;

- (b) for a Member who has selected quarterly pension payments — the 15th of January, April, July and October; and
- (c) for a Member who has selected annual pension payments — the 15th of the month selected by the Member under regulation 189(1)(b);

**“pension total”**, in relation to a Retirement Income Member, means the total amount paid to the Member from the Retirement Income Scheme during a financial year, not including any amounts paid under regulation 192;

**“retirement income account”** means an account kept under regulation 178;

**“reversionary pensioner”** means a person selected under regulation 193(1)(b) by a Retirement Income Member as the person to whom the reversionary pension payable on the death of the Member is to be paid.

*[Regulation 171 inserted in Gazette 19 Mar 2003 p. 817-18.]*

### **Division 2 — Membership**

*[Heading inserted in Gazette 19 Mar 2003 p. 818.]*

#### **172. Members**

- (1) A Gold State Super Member may apply to become a Retirement Income Member if the Member is entitled to immediate payment of a benefit from the Gold State Super Scheme.
- (1a) A West State Super Member may apply to become a Retirement Income Member if the Member —
  - (a) is entitled to immediate payment of a benefit from the West State Super Scheme; or
  - (b) at the same time requests the Board to transfer a benefit under regulation 79B to the Retirement Income Scheme.
- (2) A Retirement Access Member may apply to become a Retirement Income Member if, at the time the application is

made, the Member also requests the Board to transfer a benefit from the Retirement Access Scheme under regulation 217(1)(b) to the Retirement Income Scheme.

- (3) A person who is in receipt of, or is entitled to receive, a pension under the Pension Scheme may apply to become a Retirement Income Member if, at the time the application is made, he or she also elects to commute all or part of that pension to a lump sum.
- (3a) A former member, or a person who is or was a partner of a former member, may apply to become a Retirement Income Member if the person is entitled to —
  - (a) immediate payment of —
    - (i) a benefit from a superannuation fund; or
    - (ii) any other eligible termination payment;
  - or
  - (b) payment of a phased retirement benefit.
- (4) The Board is to accept an application under this regulation unless the Board considers that the applicant, if accepted as a Retirement Income Member, will not comply with regulation 175.

*[Regulation 172 inserted in Gazette 19 Mar 2003 p. 818-19; amended in Gazette 1 Dec 2004 p. 5714; 26 May 2006 p. 1919-20.]*

**173. Additional or replacement pensions**

- (1) A Retirement Income Member may apply to the Board —
  - (a) to start an additional pension; or
  - (b) to cancel an existing pension and start a replacement pension.
- (2) A person applying for membership under regulation 172 may, simultaneously, make an application under subregulation (1)(a) as if he or she were a Retirement Income Member.

- (3) The Board is to accept an application under this regulation unless the Board considers that if the application is accepted the Member will not comply with regulation 176 or 177 (as the case requires).
- (4) When the Board accepts a Member's application under this regulation, Divisions 4, 5 and 6 apply as if the Member were, in respect of each pension, a separate person.

*[Regulation 173 inserted in Gazette 19 Mar 2003 p. 819.]*

**174. Cessation of membership**

A person ceases to be a Retirement Income Member when the balance in all of the Member's retirement income accounts is reduced to zero.

*[Regulation 174 inserted in Gazette 19 Mar 2003 p. 820.]*

**Division 3 — Contributions**

*[Heading inserted in Gazette 19 Mar 2003 p. 820.]*

**175. Compulsory transfer for new Retirement Income Member**

- (1) When a person becomes a Retirement Income Member he or she must transfer to the Retirement Income Scheme all or part of the benefit, lump sum or eligible termination payment (as the case requires) referred to in regulation 172.
- (2) A Retirement Income Member may transfer to the Retirement Income Scheme all or part of —
  - (a) a benefit that is immediately payable to the person from another scheme or another superannuation fund;
  - (b) any other eligible termination payment immediately payable to the person; or
  - (c) a phased retirement benefit.
- (3) A transfer under subregulation (1) or (2) must be made before the person's first pension day.

- (4) The total amount transferred under subregulations (1) and (2) must not be less than \$30 000 unless the Board agrees to accept a lesser amount.

*[Regulation 175 inserted in Gazette 19 Mar 2003 p. 820; amended in Gazette 1 Dec 2004 p. 5714-15; 26 May 2006 p. 1920.]*

**176. Contribution for an additional pension**

- (1) When the Board accepts a Member's application under regulation 173(1)(a) the Member must transfer to the Retirement Income Scheme all or part of —
- (a) a benefit that is immediately payable to the Member from another scheme or another superannuation fund;
  - (b) any other eligible termination payment that is immediately payable to the Member; or
  - (c) a phased retirement benefit.
- (2) The transfer under subregulation (1) must be made before the Member's first pension day after the Board accepts the Member's application.
- (3) The total amount transferred under subregulation (1) must not be less than \$10 000 unless the Board agrees to accept a lesser amount.

*[Regulation 176 inserted in Gazette 19 Mar 2003 p. 821; amended in Gazette 26 May 2006 p. 1921.]*

**177. Contribution and transfer for replacement pension**

- (1) When the Board accepts a Member's application under regulation 173(1)(b) —
- (a) the Board is to transfer the balance of the Member's retirement income account to the new retirement income account established for the Member in respect of the replacement pension; and

- (b) the Member may transfer to the Retirement Income Scheme all or part of —
  - (i) a benefit that is immediately payable to the Member from another scheme or another superannuation fund;
  - (ii) any other eligible termination payment that is immediately payable to the Member; or
  - (iii) a phased retirement benefit.
- (2) A transfer under subregulation (1)(b) must be made before the Member's first pension day after the Board accepts the Member's application.
- (3) The total amount transferred under subregulation (1) must not be less than \$30 000 unless the Board agrees to accept a lesser amount.

*[Regulation 177 inserted in Gazette 19 Mar 2003 p. 821-2; amended in Gazette 26 May 2006 p. 1921.]*

**177A. Transfers must be directly to Retirement Income Scheme**

A transfer under this Division must be made to the Retirement Income Scheme directly from the other scheme or superannuation fund or the payer of the eligible termination payment.

*[Regulation 177A inserted in Gazette 1 Dec 2004 p. 5715.]*

**Division 4 — Retirement income accounts**

*[Heading inserted in Gazette 19 Mar 2003 p. 822.]*

**178. Retirement income accounts**

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

*[Regulation 178 inserted in Gazette 19 Mar 2003 p. 822.]*

**179. Member may divide account into sub-accounts**

- (1) A Retirement Income Member may request the Board to divide the Member's retirement income account into a cash sub-account and an investment sub-account.
- (2) The Member must set out in a request under subregulation (1) —
  - (a) the amount that is to be allocated to each sub-account (the sum of which must be equal to the balance of the Member's account); or
  - (b) the proportion of the balance of the account that is to be allocated to each sub-account,at the time the sub-accounts are established.
- (3) A Member whose retirement income account has been divided into sub-accounts under this regulation may request the Board to —
  - (a) transfer a specified amount from one sub-account to the other;
  - (b) change the proportion of the balance of the Member's account that is held in each sub-account; or
  - (c) combine the sub-accounts into a single account.
- (4) The Board is to comply with a request under subregulation (1) or (3) but the Board is not otherwise required to ensure that balances of the sub-accounts remains in accordance with the requested amounts or proportions.

*[Regulation 179 inserted in Gazette 19 Mar 2003 p. 822-3; amended in Gazette 10 Dec 2004 p. 5895.]*

**180. Amounts to be credited to retirement income accounts**

- (1) The Board is to credit to a Retirement Income Member's retirement income account —
  - (a) the amounts transferred to the Retirement Income Scheme under regulation 175, 176 or 177(1)(b);

- (b) any amount required under regulation 177(1)(a) to be transferred to the account; and
  - (c) earnings in accordance with regulation 182.
- (2) The Board may temporarily keep contributions made for a Retirement Income Member, together with contributions made for other Retirement Income Members, in an account maintained for that purpose until the contributions are credited to the appropriate benefit accounts.

*[Regulation 180 inserted in Gazette 19 Mar 2003 p. 823; amended in Gazette 1 Dec 2004 p. 5715.]*

**181. Amounts to be debited to retirement income accounts**

- (1) The Board is to debit to a Retirement Income Member's retirement income account —
- (a) any amount required under regulation 177(1) to be transferred from the account;
  - (b) any amounts paid as benefits to, or in respect of, the Member; and
  - (c) any amounts transferred to other schemes or to other superannuation funds in satisfaction of a Member's entitlement to a benefit from the Retirement Income Scheme.
- (2) The Board may debit to a Retirement Income Member's retirement income account —
- (a) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 188; and
  - (b) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member.



- (3) The Board may only debit an amount to a retirement income account under subregulation (2)(a) if an actuary has advised that it is appropriate for that amount to be debited to that account.
- (4) If a Member's retirement income account has been divided into sub-accounts under regulation 179, then to the extent that the balance of the relevant sub-account is sufficient to allow it to do so, the Board is to debit —
  - (a) pension payments made under regulation 191 to the Member's cash sub-account; and
  - (b) any other amount that is to be, or may be, debited to the Member's retirement income account, to the Member's investment sub-account,

unless the Member requests that the amount be debited to the Member's other sub-account.

*[Regulation 181 inserted in Gazette 19 Mar 2003 p. 823-4.]*

## **182. Earnings**

- (1) The Board is to credit earnings to each Member's retirement income account at a rate equal to the Member's earning rate on the balance of the account —
  - (a) at least once every year; and
  - (b) when a lump sum benefit is to be paid, or an amount transferred, from the Member's retirement income account under Division 6.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.
- (3) If a Member's retirement income account has been divided into sub-accounts under regulation 179 the Board is to credit earnings to each sub-account as if it were a separate retirement income account.

*[Regulation 182 inserted in Gazette 19 Mar 2003 p. 824-5.]*

**Division 5 — Member investment choice**

*[Heading inserted in Gazette 19 Mar 2003 p. 825.]*

**183. Interpretation**

In this Division —

**“default plan”** means the readymade investment plan selected by the Board under regulation 185 as the default plan for Retirement Income Members;

**“personalised investment plan”** means an investment plan established under regulation 184(4);

**“readymade investment plan”** means an investment plan established under regulation 184(1).

*[Regulation 183 inserted in Gazette 19 Mar 2003 p. 825.]*

**184. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for retirement income Members with asset allocations determined by the Board.
- (2) One of the investment plans established under subregulation (1) must provide for investment in cash only.
- (3) Subject to subregulation (2), the Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (4) The Board may establish an investment plan under which a Retirement Income Member who selects that plan may select the Member’s own asset allocation subject to any conditions determined by the Board.
- (5) The Board must notify all Retirement Income Members of —
  - (a) the establishment of a new investment plan for Retirement Income Members including, in the case of a readymade investment plan, the asset allocation for that plan;

- (b) any material change in the asset allocation of a readymade investment plan; and
- (c) any material change in the conditions applying to a personalised investment plan,

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

*[Regulation 184 inserted in Gazette 19 Mar 2003 p. 825-6.]*

**185. Default plan**

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

*[Regulation 185 inserted in Gazette 19 Mar 2003 p. 826.]*

**186. Member to select investment plan**

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

*[Regulation 186 inserted in Gazette 19 Mar 2003 p. 826-7.]*

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

- (1) For each Retirement Income Member who selects a readymade investment plan the Board must, as far as is practicable —
  - (a) invest the Member's assets in accordance with the asset allocation determined under regulation 184 for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a Retirement Income Member who selects a personalised investment plan the Board must invest the Member's assets as at the time the selection was made 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) If a Member's retirement income account is divided into sub-accounts under regulation 179, the Board is to invest the Member's assets in accordance with this regulation as if —
  - (a) each of the sub-accounts were a retirement income account maintained for a separate person;
  - (b) the person for whom the investment sub-account is maintained had selected, under regulation 186, the investment plan selected by the Member under that regulation; and
  - (c) the person for whom the cash sub-account is maintained had selected, under regulation 186, the investment plan referred to in regulation 184(2).
- (4) In this regulation —

**“Member's assets”** means the assets of the Fund that represent the retirement income account of a Retirement Income Member.

*[Regulation 187 inserted in Gazette 19 Mar 2003 p. 827-8;  
amended in Gazette 10 Dec 2004 p. 5895.]*

**188. Determination of earning rates**

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

*[Regulation 188 inserted in Gazette 19 Mar 2003 p. 828-9.]*

**Division 6 — Pension and other benefits**

*[Heading inserted in Gazette 19 Mar 2003 p. 829.]*

**189. Selection of payment frequency**

- (1) A Retirement Income Member is to select —
  - (a) whether the Member's pension is to be paid monthly, quarterly or annually; and

- (b) if the Member selects annual payments, the month in which the Member's pension is to be paid,  
and give notice of those selections to the Board.
- (2) A Member may change his or her selection under subregulation (1) at any time by giving notice to the Board.
- (3) Until a Retirement Income Member selects otherwise the Member is taken to have selected monthly pension payments.  
*[Regulation 189 inserted in Gazette 19 Mar 2003 p. 829-30.]*

**190. Selection of pension amount**

- (1) A Retirement Income Member is to select an amount that is —
  - (a) not less than the Commonwealth minimum; and
  - (b) not more than the Commonwealth maximum,as the annual amount of the Member's pension and give notice of those selections to the Board.
- (2) A Member may change his or her selection under subregulation (1) at any time by giving notice to the Board.
- (3) If a Member does not make a selection under subregulation (1), or the amount selected by a Member does not comply with subregulation (1), the Board may make a selection for the Member of an amount the Board considers to be reasonable, and if it does so, the Board must give notice of the selection to the Member.  
*[Regulation 190 inserted in Gazette 19 Mar 2003 p. 830.]*

**191. Payment of pension**

- (1) Subject to this regulation, on each pension day the Board is to pay to a Retirement Income Member an amount equal to the annual amount selected by or for the Member under regulation 190 divided by —

- (a) if the Member has selected monthly pension payments, 12;
  - (b) if the Member has selected quarterly pension payments, 4; or
  - (c) if the Member has selected annual pension payments, 1.
- (2) If, on a pension day, the balance of a Member's Retirement Income Account is less than the amount to be paid under subregulation (1), the amount to be paid is reduced to an amount equal to that balance.
- (3) If, in any financial year, a Retirement Income Member's pension total is less than the Commonwealth minimum, the Board is to pay to the Member, before the end of the year, an amount equal to the difference between the pension total and the Commonwealth minimum.
- (4) If payment to a Retirement Income Member of the amount to be paid under subregulation (1) on a pension day would result in the Member's pension total for a financial year exceeding the Commonwealth maximum, the amount to be paid on that day is reduced by the amount by which that maximum would otherwise be exceeded.
- (5) If, in any financial year, a Retirement Income Member's pension total reaches the Commonwealth maximum the Board is to make no further payments under subsection (1) to the Member during that year.

*[Regulation 191 inserted in Gazette 19 Mar 2003 p. 830-1;  
amended in Gazette 13 Jun 2003 p. 2113.]*

## **192. Withdrawal of lump sum**

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

a lump sum benefit of an amount equal to all or part of the balance of the Member's retirement income account and, subject to subregulation (3), the Board is to comply with that request.

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

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

- (3) If a Member's benefit in the Retirement Income Scheme is a phased retirement benefit, the Board must not pay or transfer any of that benefit or earnings on it, under this regulation unless —
- (a) the Member has satisfied an unrestricted condition of release;
  - (b) the benefit is transferred to another scheme or superannuation fund the rules of which prevent the cashing, commutation or transfer of the benefit unless —
    - (i) the Member has satisfied an unrestricted condition of release; or
    - (ii) the benefit is transferred to another superannuation fund the rules of which include provisions having the same effect as this subregulation;
- or
- (c) the benefit is to be used to pay contributions tax and is paid to the Member for payment to the Commonwealth Commissioner of Taxation.

*[Regulation 192 inserted in Gazette 19 Mar 2003 p. 831-2; amended in Gazette 26 May 2006 p. 1921-2; 21 Jul 2006 p. 2652.]*



**193. Death benefit options**

- (1) When a person becomes a Retirement Income Member he or she is to select —
  - (a) whether the benefit to be paid on the Member's death (if he or she dies while still a Retirement Income Member) is to be —
    - (i) a lump sum benefit under regulation 194; or
    - (ii) a reversionary pension under regulation 195;and
  - (b) if the Member selects a reversionary pension, the person to whom that pension is to be paid,and give notice of those selections to the Board.
- (2) The person selected under subregulation (1)(b) must be a partner or a dependant of the Member.
- (3) If a Retirement Income Member has not given notice of the Member's selection to the Board before the Member's first pension day, or the Member's selection under subregulation (1)(b) does not comply with subregulation (2), the Member is taken to have selected a lump sum death benefit.

*[Regulation 193 inserted in Gazette 19 Mar 2003 p. 832; amended in Gazette 1 Dec 2004 p. 5706.]*

**194. Lump sum death benefit**

If a Retirement Income Member who selected a lump sum death benefit dies while there is still an amount in the Member's retirement income account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the Member's estate.

*[Regulation 194 inserted in Gazette 19 Mar 2003 p. 833.]*

**195. Reversionary pension**

On and after the death of a Retirement Income Member who selected a reversionary pension (the “**primary Member**”) —

- (a) the pension that would have been payable to the primary Member had he or she not died is to be paid to the reversionary pensioner; and
- (b) for the purposes of these regulations, the reversionary pensioner is to be taken to be the primary Member.

*[Regulation 195 inserted in Gazette 19 Mar 2003 p. 833.]*

## **Part 4A — Term Allocated Pension Scheme**

*[Heading inserted in Gazette 10 Dec 2004 p. 5896.]*

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

*[Heading inserted in Gazette 10 Dec 2004 p. 5896.]*

#### **196. Establishment of Term Allocated Pension Scheme**

The Term Allocated Pension Scheme is established as a superannuation scheme under section 28 of the Act.

*[Regulation 196 inserted in Gazette 10 Dec 2004 p. 5896.]*

#### **196A. Interpretation**

In this Part —

**“pension day”** means —

- (a) for a Member who has selected monthly pension payments — the 15th of each month;
- (b) for a Member who has selected quarterly pension payments — the 15th of January, April, July and October; and
- (c) for a Member who has selected annual pension payments — the 15th of the month selected by the Member under regulation 196Q(1)(b);

**“term allocated pension”** means a pension payable under this Part;

**“term allocated pension account”** means an account kept under regulation 196E.

*[Regulation 196A inserted in Gazette 10 Dec 2004 p. 5896.]*

**Division 2 — Membership and purchase**

*[Heading inserted in Gazette 10 Dec 2004 p. 5896.]*

**196B. Members**

- (1) A person may apply to become a Term Allocated Pension Member if he or she is —
  - (a) a Member;
  - (b) in receipt of, or entitled to receive, a pension under the Pension Scheme;
  - (c) a former member, or a person who is or was a partner of a former member; or
  - (d) a Term Allocated Pension Member applying for a second or subsequent term allocated pension,and is entitled to —
  - (e) immediate payment of a benefit from another scheme or another superannuation fund;
  - (f) immediate payment of any other eligible termination payment; or
  - (g) payment of a phased retirement benefit.
- (2) The Board is to accept an application under this regulation unless the Board considers that the applicant, if accepted as a Term Allocated Pension Member, will not comply with regulation 196D.
- (3) If a person becomes a Term Allocated Pension Member for a second or subsequent term allocated pension, these regulations apply as if he or she were, in respect of each term allocated pension, a separate person.

*[Regulation 196B inserted in Gazette 10 Dec 2004 p. 5896-7; amended in Gazette 26 May 2006 p. 1922.]*

**196C. Cessation of membership**

A person ceases to be a Term Allocated Pension Member when the balance in the Member's term allocated pension account is reduced to zero.

*[Regulation 196C inserted in Gazette 10 Dec 2004 p. 5897.]*

**196D. Transfer of benefit or ETP**

- (1) When a person becomes a Term Allocated Pension Member he or she must transfer to the Term Allocated Pension Scheme all or part of the benefit, lump sum or eligible termination payment referred to in regulation 196B.
- (2) The person may also transfer to the Term Allocated Pension Scheme all or part of any other —
  - (a) benefit that is immediately payable to the person from another scheme or another superannuation fund;
  - (b) eligible termination payment immediately payable to the person; or
  - (c) a phased retirement benefit payable to the person.
- (3) A transfer under subregulation (1) or (2) must be made before the person's first pension day.
- (4) The total amount transferred under subregulations (1) and (2) must not be less than —
  - (a) \$30 000 for a person's first term allocated pension; or
  - (b) \$10 000 for a second or subsequent term allocated pension,unless the Board agrees to accept a lesser amount.
- (5) A transfer under this regulation must be made to the Term Allocated Pension Scheme directly from the other scheme or superannuation fund or the payer of the eligible termination payment.

*[Regulation 196D inserted in Gazette 10 Dec 2004 p. 5897;  
amended in Gazette 26 May 2006 p. 1923.]*

**Division 3 — Term allocated pension accounts**

*[Heading inserted in Gazette 10 Dec 2004 p. 5897.]*

**196E. Term allocated pension accounts**

- (1) The Board is to establish and maintain in the Fund a term allocated pension account for each Term Allocated Pension Member.
- (2) The Board may divide a term allocated pension account into 2 or more sub-accounts.

*[Regulation 196E inserted in Gazette 10 Dec 2004 p. 5897-8.]*

**196F. Member may divide account into sub-accounts**

- (1) A Term Allocated Pension Member may request the Board to divide the Member's term allocated pension account into a cash sub-account and an investment sub-account.
- (2) The Member must set out in a request under subregulation (1) —
  - (a) the amount that is to be allocated to each sub-account (the sum of which must be equal to the balance of the Member's account); or
  - (b) the proportion of the balance of the account that is to be allocated to each sub-account,

at the time the sub-accounts are established.

- (3) A Member whose term allocated pension account has been divided into sub-accounts under this regulation may request the Board to —
  - (a) transfer a specified amount from one sub-account to the other;

- (b) change the proportion of the balance of the Member's account that is held in each sub-account; or
  - (c) combine the sub-accounts into a single account.
- (4) The Board is to comply with a request under subregulation (1) or (3) but is not otherwise required to ensure that the balances of the sub-accounts remain in accordance with the requested amounts or proportions.

*[Regulation 196F inserted in Gazette 10 Dec 2004 p. 5898.]*

**196G. Amounts to be credited to term allocated pension accounts**

- (1) The Board is to credit to a Term Allocated Pension Member's term allocated pension account —
- (a) the amounts transferred to the Term Allocated Pension Scheme under regulation 196D; and
  - (b) earnings in accordance with regulation 196I.
- (2) The Board may temporarily keep amounts transferred for a Term Allocated Pension Member, together with amounts transferred for other Term Allocated Pension Members, in an account maintained for that purpose until those amounts are credited to the appropriate benefit accounts.

*[Regulation 196G inserted in Gazette 10 Dec 2004 p. 5898.]*

**196H. Amounts to be debited to term allocated pension accounts**

- (1) The Board is to debit to a Term Allocated Pension Member's term allocated pension account any amounts paid as benefits to, or in respect of, the Member under Division 5.
- (2) The Board may debit to a Term Allocated Pension Member's term allocated pension account —
- (a) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 196I; and

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- (b) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member.
- (3) The Board may only debit an amount to a term allocated pension account under subregulation (2)(a) if an actuary has advised that it is appropriate for that amount to be debited to that account.
- (4) If a Member's term allocated pension account has been divided into sub-accounts under regulation 196F, then to the extent that the balance of the relevant sub-account is sufficient to allow it to do so, the Board is to debit —
  - (a) term allocated pension payments made under regulation 196R to the Member's cash sub-account; and
  - (b) any other amount that is to be, or may be, debited to the Member's term allocated pension account, to the Member's investment sub-account,

unless the Member requests otherwise.

*[Regulation 196H inserted in Gazette 10 Dec 2004 p. 5899.]*

**196I. Earnings**

- (1) The Board is to credit earnings to each Term Allocated Pension Member's term allocated pension account at a rate equal to the Member's earning rate on the balance of the account —
  - (a) at least once every year; and
  - (b) when a lump sum benefit is to be paid, or an amount transferred, from the Member's term allocated pension account under Division 5.
- (2) The Board is to decide whether the earning rate is to be applied to daily balances, average balances or on some other basis.
- (3) If a Member's term allocated pension account has been divided into sub-accounts under regulation 196F the Board is to credit



earnings to each sub-account as if it were a separate term allocated pension account.

*[Regulation 196I inserted in Gazette 10 Dec 2004 p. 5899.]*

#### **Division 4 — Member investment choice**

*[Heading inserted in Gazette 10 Dec 2004 p. 5900.]*

#### **196J. Interpretation**

In this Division —

**“default plan”** means the readymade investment plan selected by the Board under regulation 196L as the default plan for Term Allocated Pension Members;

**“personalised investment plan”** means an investment plan established under regulation 196K(4);

**“readymade investment plan”** means an investment plan established under regulation 196K(1).

*[Regulation 196J inserted in Gazette 10 Dec 2004 p. 5900.]*

#### **196K. Board to establish investment plans**

- (1) The Board is to establish one or more investment plans for Term Allocated Pension Members with asset allocations determined by the Board.
- (2) One of the investment plans established under subregulation (1) must provide for investment in cash only.
- (3) Subject to subregulation (2), the Board may alter the asset allocation for a readymade investment plan whenever the Board considers it appropriate to do so.
- (4) The Board may establish an investment plan under which a Term Allocated Pension Member who selects that plan may select the Member’s own asset allocation subject to any conditions determined by the Board.

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- (5) The Board must notify all Term Allocated Pension Members of —
- (a) the establishment of a new investment plan for Term Allocated Pension Members including, in the case of a readymade investment plan, the asset allocation for that plan;
  - (b) any material change in the asset allocation of a readymade investment plan; and
  - (c) any material change in the conditions applying to a personalised investment plan,

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

*[Regulation 196K inserted in Gazette 10 Dec 2004 p. 5900.]*

**196L. Default plan**

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

*[Regulation 196L inserted in Gazette 10 Dec 2004 p. 5900-1.]*

**196M. Member to select investment plan**

- (1) A Term Allocated Pension Member is to select an investment plan to be used in determining the Member's earning rate and give notice of that selection to the Board.
- (2) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.

- (3) A Member may change his or her selection under subregulation (1) or (2) at any time by giving notice to the Board, and the Board must give effect to the notice as soon as practicable.
- (4) Until a Term Allocated Pension Member selects otherwise the Member is taken to have selected the default plan.  
*[Regulation 196M inserted in Gazette 10 Dec 2004 p. 5901.]*

**196N. Board to invest assets to reflect Member's choice**

- (1) For each Term Allocated Pension Member who selects a readymade investment plan the Board must, as far as is practicable —
  - (a) invest the Member's assets in accordance with the asset allocation determined under regulation 196K for that investment plan; and
  - (b) ensure that the investment of the Member's assets remains in accordance with that asset allocation until the Member selects a different investment plan.
- (2) For a Term Allocated Pension Member who selects a personalised investment plan the Board must invest the Member's assets as at the time the selection was made 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) If a Member's term allocated pension account is divided into sub-accounts under regulation 196F, the Board is to invest the Member's assets in accordance with this regulation as if —
  - (a) each of the sub-accounts were a term allocated pension account maintained for a separate person;
  - (b) the person for whom the investment sub-account is maintained had selected, under regulation 196M, the

investment plan selected by the Member under that regulation; and

- (c) the person for whom the cash sub-account is maintained had selected, under regulation 196M, the investment plan referred to in regulation 196K(2).

- (4) In this regulation —

**“Member’s assets”** means the assets of the Fund that represent the term allocated pension account of a Term Allocated Pension Member.

*[Regulation 196N inserted in Gazette 10 Dec 2004 p. 5901-2.]*

**196O. Determination of earning rates**

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

- (4) An earning rate may be positive or negative.

*[Regulation 196O inserted in Gazette 10 Dec 2004 p. 5902.]*

**Division 5 — Pension and other benefits**

*[Heading inserted in Gazette 10 Dec 2004 p. 5902.]*

**196P. Selection of pension period**

- (1) A Term Allocated Pension Member is to select the period for which the Member's term allocated pension is to be paid and give notice of that selection to the Board before the Member's first pension day.

- (2) Subject to subregulation (3), the period selected must be a whole number of years that is —

- (a) not less than the Member's life expectancy; and
- (b) not more than what would be the Member's life expectancy if he or she were 5 years younger.

- (3) If —

- (a) the Member has selected a reversionary pension under regulation 196T;
- (b) the selected reversionary pensioner is the Member's partner; and
- (c) the partner's life expectancy is greater than the Member's,

then the period selected by the Member may be a whole number of years that is —

- (d) not less than the partner's life expectancy; and
- (e) not more than what would be the partner's life expectancy if he or she were 5 years younger.

- (4) In this regulation —

**“life expectancy”**, in relation to a person, means the number of years in the person's expectation of life ascertained when

the person became a Term Allocated Pension Member from the then most recent Australian Life Tables published by the Australian Government Actuary, rounded up to the nearest whole number.

*[Regulation 196P inserted in Gazette 10 Dec 2004 p. 5902-3.]*

**196Q. Selection of payment frequency**

- (1) A Term Allocated Pension Member is to select —
  - (a) whether the Member's term allocated pension is to be paid monthly, quarterly or annually; and
  - (b) if the Member selects annual payments, the month in which the Member's term allocated pension is to be paid,

and give notice of those selections to the Board.

- (2) A Member may change his or her selection under subregulation (1) at any time by giving notice to the Board.
- (3) Until a Term Allocated Pension Member selects otherwise the Member is taken to have selected monthly pension payments.

*[Regulation 196Q inserted in Gazette 10 Dec 2004 p. 5903.]*

**196R. Payment of term allocated pension**

- (1) The annual pension amount for a Term Allocated Pension Member is —
  - (a) in the financial year in which he or she becomes a Term Allocated Pension Member — the SIS annual amount calculated as at the day he or she becomes a Term Allocated Pension Member; and
  - (b) in each subsequent financial year — the SIS annual amount calculated as at 1 July in that year.
- (2) If a Term Allocated Pension Member commutes part of his or her term allocated pension the annual pension amount for the period from the commutation date to the end of the financial

year in which the commutation occurs is the SIS annual amount calculated as at the commutation date.

- (3) On each pension day the Board is to pay to a Term Allocated Pension Member an amount equal to the Member's annual pension amount divided by the number of the Member's pension days in the financial year.
- (4) If, on a pension day, the balance of a Member's term allocated pension account is less than the amount due to be paid under subregulation (3), the amount to be paid is an amount equal to that balance.
- (5) If after a Term Allocated Pension Member's last pension day there is still an amount in the Member's term allocated pension account, the Board is to pay the Member a lump sum benefit of an amount equal to that amount within 28 days after the end of the pension period selected by the Member.
- (6) In this regulation —  
**“SIS annual amount”** means the amount prescribed under the SIS Act as the total amount of payments that a superannuation fund's rules must require to be made in a year in order for a market linked pension payable for a term equal to the pension period selected by the Member to be taken to be a pension for the purposes of the SIS Act.

*[Regulation 196R inserted in Gazette 10 Dec 2004 p. 5903-4.]*

#### **196S. Commutation**

- (1) A Term Allocated Pension Member may request the Board to commute some or all of his or her term allocated pension if —
  - (a) the request —
    - (i) is made within 6 months after he or she became a Term Allocated Pension Member; and
    - (ii) does not relate to any amount transferred to the Term Allocated Pension Scheme under

- regulation 196D from the commutation of another SIS annuity or pension;
- (b) the commuted amount is to be used to pay contributions tax; or
  - (c) the commuted amount is to be used to purchase —
    - (i) another term allocated pension; or
    - (ii) another SIS annuity or pension.
- (2) Subject to subregulations (3) and (3a), the Board is to comply with a request under subregulation (1) and pay or transfer the commuted amount, in the case of a request under —
- (a) subregulation (1)(a) — to, or as requested by, the Member;
  - (b) subregulation (1)(b) — to the Member for payment to the Commonwealth Commissioner of Taxation;
  - (c) subregulation (1)(c)(i) — to a new term allocated pension account for the Member; or
  - (d) subregulation (1)(c)(ii) — to the provider of the SIS annuity or pension.
- (3) The Board must not pay or transfer a term allocated pension unless, or until, any applicable SIS minimum amount has been paid.
- (3a) If a Member's benefit in the Term Allocated Pension Scheme is a phased retirement benefit, the Board must not pay or transfer any of that benefit or earnings on it, under subregulation (2)(a) or (d) unless —
- (a) the Member has satisfied an unrestricted condition of release; or
  - (b) the commuted amount is transferred to another scheme or superannuation fund the rules of which prevent the cashing, commutation or transfer of the amount unless —



- (i) the Member has satisfied an unrestricted condition of release; or
  - (ii) the amount is transferred to another superannuation fund the rules of which include provisions having the same effect as this subregulation.
- (4) In this regulation —
- “SIS annuity or pension”** means a benefit that is taken to be an annuity or pension for the purposes of the SIS Act;
- “SIS minimum amount”** means the amount prescribed under the SIS Act as the minimum amount that a superannuation fund’s rules must require to have been paid before a market linked pension can be commuted in order for the pension to be taken to be a pension for the purposes of the SIS Act.

*[Regulation 196S inserted in Gazette 10 Dec 2004 p. 5904-5; amended in Gazette 26 May 2006 p. 1923-4 and 1930; 21 Jul 2006 p. 2652.]*

**196T. Death benefit options**

- (1) A Term Allocated Pension Member is to select —
- (a) whether the benefit to be paid on the Member’s death (if he or she dies while still a Term Allocated Pension Member) is to be —
    - (i) a lump sum benefit under regulation 196U; or
    - (ii) a reversionary pension under regulation 196V;and
  - (b) if the Member selects a reversionary pension, the person to whom that pension is to be paid,

and give notice of those selections to the Board before the Member’s first pension day.

- (2) The person selected under subregulation (1)(b) must be a partner or dependant of the Member.

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- (3) If a Term Allocated Pension Member has not given notice of the Member's selection to the Board before the Member's first pension day, or the Member's selection under subregulation (1)(b) does not comply with subregulation (2), the Member is taken to have selected a lump sum death benefit.

*[Regulation 196T inserted in Gazette 10 Dec 2004 p. 5905-6.]*

**196U. Lump sum death benefit**

If a Term Allocated Pension Member who selected a lump sum death benefit dies while there is still an amount in the Member's term allocated pension account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the Member's estate.

*[Regulation 196U inserted in Gazette 10 Dec 2004 p. 5906.]*

**196V. Reversionary pension**

- (1) On and after the death of a Term Allocated Pension Member who selected a reversionary pension (the "**primary Member**") —
- (a) the term allocated pension that would have been payable to the primary Member had he or she not died is to be paid to the reversionary pensioner; and
  - (b) these regulations apply as if the reversionary pensioner were the primary Member.
- (2) If a reversionary pensioner dies while there is still an amount in his or her term allocated pension account, the Board is to pay a benefit of an amount equal to the balance of the account to the executor or administrator of the reversionary pensioner's estate.

*[Regulation 196V inserted in Gazette 10 Dec 2004 p. 5906.]*

*[197 to 199. Reserved.]*

## **Part 5 — Retirement Access Scheme**

*[Heading inserted in Gazette 28 Jun 2002 p. 3014.]*

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

*[Heading inserted in Gazette 28 Jun 2002 p. 3014.]*

#### **200. Establishment of Retirement Access Scheme**

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

*[Regulation 200 inserted in Gazette 28 Jun 2002 p. 3014.]*

#### **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.

*[Regulation 201 inserted in Gazette 28 Jun 2002 p. 3014.]*

### **Division 2 — Membership**

*[Heading inserted in Gazette 28 Jun 2002 p. 3014.]*

#### **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 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.
- (2a) A Retirement Income Member may apply to become a Retirement Access Member if —
  - (a) the Member —
    - (i) at the time the application is made, also requests the Board to transfer a benefit from the Retirement Income Scheme under regulation 192(1)(b) to the Retirement Access Scheme; or
    - (ii) is entitled to immediate payment of a benefit from another superannuation fund or any other eligible termination payment;
  - and
  - (b) the Member has not reached the compulsory payment age.
- (2b) A former member or a person who is or was a partner of a former member may apply to become a Retirement Access Member if the person —
  - (a) is entitled to immediate payment of —
    - (i) a benefit from a superannuation fund;
    - (ii) any other eligible termination payment;
  - and
  - (b) 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 comply with regulation 204.

*[Regulation 202 inserted in Gazette 28 Jun 2002 p. 3014; amended in Gazette 19 Mar 2003 p. 833-4; 1 Dec 2004 p. 5716.]*

**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.

*[Regulation 203 inserted in Gazette 28 Jun 2002 p. 3015.]*

**Division 3 — Contributions**

*[Heading inserted in Gazette 28 Jun 2002 p. 3015.]*

**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 the benefit, lump sum or eligible termination payment (as the case requires) referred to in regulation 202.
- (2) The amount transferred must not be less than \$3 000 unless the Board agrees to accept a lesser amount.

*[Regulation 204 inserted in Gazette 28 Jun 2002 p. 3015; amended in Gazette 19 Mar 2003 p. 834; 1 Dec 2004 p. 5716.]*

**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.

*[Regulation 205 inserted in Gazette 28 Jun 2002 p. 3015.]*

**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.

*[Regulation 206 inserted in Gazette 28 Jun 2002 p. 3015.]*

**206A. Other payments or contributions for a Member**

The Board may accept, in respect of a Retirement Access Member —

- (a) any payment of the kind described in regulation 58; and
- (b) any contribution payable for the Member under Part 3 but not paid.

*[Regulation 206A inserted in Gazette 1 Dec 2004 p. 5716.]*

**206B. Transfers must be directly to Retirement Access Scheme**

A transfer under this Division must be made to the Retirement Access Scheme directly from the other scheme or superannuation fund or the payer of the eligible termination payment.

*[Regulation 206B inserted in Gazette 1 Dec 2004 p. 5717.]*

**Division 4 — Retirement access accounts**

*[Heading inserted in Gazette 28 Jun 2002 p. 3015.]*

**207. Retirement access accounts**

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

*[Regulation 207 inserted in Gazette 28 Jun 2002 p. 3015.]*

**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 or other eligible termination payment transferred to the Retirement Access Scheme under regulation 204;
  - (b) any contributions made by the Member under regulation 205;
  - (c) any benefits or other eligible termination payments transferred to the Retirement Access Scheme under regulation 206;
  - (ca) any contributions or payments accepted in respect of the Member under regulation 206A; and
  - (d) earnings in accordance with regulation 210.
- (2) The Board may temporarily keep amounts transferred to the Retirement Access Scheme for a Retirement Access Member, together with amounts transferred for other Retirement Access Members, in an account maintained for that purpose until those amounts are credited to the appropriate benefit accounts.

*[Regulation 208 inserted in Gazette 28 Jun 2002 p. 3016;  
amended in Gazette 19 Mar 2003 p. 839; 1 Dec 2004 p. 5717.]*

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

- (1) The Board is to debit to a Retirement Access Member's retirement access account —
  - (a) any amounts paid as benefits to, or in respect of, the Member; and
  - (b) any amounts transferred to other schemes or to other superannuation funds in satisfaction of a Member's entitlement to a benefit from the Retirement Access Scheme.
- (2) The Board may debit to a Retirement Access Member's retirement access account —
  - (a) administrative costs to the extent that they have not been taken into account in the determination of earning rates under regulation 216; and
  - (b) any tax or other amounts required by a written law or a law of the Commonwealth to be paid by the Board in respect of the Member.
- (3) The Board may only debit an amount to a retirement access account under subregulation (2)(a) if an actuary has advised that it is appropriate for that amount to be debited to that account.

*[Regulation 209 inserted in Gazette 19 Mar 2003 p. 839-40.]*

**210. Earnings**

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



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

*[Regulation 210 inserted in Gazette 28 Jun 2002 p. 3016-17; amended in Gazette 19 Mar 2003 p. 840.]*

**Division 5 — Member investment choice**

*[Heading inserted in Gazette 28 Jun 2002 p. 3017.]*

**211. 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).

*[Regulation 211 inserted in Gazette 28 Jun 2002 p. 3017.]*

**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.

*[Regulation 212 inserted in Gazette 28 Jun 2002 p. 3017.]*

**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.

*[Regulation 213 inserted in Gazette 28 Jun 2002 p. 3017.]*

**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 and give notice of that selection to the Board.
  - (1a) If a Member selects a personalised investment plan the Member must also select the asset allocation to be applied to the Member's assets and give notice of that selection to the Board.
- (2) A Member may change his or her selection under subregulation (1) or (1a) at any time by giving notice to the Board, 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.

*[Regulation 214 inserted in Gazette 28 Jun 2002 p. 3018;  
amended in Gazette 19 Mar 2003 p. 840-1.]*

**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.

*[Regulation 215 inserted in Gazette 28 Jun 2002 p. 3018.]*

**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;
  - (aa) administrative costs; and
  - (b) the desirability of averaging returns in order to reduce fluctuations in earning rates.
- (4) An earning rate may be positive or negative.

*[Regulation 216 inserted in Gazette 28 Jun 2002 p. 3018-19; amended in Gazette 19 Mar 2003 p. 841.]*

**Division 6 — Access to benefits**

*[Heading inserted in Gazette 28 Jun 2002 p. 3019.]*

**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.

*[Regulation 217 inserted in Gazette 28 Jun 2002 p. 3019.]*

#### **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.

*[Regulation 218 inserted in Gazette 28 Jun 2002 p. 3019-20.]*

#### **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 subregulation (3) the Board may —
  - (a) pay the amount to one or more of the people who were, immediately before the Member died, a 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.

*[Regulation 219 inserted in Gazette 28 Jun 2002 p. 3020;  
amended in Gazette 13 Jun 2003 p. 2113; 1 Dec 2004 p. 5706.]*

## Part 6 — Information requirements

[Heading inserted in Gazette 29 Jun 2001 p. 3092.]

### 220. Interpretation

In this Part —

“**annual reporting day**” means the day selected under regulation 222(1);

“**contact details**” of the Board means the Board’s name and address and the name and telephone number of a person who is available to deal with inquiries directed to the Board;

“**reporting period**” means —

- (a) on and before a Member’s first annual reporting day — the period on and from the day the person became a Member to and including that first annual reporting day; and
- (b) otherwise, the period from one annual reporting day to and including the next;

“**Superannuation Complaints Tribunal**” means the Superannuation Complaints Tribunal established by the *Superannuation (Resolution of Complaints) Act 1993* of the Commonwealth.

[Regulation 220 inserted in Gazette 29 Jun 2001 p. 3092.]

### 221. Information to new Members

- (1) As soon as practicable after a person becomes a Member the Board is to give the person all the information that the Board reasonably believes a person would reasonably need for the purpose of understanding —
  - (a) the main features of the Gold State Super Scheme or the West State Super Scheme (as the case requires);
  - (b) the management of the relevant scheme and financial condition of the Fund; and

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- (c) the investment performance of the Fund.
- (2) The information given under subregulation (1) is to include —
  - (a) the Board's contact details;
  - (b) a summary of the main features of the relevant scheme;
  - (c) a summary of the benefits provided under the relevant scheme and the method by which they are calculated;
  - (d) in the case of a West State Super Member —
    - (i) details of the options available to Members under Part 3 Division 4A; and
    - (ii) an outline of the fees and charges that are attributed to Members of the scheme;
  - (e) a copy of the latest information given under regulation 224 to Members of the relevant scheme; and
  - (f) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and
    - (ii) the functions of the Superannuation Complaints Tribunal.

*[Regulation 221 inserted in Gazette 29 Jun 2001 p. 3093-4.]*

**222. Annual reporting day**

- (1) For each Member the Board is to select a day to be the Member's annual reporting day.
- (2) The Board may change a Member's annual reporting day but any such change must not result in a reporting period being more than 12 months.
- (3) The Board is to notify the Member of the day selected under subregulation (1) and any change in that selection.
- (4) Until the Board selects otherwise a Member's annual reporting day is 30 June.

*[Regulation 222 inserted in Gazette 29 Jun 2001 p. 3094.]*



**223. Annual Member specific information**

- (1) As soon as practicable after the last day of a Member's reporting period the Board is to give to the Member all the information that the Board reasonably believes a Member reasonably needs for the purpose of understanding the Member's benefit entitlements.
- (2) The information given under subregulation (1) is to include —
  - (a) the Board's contact details;
  - (b) details of contributions made during the reporting period including —
    - (i) the amount of contributions made by the Member; and
    - (ii) the amount of any benefits or other eligible termination payments transferred to the Fund for the Member,during the reporting period;
  - (c) an explanation of the circumstances in which the Member will or may become entitled to a benefit;
  - (d) details of the Member's benefit entitlements (including death and disablement benefits) on the first and last days of the reporting period and the methods by which the amounts of the benefits are calculated; and
  - (e) in the case of a West State Super Member —
    - (i) the amounts of fees and charges deducted from the Member's benefit account during the reporting period; and
    - (ii) the rate at which earnings were credited to the Member's benefit account during the reporting period and the amount credited.

*[Regulation 223 inserted in Gazette 29 Jun 2001 p. 3094-5;  
amended in Gazette 28 Jun 2002 p. 3022.]*

**224. Annual Fund information**

- (1) As soon as practicable after the last day of a Member's reporting period the Board is to give to the Member all the information that the Board reasonably believes a Member would reasonably need for the purpose of understanding the management, financial condition and investment performance of the Fund.
- (2) The information given under subregulation (1) is to include —
  - (a) details about the Board including —
    - (i) the Board's contact details;
    - (ii) the names of the directors of the Board during the reporting period and details of how and by whom they were appointed or elected; and
    - (iii) a statement as to whether or not any indemnity insurance has been taken out by the Board;
  - (b) investment details including —
    - (i) a description of the investment strategy of the Board;
    - (ii) the names of investment managers appointed by the Board;
    - (iii) a statement of the assets of the Fund as at the end of —
      - (I) the reporting period; and
      - (II) the immediately preceding reporting period,that includes all information that the Board reasonably believes a Member would reasonably need to understand the asset allocation of the Fund at those times; and
    - (iv) details of —
      - (I) each investment the value of which exceeds 5% of the total value of the assets of the Fund; and

- (II) each combination of investments that the Board knows or ought reasonably to know are invested, directly or indirectly, in a single enterprise or a single group of associated enterprises, the combined value of which exceeds 5% of the total value of the assets of the Fund;
  - (c) details of the Fund's accounts being either —
    - (i) the audited Fund accounts and the auditor's report; or
    - (ii) both —
      - (I) abridged financial information about the Fund for the reporting period; and
      - (II) a statement as to when the audited Fund accounts and the auditor's report will be sent, or made available, to Members;
  - (d) in relation to the West State Super Scheme, a statement of —
    - (i) the earning rates determined for each of the readymade investment plans established under regulation 69B, for the 5 years ending at the end of the reporting period; and
    - (ii) the fees and charges that are attributed to Members of the scheme;
  - (e) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and
    - (ii) the functions of the Superannuation Complaints Tribunal;
- and
- (f) a statement setting out the kind of information that is available on request.

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- (3) In this regulation —
- “abridged financial information”** in relation to a reporting period means information derived from the Fund’s accounts or records that gives a reasonable summary of either —
- (a) both —
- (i) changes in the financial position of the Fund during the reporting period; and
  - (ii) the financial position of the Fund at the end of the reporting period;
- or
- (b) both —
- (i) changes in the nett assets of the Fund during the reporting period; and
  - (ii) the nett assets of the Fund at the end of the reporting period.

*[Regulation 224 inserted in Gazette 29 Jun 2001 p. 3095-8.]*

**224A. Information about significant events**

- (1) As soon as practicable after the occurrence of a significant event the Board is to give to each Member who the Board reasonably expects has been, will or may be affected by the event all information about the event that the Board reasonably believes that the Member would reasonably expect to be provided with, including details of —
- (a) the nature of the event;
  - (b) the purpose (if any) of the event; and
  - (c) its effect on the Member’s rights and entitlements.

(2) In this regulation —

**“significant event”** means any event that the Board reasonably believes —

- (a) will or may have, or has had, an adverse effect on —
  - (i) a Member’s right to accrued benefits or the amount of those benefits;
  - (ii) the benefits to which a Member may become entitled;
  - (iii) the circumstances in which those benefits will or may become payable;
  - (iv) the manner in which those benefits would be calculated; or
  - (v) the security of the Member’s benefits;
- or
- (b) Members would reasonably expect to be informed of.

*[Regulation 224A inserted in Gazette 29 Jun 2001 p. 3098-9.]*

**224B. Information to exiting Member**

- (1) When a Member ceases to be a Member other than because the Member has died, the Board is to give to the Member all the information that the Board reasonably believes the Member would reasonably need for the purpose of understanding his or her entitlements.
- (2) The information given under subregulation (1) is to include —
  - (a) the Board’s contact details;
  - (b) details of the kind referred to in regulation 223(2)(b), (d) and (e) in respect of the period from the last annual reporting day on which the person was a Member to the day on which the person ceased to be a Member; and
  - (c) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and

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- (ii) the functions of the Superannuation Complaints Tribunal.
- (3) If a Member dies while still a Member, the Board is to give to each person to whom a death benefit is paid a statement setting out —
  - (a) a summary of —
    - (i) the arrangements that the Board has to deal with inquiries or complaints; and
    - (ii) the functions of the Superannuation Complaints Tribunal;
  - and
  - (b) the kind of information that is available on request.

*[Regulation 224B inserted in Gazette 29 Jun 2001  
p. 3099-100.]*

**224C. Employers to provide information to the Board**

- (1) The Board may give directions to Employers setting out the information Employers are to give to the Board about workers who are, or have applied to become, Members, and an Employer is to comply with those directions.
- (2) If an Employer fails to comply with a direction given under subregulation (1), the Board may —
  - (a) if the information relates to a worker's application to become a Gold State Super Member, refuse to accept the application; or
  - (b) if the information relates to —
    - (i) a Member's entitlement to a benefit; or
    - (ii) the amount of a benefit to which a Member is entitled,defer payment of the benefit until the information is provided.

*[Regulation 224C inserted in Gazette 29 Jun 2001 p. 3100-1.]*

**224D. Information to be provided on request**

- (1) If requested to do so by a Member or a person to whom a death benefit is paid the Board is to give to the person all information that the person reasonably requires for the purposes of —
  - (a) understanding any benefit entitlements that the person may have, has or used to have;
  - (b) understanding the main features of the relevant scheme;
  - (c) making an informed judgment about the management and financial condition of the Fund;
  - (d) making an informed judgment about the investment performance of the Fund; and
  - (e) understanding the particular investments of the Fund.
- (2) If requested to do so by an Employer, the Board is to give to the Employer all information that the Employer reasonably requires for the purposes of —
  - (a) understanding the main features of the relevant Scheme;
  - (b) understanding the kinds of benefits to which the Employer's workers are entitled or will or may become entitled;
  - (c) making an informed judgment about the management and financial condition of the Fund; and
  - (d) making an informed judgment about the investment performance of the Fund.
- (3) If requested to do so by a Member, a person to whom a death benefit is paid, or an Employer, the Board is to give to the person a copy, or access to a copy, of —
  - (a) the Act, these regulations and any other regulation under the Act;
  - (b) the most recent audited accounts of the Fund, together with (whether or not specifically requested) the auditor's report in relation to the accounts;

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- (c) the most recent actuarial report on the Fund, and any subsequent written advice by an actuary to the Board, to the extent that those documents are relevant to —
    - (i) the overall financial condition of the Fund; and
    - (ii) the entitlements of the person or, in the case of an Employer, the Employer's workers;
  - or
  - (d) the latest information given under regulation 223 to Members of the relevant scheme.
- (4) The Board need not give a person information or a copy of a document under this regulation if it has previously given the person the information or a copy of the document.

*[Regulation 224D inserted in Gazette 29 Jun 2001 p. 3101-3.]*

**224E. Information to be provided on transfer to eligible rollover fund**

If the Board transfers a benefit to an eligible rollover fund the Board is to give to the trustee of that fund —

- (a) if the Member entitled to the benefit is a lost Member (as defined under the SIS Act), a statement to that effect;
- (b) if the Member has specifically asked the Board not to disclose information of a specified kind — a statement to that effect; and
- (c) all information in the possession of the Board that could reasonably help the trustee of the eligible rollover fund to locate or identify the Member, other than information of a kind referred to in paragraph (b).

*[Regulation 224E inserted in Gazette 29 Jun 2001 p. 3103.]*

**224F. Confidential information**

Nothing in this Division requires or authorises the disclosure of —

- (a) internal working documents of the Board;



- (b) information or documents that would disclose, or tend to disclose —
  - (i) personal information of another person if, in the circumstances, the disclosure would be unreasonable;
  - (ii) trade secrets or other information having a commercial value that would be reduced or destroyed by the disclosure;

or

- (c) information or documents in relation to which the Board owes to another person a duty of non-disclosure.

*[Regulation 224F inserted in Gazette 29 Jun 2001 p. 3103-4.]*

## **Part 7 — Board elections**

### **225. Interpretation**

In this Part —

“**close of nominations**” means the end of the period within which nominations for candidates for an election must be lodged;

“**Member**” means —

- (a) a Member as defined in regulation 3;
- (b) a Provident Scheme Member or Pension Scheme Member;
- (c) a person who is in receipt of a pension under the Pension Scheme, other than a reversionary pension; or
- (d) a person who is entitled to a benefit under the Pension Scheme or the Provident Scheme that is not yet payable.

“**organisation**” means an organisation of employees registered pursuant to the *Conciliation and Arbitration Act 1904*<sup>3</sup> of the Commonwealth or the *Industrial Relations Act 1979*;

“**Registrar**” means the Registrar appointed under the *Industrial Relations Act 1979*;

“**returning officer**” means the person appointed under regulation 228;

“**UnionsWA**” means the body known as Unions Western Australia (and formerly known as the Trades and Labor Council of Western Australia).

*[Regulation 225 amended in Gazette 28 Jun 2002 p. 3021; 19 Mar 2003 p. 834-5.]*

### **226. Conduct of elections**

Elections for the purposes of section 8(1)(c) of the Act are to be conducted by UnionsWA in accordance with these regulations.

**227. Notification of need for an election**

The Board is to notify UnionsWA that an election is required —

- (a) at least 6 months before the expiry of the term of office of a current director elected under section 8(1)(c) of the Act; or
- (b) in the case of an election to fill a casual vacancy in the office of a director elected under section 8(1)(c) of the Act, as soon as practicable after the vacancy occurs.

**228. Appointment of returning officer**

On receipt of a notification under regulation 227 UnionsWA is to appoint a returning officer who is to be responsible for the conduct of the election.

**229. Returning officer to call for nominations**

- (1) On being appointed the returning officer is to cause to be published at least once in a newspaper circulating throughout the State a notice calling for nominations for candidates for the election.
- (2) The notice is to set out —
  - (a) the number of vacancies to be filled at the election;
  - (b) the term of office;
  - (c) the form in which nominations are to be made;
  - (d) the place where nominations are to be lodged;
  - (e) the period within which nominations are to be lodged, which is to be at least 14 days in duration; and
  - (f) the eligibility requirements for election.
- (3) The notice must be published not less than 14 days, and not more than 21 days, before the commencement of the period for lodging nominations.
- (4) The returning officer is to give a copy of the notice to the Registrar.

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**230. Nominations**

- (1) A nomination of a person as a candidate is to be —
  - (a) in writing, signed by the nominee;
  - (b) signed by 5 Members (not including the nominee, if he or she is a Member); and
  - (c) given to the returning officer before the close of nominations.
- (2) If a nomination does not comply with subregulation (1) the returning officer is to reject it and notify the nominee.
- (3) A candidate may withdraw his or her nomination before the close of nominations by giving notice to the returning officer.

*[Regulation 230 amended in Gazette 28 Jun 2002 p. 3027.]*

**231. Determination of need for an election**

- (1) If, at the close of nominations, the number of candidates is equal to the number of vacancies to be filled at the election, the candidate is, or candidates are, elected unopposed.
- (2) If, at the close of nominations, the number of candidates is less than the number of offices to be filled at the election —
  - (a) the candidate is, or candidates are, elected;
  - (b) the returning officer is to notify the Minister; and
  - (c) the unfilled vacancies are to be taken to be casual vacancies occurring on the day after the close of nominations.
- (3) If, at the close of nominations, the number of candidates is greater than the number of vacancies, an election is to be held.

**232. Entitlement of organisations to vote**

- (1) An organisation whose members includes people who are, or are eligible to become, Members may vote in an election.

- (2) On receipt of a notice under regulation 229(4) the Registrar is to determine, for each organisation entitled to vote in the election, the number of people who —
- (a) are, or are eligible to become, members of the organisation; and
  - (b) are, or are eligible to become, Members.
- (3) In making a determination under subregulation (2) the Registrar is to —
- (a) have regard to the public sector employment statistics of the State; and
  - (b) consult with —
    - (i) the department of the public service principally assisting the Minister to whom the administration of the *Industrial Relations Act 1979* is for the time being committed by the Governor in the administration of that Act;
    - (ii) UnionsWA;
    - (iii) the Board; and
    - (iv) the relevant organisation.
- (4) An organisation entitled to vote in an election may cast the number of votes equal to the number of people (as determined under subregulation (2)) who —
- (a) are, or are eligible to become, members of the organisation; and
  - (b) are, or are eligible to become, Members.

### **233. Ballot papers**

- (1) When an election is to be held the returning officer is to —
- (a) draw lots to determine the order in which the candidates' names are to appear on the ballot paper; and
  - (b) cause ballot papers to be printed for each organisation entitled to vote in the election.

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- (2) Each ballot paper is to set out —
  - (a) whether the election is a regular triennial election or to fill a casual vacancy;
  - (b) the name of the organisation entitled to exercise the vote;
  - (c) the number of votes the organisation is entitled to cast, as determined under regulation 232;
  - (d) the names of each of the candidates in the order determined under subregulation (1)(a);
  - (e) instructions on how to mark the ballot paper; and
  - (f) where, when and how the ballot paper is to be returned to the returning officer.
- (3) The time specified under subregulation (2)(f) as the time by which ballot papers must be returned must not be more than 28 days after the close of nominations.
- (4) Within 14 days of the close of nominations the returning officer is to deliver to the secretary (or a similar officer) of each organisation eligible to vote in the election a ballot paper initialled by the returning officer.

**234. Replacement ballot paper**

If the returning officer is satisfied that the ballot paper for an organisation entitled to vote at the election has not been received or has been lost or spoiled, the returning officer may issue a replacement ballot paper to that organisation.

**235. Voting**

- (1) To exercise its right to vote in an election an organisation is to —
  - (a) fill in the ballot paper by numbering the candidates sequentially in order of preference starting with the number “1”; and

- (b) return the ballot paper to the returning officer in accordance with the instructions set out on the ballot paper.
- (2) An organisation is taken to have complied with subregulation (1)(a) if it has, in accordance with that subregulation, numbered all except one candidate, and in that case that candidate is taken to rank last in the organisation's order of preference.
- (3) On receipt of a ballot paper the returning officer is to place it in a ballot box arranged for the purpose.

**236. Scrutineers**

- (1) Each candidate may, by notice to the returning officer, appoint a scrutineer and a deputy scrutineer.
- (2) A scrutineer or deputy scrutineer must not be a candidate in the election.
- (3) A scrutineer (or in the absence of the scrutineer, the deputy scrutineer) for each candidate may be present when the ballot box is opened and during the counting of the votes so as to observe all proceedings at the count.

**237. Counting of votes**

- (1) After the close of voting the returning officer is to open the ballot box, and examine and count the ballot papers.
- (2) The returning officer is to reject any ballot paper that —
  - (a) does not bear the initials of the returning officer; or
  - (b) is not marked in accordance with these regulations.
- (3) The votes are to be counted in accordance with Schedules 1 and 2 of the *Electoral Act 1907* as in force at the commencement of these regulations.

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**238. Declaration and notification of results**

- (1) After counting the votes the returning officer is to declare the results of the election and notify all the candidates.
- (2) Within 7 days of declaring the results the returning officer is to notify the Minister —
  - (a) of the results; and
  - (b) that the election has been conducted in accordance with these regulations.
- (3) The Minister is to cause notice of the results to be published in the *Gazette*.

**239. Preservation of ballot papers**

UnionsWA is to keep all nomination and ballot papers in safe custody for at least 12 months after the election.

**240. Disputes**

- (1) A person may appeal to the Minister against —
  - (a) the manner in which the election was conducted; or
  - (b) the result of the election.
- (2) An appeal is to be in writing and must be received by the Minister within one month of the publication of the election results in the *Gazette*.
- (3) The Minister is to determine an appeal made under subregulation (1) and the Minister's decision is final and binding.

**241. Costs of an election**

The Board may pay out of the Fund the reasonable costs incurred by UnionsWA, the returning officer or the Registrar in conducting an election.



## Part 8 — General

### Division 1 — Benefits

#### 242. Incapacity of beneficiary

- (1) If the Board considers that a person entitled to payment of a benefit is incapable of managing the person's affairs, the Board may —
  - (a) withhold payment of the benefit;
  - (b) pay all or part of the benefit to a person authorised by or under a written law to administer the entitled person's affairs; or
  - (c) pay all or part of the benefit to be applied for the care, maintenance, benefit and support of the entitled person or any of the person's dependants.
- (2) For the purpose of determining whether a person is incapable the Board may obtain and have regard to such medical or other evidence as it considers appropriate.

#### 243. Interest if payment delayed

If a benefit is not paid on the day on which it becomes payable, interest accrues on the benefit —

- (a) at a rate equal to —
  - (i) for any part of the benefit consisting of an amount equal to the balance of the Member's accumulation account, the Member's earning rate; or
  - (ii) for any other part of the benefit, the CPI rate plus 2%;
- (b) from the day on which the benefit became payable up to, but not including, the day on which it is paid; and
- (c) in a manner determined by the Board.

*[Regulation 243 amended in Gazette 29 Jun 2001 p. 3104; 28 Jun 2002 p. 3021; 19 Mar 2003 p. 841; 26 May 2006 p. 1927.]*

**244. Benefit in special circumstances**

- (1) If the Treasurer considers there are special circumstances the Treasurer may direct the Board to pay a benefit that is not otherwise payable to —
  - (a) a Member;
  - (b) a former Member;
  - (c) the personal representative of a Member or former Member;
  - (d) a person who is not a Member but in respect of whom contributions have been made as if he or she was a Member; or
  - (e) a class of persons each of whom is a person referred to in paragraphs (a) to (d),

and the Board is to give effect to that direction.

- (2) The cost to the Fund (if any) of paying a benefit under this regulation is to be assessed by an actuary and paid to the Fund by the person specified by the Treasurer in the direction.
- (3) When giving a direction under subregulation (1) the Treasurer may make payment of the benefit subject to any conditions the Treasurer considers appropriate.

*[Regulation 244 amended in Gazette 28 Jun 2002 p. 3021; 19 Mar 2003 p. 835; 13 Jun 2003 p. 2114; 26 Aug 2003 p. 3756-7; 10 Dec 2004 p. 5906.]*

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

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.

**246. Benefit does not pass to other persons**

Where, but for this regulation, a benefit would pass by operation of law to a person other than the person who is entitled to it under these regulations, the benefit does not so pass.

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

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

*[Regulation 246A inserted in Gazette 28 Jun 2002 p. 3027.]*

**246B. Exercise of investment powers after death or for incapacitated Member**

- (1) When a benefit (other than a reversionary pension) is payable because a Member has died the investment powers that would be exercisable by the Member if he or she were alive and entitled to the benefit may be exercised —
  - (a) if the benefit is payable to the executor or administrator of the estate of a Member —
    - (i) until probate of the will, or administration of the estate, of the Member is granted, by the Board; and
    - (ii) thereafter, by the executor or administrator;
  - or
  - (b) otherwise, by the Board.
- (2) If, under regulation 242, the Board does not pay a benefit to a person entitled to it, the investment powers exercisable by that person may be exercised —
  - (a) if there is a person authorised by or under a written law to administer the entitled person's affairs, by that authorised person; or

- (b) otherwise, by the Board.
- (3) When exercising a power under this regulation the Board is to act in what it reasonably considers to be the best interests of the person who is or will become entitled to the benefit.
- (4) In this regulation —
- “**investment powers**” means the powers exercisable by a Member under the regulations relating to investment choice for Members of the scheme of which the Member was a member.

*[Regulation 246B inserted in Gazette 10 Dec 2004 p. 5907.]*

### **Division 2 — Other matters**

#### **247. In-house assets — prescribed percentage**

The prescribed percentage for the purposes of section 20(3) of the Act is 5%.

#### **248. Recovery of money owing to the Fund by a Member**

- (1) The Board must not give a direction under section 26(2) of the Act for an Employer to deduct more than \$20 a fortnight from a Member’s pay unless the Member agrees.
- (2) If a Member who owes money to the Fund notifies the Board that he or she cannot reasonably afford to repay the money at the rate of \$20 a fortnight, the Board is to negotiate with the Member with a view to arranging for the Member to repay the money at a lesser rate or in some other manner.

#### **248A. Payment to be made in accordance with deed**

The Crown is to make payments to the Board in accordance with the deed between the Treasurer and the Board entered into in June 2001 relating to the under-funding of the West State Super Scheme which occurred between 1 July 1992 and 30 June 1998.

*[Regulation 248A inserted in Gazette 29 Jun 2001 p. 3104.]*

**249. Power to restore lost rights**

- (1) If a person has ceased to be entitled to a right, privilege or benefit to which the person was, or might have been, entitled under the Act and the Board is satisfied that —
- (a) the cessation was not due to the person's own fault; and
  - (b) it is just and equitable to do so,

the Board may —

- (c) permit the person to exercise the right;
- (d) grant the person the privilege; or
- (e) pay the benefit to the person,

even if any relevant time period prescribed by or under the Act has expired.

- (2) For the purposes of subregulation (1) the Board may make any enquiries it considers appropriate.
- (3) When exercising a power under subregulation (1) the Board may impose any conditions it considers appropriate.

*[Regulation 249 amended in Gazette 28 Jun 2002 p. 3028.]*

**250. Referral of decision for independent review**

Subject to the *Superannuation (Resolution of Complaints) Act 1993* of the Commonwealth a person aggrieved by a decision of the Board on a review under section 13(1) of the Act may refer the decision to the Superannuation Complaints Tribunal established by that Act by making a complaint in accordance with that Act.

**251. Documents and information**

- (1) An application, approval, certificate, determination, direction, notice, report, request, return or statement made or given for the purposes of the Act must be made or given in writing.

- (2) If a person is required by these regulations to provide information or evidence to the Board, the Board may require the person to provide that information or evidence in writing and the person is to comply with that requirement.
- (3) A document to be used for the purposes of the Act must be —
  - (a) in the form (if any) determined by the Board;
  - (b) signed by the person making or giving it; and
  - (c) if it is to be given to the Board, delivered to the offices of the Board.
- (4) The Board may accept a document given to it —
  - (a) other than in accordance with subregulation (3); or
  - (b) after the expiry of the time fixed under the Act for giving the document.
- (5) In this regulation —  
**“document”** means anything in writing.

*[Regulation 251 amended in Gazette 28 Jun 2002 p. 3028.]*

**252. Special provisions for certain Gold State Super Members and West State Super Members**

Schedule 2 has effect.

**253. Discontinuance of old rules**

The continued application of —

- (a) the provisions of Parts I (including Schedule 1), VIIA, VIIB and VIII (including Schedule 4) of the GES Act to and in relation to the West State Super Scheme; and
- (b) Parts I (including Schedule 1), IV, V, VI, VII, VIIB and VIII (including Schedule 4) of the GES Act to and in relation to the Gold State Super Scheme,

under section 26(1) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* is discontinued.

**254. Transitional provisions**

Schedule 3 has effect.

*[Part 9<sup>2</sup> omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **Schedule 1 — Employers**

[r. 7]

### **Division 1 — State funded employers**

1. **Departments** established or continued, or deemed to have been established, under the *Public Sector Management Act 1994*, other than department or parts of departments listed in Division 2
2. **The Government of Western Australia** in relation to a worker in respect of whom the obligations of the Government are being discharged under regulation 9(1)(a) by a Minister
3. **The Government of Western Australia** in relation to a worker in respect of whom the obligations of the Government are being discharged by a person, or by the employing authority of a department or organisation, specified in an order under regulation 9(1)(b) if the order specifies that in relation to that worker the Government is a Division 1 Employer
- 3a. **The Government of Western Australia** in relation to a worker who is a parliamentarian
4. **Agent General** appointed under the *Agent General Act 1895*
5. **Agricultural Produce Commission** established by the *Agricultural Produce Commission Act 1988*
- [6. *deleted*]
7. **Chemistry Centre (WA)**
8. **Colleges** established or continued under the *Vocational Education and Training Act 1996*
9. **Commissioner for Public Sector Standards** under the *Public Sector Management Act 1994*
10. **Commissioner for Equal Opportunity** appointed under the *Equal Opportunity Act 1984*
11. **Commissioner of Police** appointed under the *Police Act 1892*
12. **Coordinator of Energy** appointed under the *Energy Coordination Act 1994*
13. **Coordinator of Water Services** appointed under the *Water Services Licensing Act 1995*<sup>4</sup>
- 13A. **Corruption and Crime Commission** established under the *Corruption and Crime Commission Act 2003*



14. **Director of Public Prosecutions** under the *Director of Public Prosecutions Act 1991*
15. **Governor** under the *Governor's Establishment Act 1992*
16. **Hospital Boards** constituted under section 15 of the *Hospitals and Health Services Act 1927* and the **Minister** to whom the administration of that Act has for the time being been committed by the Governor in relation to any public hospital under the control of that Minister under section 7 of that Act
17. **Information Commissioner** under the *Freedom of Information Act 1992*
18. **Inspector of Custodial Services** under the *Inspector of Custodial Services Act 2003*
- [19. *deleted*]
20. **Parliamentary Commissioner for Administrative Investigations** appointed under the *Parliamentary Commissioner Act 1971*
21. **Perth Theatre Trust** established by the *Perth Theatre Trust Act 1979*
22. **President of the Legislative Council, Speaker of the Legislative Assembly, President of the Legislative Council and Speaker of the Legislative Assembly acting jointly** under the *Parliamentary and Electorate Staff (Employment) Act 1992*
23. **Rural Business Development Corporation** continued under the *Rural Business Development Corporation Act 2000*
24. **State Supply Commission** established under the *State Supply Commission Act 1991*
25. **The Agriculture Protection Board of Western Australia** constituted under the *Agriculture Protection Board Act 1950*
26. **The Board of the Art Gallery of Western Australia** continued by the *Art Gallery Act 1959*
27. **The Library Board of Western Australia** constituted under the *Library Board of Western Australia Act 1951*
28. **The Western Australian Industrial Relations Commission** continued by the *Industrial Relations Act 1979*
29. **The Western Australian Museum** constituted by the *Museum Act 1969*
30. **Valuer General** appointed under the *Valuation of Land Act 1978*
31. **Western Australian Planning Commission** established by the *Western Australian Planning Commission Act 1985*

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32. **Commission for Occupational Safety and Health** (WorkSafe W A) established by the *Occupational Safety and Health Act 1984*

*[Division 1 amended in Gazette 29 Jun 2001 p. 3105; 26 Aug 2003 p. 3757; 1 Dec 2004 p. 5703 and 5717; 26 May 2006 p. 1931; amended by Act No. 75 of 2003 s. 56(1).]*

**Division 2 — Self funding employers**

1. **The Government of Western Australia** in relation to a worker in respect of whom the obligations of the Government are being discharged by a person, or by the employing authority of a department or organisation, specified in an order under regulation 9(1)(b) unless the order specifies that in relation to that worker the Government is a Division 1 Employer
2. **Animal Resources Authority** established by the *Animal Resources Authority Act 1981*
- [3. *deleted*]
4. **Botanic Gardens and Parks Authority** established under the *Botanic Gardens and Parks Authority Act 1998*
5. **Builders' Registration Board of Western Australia** continued under the *Builders' Registration Act 1939*
6. **Building and Construction Industry Training Board** established under the *Building and Construction Industry Training Fund and Levy Collection Act 1990*
7. **Commissioner of Main Roads** appointed under the *Main Roads Act 1930*
- [8. *deleted*]
9. **Construction Industry Long Service Leave Payments Board** established under *Construction Industry Portable Paid Long Service Leave Act 1985*
10. **Country High School Hostels Authority** established under the *Country High School Hostels Authority Act 1960*
11. **Country Housing Authority** established under the *Country Housing Act 1998*
12. **Curriculum Council** established under the *Curriculum Council Act 1997*
13. **Department of Conservation and Land Management**
14. **Department of Transport**

15. **Disability Services Commission** continued under the *Disability Services Act 1993*
16. **East Perth Redevelopment Authority** established under the *East Perth Redevelopment Act 1991*
17. **Eastern Goldfields Transport Board** continued under the *Eastern Goldfields Transport Board Act 1984*
- 17A. **Electricity Generation Corporation** established by the *Electricity Corporations Act 2005*
- 17B. **Electricity Networks Corporation** established by the *Electricity Corporations Act 2005*
- 17C. **Electricity Retail Corporation** established by the *Electricity Corporations Act 2005*
18. **Family Court of Western Australia** continued by the *Family Court Act 1997*
19. **Fire and Emergency Services Authority of Western Australia** established under the *Fire and Emergency Services Authority of Western Australia Act 1998*
20. **Forest Products Commission** established by the *Forest Products Act 2000*
21. **Fremantle Cemetery Board** established by the Governor under the *Cemeteries Act 1986*
22. **Gaming and Wagering Commission of Western Australia** established under the *Gaming and Wagering Commission Act 1987*
23. **Government Employees' Housing Authority** established under the *Government Employees' Housing Act 1964*
24. **Government Employees Superannuation Board** under the Act
25. **Heritage Council of Western Australia** established under the *Heritage of Western Australia Act 1990*
26. *Hospitals and Health Services Act 1927* — all agencies established under section 7B(1) of that Act
27. **Insurance Commission of Western Australia** continued under the *Insurance Commission of Western Australia Act 1986*
28. **Keep Australia Beautiful Council (W.A.)** established under the *Litter Act 1979*
29. **Legal Aid Commission of Western Australia** established under the *Legal Aid Commission Act 1976*

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- 30. **Lotteries Commission** preserved and continued under the *Lotteries Commission Act 1990*
- [31. *deleted*]
- 32. **Metropolitan Cemeteries Board** established under the *Cemeteries Act 1986*
- 33. **Midland Redevelopment Authority** established under the *Midland Redevelopment Act 1999*
- 34. **Minerals and Energy Research Institute of Western Australia** established under the *Minerals and Energy Research Act 1987*
- 35. **Nurses Board of Western Australia** established under the *Nurses Act 1992*
- 36. **Office of Health Review** established under the *Health Services (Conciliation and Review) Act 1995*
- 37. **Perth International Centre for Application of Solar Energy** established under the *Perth International Centre for Application of Solar Energy Act 1994*
- 38. **Perth Market Authority** preserved and continued under the *Perth Market Act 1926*
- 39. **Port authorities** established under the *Port Authorities Act 1999*
- 40. **Potato Marketing Corporation of Western Australia** preserved and continued under the *Marketing of Potatoes Act 1946*
- 40a. **Public Transport Authority of Western Australia** established under the *Public Transport Authority Act 2003*
- 41. **Public Trust Office** established by the *Public Trustee Act 1941*
- 42. **Racing and Wagering Western Australia** established by the *Racing and Wagering Western Australia Act 2003*
- 43. **Regional development commissions** established under the *Regional Development Commissions Act 1993*
- 43A. **Regional Power Corporation** established by the *Electricity Corporations Act 2005*
- 44. **Rottnest Island Authority** established under the *Rottnest Island Authority Act 1987*
- 45. **Small Business Development Corporation** established under the *Small Business Development Corporation Act 1983*
- 46. **Subiaco Redevelopment Authority** established under the *Subiaco Redevelopment Act 1994*

47. **The Aboriginal Affairs Planning Authority** continued by the *Aboriginal Affairs Planning Authority Act 1972*
48. **The Burswood Park Board** established under the *Parks and Reserves Act 1895*
49. **The National Trust of Australia (W.A.)** established and incorporated under the *National Trust of Australia (W.A.) Act 1964*
50. **The State Housing Commission** (Homeswest) preserved and continued under the *Housing Act 1980*
- [51. *deleted*]
- [52. *deleted*]
53. **Water and Rivers Commission** established under the *Water and Rivers Commission Act 1995*
54. **Water Corporation** established under the *Water Corporation Act 1995*
55. **Waterways Conservation Act 1976** — all **management authorities** constituted under section 10 and 14 of that Act
56. **Western Australian Alcohol and Drug Authority** established under the *Alcohol and Drug Authority Act 1974*
57. **Western Australian Coastal Shipping Commission** established under the *Western Australian Coastal Shipping Commission Act 1965*
58. **Western Australian Egg Marketing Board** constituted under the *Marketing of Eggs Act 1945*
59. **Western Australian Greyhound Racing Association** established under the *Western Australian Greyhound Racing Association Act 1981*
60. **Western Australian Health Promotion Foundation** established under the *Tobacco Control Act 1990*
61. **Western Australian Land Authority** (Landcorp) established under the *Western Australian Land Authority Act 1992*
62. **Western Australian Meat Industry Authority** established under the *Western Australian Meat Industry Authority Act 1976*
63. **Western Australian Mint** preserved and continued in existence under the *Gold Corporation Act 1987*
64. **Western Australian Sports Centre Trust** established under the *Western Australian Sports Centre Trust Act 1986*
65. **Western Australian Tourism Commission** established under the *Western Australian Tourism Commission Act 1983*

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66. **Western Australian Treasury Corporation** established under the  
*Western Australian Treasury Corporation Act 1986*

[67. *deleted*]

68. **WorkCover Western Australia Authority** (WorkCover Western  
Australia) constituted under the *Workers' Compensation and Injury  
Management Act 1981*<sup>5</sup>

69. **Zoological Parks Authority** established under the *Zoological Parks  
Authority Act 2001*

*[Division 2 amended in Gazette 15 Aug 2003 p. 3692; 26 Aug 2003  
p. 3757; 30 Dec 2003 p. 5725-6; 25 Jun 2004 p. 2232 and 2234;  
1 Dec 2004 p. 5717; 31 Mar 2006 p. 1354.]*

## **Schedule 2 — Special provisions for certain Gold State Super Members and West State Super Members**

[r. 252]

### **Part 1 — Gold State Super Members who transferred from the Pension Scheme or Provident Scheme**

#### **1. Interpretation**

(1) In this Part —

**“1987 part-time transferee”** means a person who became a member of the 1987 scheme under the GES Act under clause 14 of Schedule 4 to that Act;

**“adjusted final remuneration”** means a Part 1 Member’s final remuneration calculated as if the Member’s contributory membership period included the Member’s transferred service;

**“compulsory transferee”** means a person who became a member of the 1987 scheme under the GES Act under clause 6 of Schedule 4 to that Act;

**“Part 1 Member”** means —

- (a) a voluntary transferee;
- (b) a compulsory transferee;
- (c) a 1987 part-time transferee;
- (d) a post-1987 part-time transferee; or
- (e) a retrenched transferee;

**“post-1987 part-time transferee”** means a person who —

- (a) became a member of the 1987 scheme under the GES Act under clause 14A of Schedule 4 to that Act; or
- (b) becomes a Gold State Super Member under regulation 19(1)(b);

**“retrenched transferee”** means a person who —

- (a) became a member of the 1987 scheme under the GES Act by making an election under clause 7B of Schedule 4 to that Act; or

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- (b) becomes a Gold State Super Member under regulation 19(1)(c);

**“transfer day”** means —

- (a) for a voluntary transferee, the day on which the Member’s election to transfer under Schedule 4 to the GES Act was lodged with the Board;
- (b) for a compulsory transferee, 1 July 1987;
- (c) for a 1987 part-time transferee, the day on which the Member elected to become a member of the 1987 scheme under the GES Act;
- (d) for a post-1987 part-time transferee, the day on which the Member ceased to be a contributor under the S&FB Act because he or she was no longer required to give his or her whole time to the duties of his or her employment; and
- (e) for a retrenched transferee, the day on which the Member is or was retrenched;

**“transferred contributions”** means, subject to subclause (2) —

- (a) for a Part 1 Member who was, immediately before the Member’s transfer day, a subscriber or contributor to the Provident Account (within the meaning of the S&FB Act) — the amount, including interest, that was standing to the credit of the Member in the Provident Account on that day; or
- (b) for a Part 1 Member who was, immediately before the Member’s transfer day, contributing for units of pension under the S&FB Act —
  - (i) the amount of the contributions made by the Member under the S&FB Act excluding moneys held to the credit of the Member under section 38(2) or 41(3a) of the S&FB Act; plus
  - (ii) compound interest calculated at the rate of 10% from the time the contributions were made up to and including the Member’s transfer day;



**“transferred service”** means —

- (a) the period of service or employment of a Part 1 Member that constituted service for the purposes of the S&FB Act before the Member’s transfer day; plus
- (b) for a 1987 part-time transferee — the number of complete months of full-time service that the Board considers equivalent to the number of days of part-time service actually completed by the Member before 1 July 1987;

**“voluntary transferee”** means a person who became a member of the 1987 scheme under the GES Act by making an election under clause 4, 5, 7 or 7A of Schedule 4 to that Act.

- (2) The transferred contributions for a 1987 part-time transferee are nil.

**2. Contributions by the Crown for unfunded liability**

The Crown is to contribute to the Fund under regulation 31 for a Part 1 Member even if he or she is not a Member of the kind described in regulation 31(1)(a) or (b).

**3. Benefit on retirement, death or disablement**

- (1) If a benefit becomes payable to or in respect of a Part 1 Member under regulations 38 to 43 the benefit is increased by adding an amount calculated in accordance with subclause (2).
- (2) The amount calculated under this subclause is B in the formula —

$$B = \left( FR \times \frac{TS}{12} \times \frac{C}{5} \times \frac{12}{100} \right) + A$$

where —

FR is the Member’s adjusted final remuneration;

TS is the number of complete months of the Member’s transferred service;

C is —

- (i) for a retrenched transferee, 5%; or
- (ii) otherwise, the Member’s average contribution rate;

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- A is the Member's transferred contributions plus compound interest calculated —
- (i) at the rate of the CPI rate plus 2%;
  - (ii) from the Member's transfer day up to, but not including, the day on which the benefit becomes payable.

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

- (1) If a Part 1 Member becomes entitled to a benefit under regulation 44 because the Member withdraws from the Gold State Super Scheme under regulation 24, the Member is also entitled to either —
- (a) both —
    - (i) a preserved benefit under subclause (3); and
    - (ii) a preserved benefit under subclause (4);or
  - (b) a benefit under subclause (4) that is not preserved.
- (2) If a Part 1 Member becomes entitled to a benefit under regulation 44 for any other reason the Member is also entitled to —
- (a) a preserved benefit under subclause (3); and
  - (b) either —
    - (i) a preserved benefit under subclause (4); or
    - (ii) a benefit under subclause (4) that is not preserved.
- (3) The benefit under this subclause is an amount equal to B in the formula —

$$B = FR \times \frac{TS}{12} \times \frac{C}{5} \times \frac{12}{100}$$

where —

- FR is the Member's adjusted final remuneration;
- TS is the number of complete months of the Member's transferred service;
- C is —
- (i) for a retrenched transferee 5%;

- (ii) for a Part 1 Member who withdrew from the Gold State Super Scheme under regulation 24 and elected in the Member's application under that regulation to take the Member's transferred contributions immediately — zero; or
  - (iii) otherwise, the Member's average contribution rate.
- (4) The benefit under this subclause is an amount equal to the Member's transferred contributions plus compound interest calculated —
  - (a) at the rate of the CPI rate plus 2%;
  - (b) from the Member's transfer day up to, but not including, the day on which the member becomes entitled to it.
- (5) Despite the definition of "preserved benefit" in regulation 3, a benefit described in subclause (1) or (2) as a preserved benefit is a preserved benefit for the purposes of regulations 45 and 46.
- (6) Despite regulation 46(a), the interest rate to be applied under regulation 46 to a benefit under subclause (4) is a rate equal to the CPI rate plus 2%.

*[Clause 4 amended in Gazette 13 Jun 2003 p. 2114.]*

**5. Transferred contributors for limited benefits — benefit under regulation 43**

- (1) In this clause —  
**"transferred contributor for limited benefits"** means a Part 1 Member who was, immediately before the Member's transfer day, a contributor for limited benefits for the purposes of section 61 of the S&FB Act.
- (2) If a benefit becomes payable under regulation 43 to or in respect of a transferred contributor for limited benefits, the amount of the benefit is to be calculated as if G in the formula in that regulation was an amount equal to 4 times the Member's average contribution rate.

**6. Curtin and Edith Cowan Universities deemed to be Employers for Part 1 Members**

- (1) If a Part 1 Member was, immediately before the Member's transfer day, an employee of a University, then while the person remains a

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Gold State Super Member the University for which that Member works is deemed to be a Division 2 Employer with respect to that Member.

(2) In this clause —

“**University**” means the Curtin University of Technology established under the *Curtin University of Technology Act 1966* or the Edith Cowan University established under the *Edith Cowan University Act 1984*.

**Part 2 — Gold State Super Members who were formerly non-contributory members**

**7. Interpretation**

In this Part —

“**non-contributory period**” means the period during which a Part 2 Member was a non-contributory member under the previous law;

“**Part 2 Member**” means a Gold State Super Member who, under the previous law, was a non-contributory member before becoming a contributory member;

“**previous law**” means the GES Act as in force before the commencement of Part 2 of the *Superannuation Legislation Amendment Act 1993*.

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

The Crown is to contribute to the Fund under regulation 31 for a Part 2 Member who, at any time during the Member’s non-contributory period was employed by an employer who was, at that time listed, or deemed by or under that Act to be listed, in Part A of Schedule 1 to the GES Act, even if he or she is not a Member of the kind described in regulation 31(1)(a) or (b).

**9. Recognition of service as a non-contributory member**

When calculating the benefit payable to or in respect of a Part 2 Member —

- (a) the Member’s contributory membership period is to be taken to include the Member’s non-contributory period; and

- (b) the Member's average contribution rate for the Member's non-contributory period is to be taken to be —
  - (i) for the part of the non-contributory period that was before 1 July 1992 — 0.825; and
  - (ii) for the part of the non-contributory period that was on or after 1 July 1992 — one quarter of the charge percentage for the quarter during which the Member elected to become a contributory member.

### **Part 3 — Director of Public Prosecutions**

#### **10. Interpretation**

In this Part —

“DPP” means the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*.

#### **11. Employer**

- (1) If an order is in force under regulation 9(1)(b) in relation to the DPP, then in relation to the DPP, the Government of Western Australia is a Division 1 Employer.
- (2) If, on the commencement day, an instrument is in force under clause 3(2) of Schedule 1 to the *Director of Public Prosecutions Act 1991* specifying a person or department that is to be treated as the employer of the DPP, that instrument continues in force on and from that day as if it were an order made under regulation 9(1)(b) specifying that person or department.

#### **12. Member contributions**

If the DPP is a Gold State Super Member —

- (a) the DPP is taken to have selected under regulation 33 the highest possible member contribution rate;
- (b) the DPP is not required to pay member contributions;
- (c) the Employer is to pay the contributions that would, but for paragraph (b), be payable by the DPP; and
- (d) those contributions are to be taken to have been made by the DPP.

**Part 4 — Members who became ASIC staff**

*[Heading amended in Gazette 28 Sep 2001 p. 5356.]*

**13. Interpretation**

In this Part —

“ASIC” means —

- (a) the Australian Securities Commission established by the *Australian Securities and Investments Commission Act 1989* of the Commonwealth;
- (b) the Australian Securities and Investments Commission as the Australian Securities Commission became known under that Act; and
- (c) the Australian Securities and Investments Commission as continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

“ASIC worker” means a person who is a member of the staff of ASIC;

“relevant regulations” means in relation to a person who, immediately before becoming an ASIC worker, was —

- (a) a contributory member under the GES Act — so much of these regulations as relate to the Gold State Super Scheme; or
- (b) a non-contributory member under the GES Act — so much of these regulations as relate to the West State Super Scheme.

*[Clause 13 amended in Gazette 28 Sep 2001 p. 5356.]*

**14. Continuation of membership**

(1) If an ASIC worker —

- (a) was, immediately before becoming an ASIC worker, a member under the *Government Employees Superannuation Act 1987*<sup>6</sup> as then in force (“old law”);

- (b) elected under section 83 of the *Corporations (Western Australia) Act 1990* as in force before the commencement day, to continue to be such a member; and
- (c) was still such a member immediately before the commencement day,

then while he or she remains an ASIC worker the relevant regulations apply to and in relation to the person as if ASIC were an Employer.

- (2) While a person continues to be a Member after becoming an ASIC worker, ASIC is deemed to be a Division 2 Employer, but only in respect of that Member.

*[Clause 14 amended in Gazette 28 Sep 2001 p. 5356.]*

### **Part 5 — Curtin and Edith Cowan University Staff**

#### **15. Interpretation**

In this Part —

“**relevant regulations**” means so much of these regulations as relate to the Gold State Super Scheme;

“**University**” means the Curtin University of Technology established under the *Curtin University of Technology Act 1966* or the Edith Cowan University established under the *Edith Cowan University Act 1984*;

“**University staff member**” means a person who works for a University.

#### **16. Continued membership**

- (1) If a Gold State Super Member becomes a University staff member and elects to continue to be a Member then while he or she remains a University staff member the relevant regulations apply to and in relation to the person as if the University for which the person works were an Employer.
- (2) If a University staff member —
  - (a) was, before becoming a University staff member, a member of the 1987 scheme under the GES Act;

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- (b) under clause 16 of Schedule 4 to the GES Act continued to be such a member after becoming a University staff member, and
- (c) was still such a member immediately before the commencement day,

then while he or she remains a University staff member the relevant regulations apply to and in relation to the person as if the University for which the person works were an Employer.

- (3) While a person continues to be a Member after becoming a University staff member, the University for which that Member works is deemed to be a Division 2 Employer, but only in respect of that Member.

**Part 6 — Police officers, magistrates and industrial commissioners**

**17. Interpretation**

In this Part —

**“average Part 6 contribution rate”** means the sum of the contribution rates selected by a Part 6 Member under clause 20 applying for each day on which the person was a Part 6 Member divided by the number of days on which the person was a Part 6 Member;

**“end date”** means the date determined under clause 18;

**“industrial commissioner”** means a commissioner under the *Industrial Relations Act 1979*;

**“magistrate”** means a stipendiary magistrate under the *Stipendiary Magistrates Act 1957*;

**“over 50 transferee police officer”** means a police officer who —

- (a) became a Gold State Super Member by transferring from the Pension Scheme;
- (b) was over 50 when he or she became a Gold State Super Member; and
- (c) was a Part 6 Member for the whole of the time from when he or she became a Gold State Super Member until he or she turned 60 or ceased to be an eligible Gold State worker (whichever occurred first);



**“Part 6 Member”** means a police officer, magistrate or industrial commissioner who has elected to be a Part 6 Member under clause 19 and who has not ceased to be a Part 6 Member;

**“police officer”** means a person appointed under Part I of the *Police Act 1892* other than the Commissioner of Police.

**18. Meaning of “end date”**

- (1) For the purposes of this Part the end date for a police officer is —
- (a) if the person was, on his or her 45th birthday, both a Gold State Super Member and a police officer — the person’s 55th birthday; or
  - (b) otherwise —
    - (i) if he or she transferred to the Gold State Super Scheme under Schedule 4 to the GES Act and was a police officer at the time of the transfer — the earlier of —
      - (I) the day 10 years after the day on which the person became both a Gold State Super Member and a police officer; and
      - (II) the Member’s 60th birthday;
    - or
    - (ii) otherwise — the person’s 55th birthday.
- (2) For the purposes of this Part the end date for a magistrate or an industrial commissioner is —
- (a) if the person was, on his or her 45th birthday, both a Gold State Super Member and a magistrate or industrial commissioner — the person’s 55th birthday; or
  - (b) otherwise — the day 10 years after the day on which the person became both a Gold State Super Member and a magistrate or industrial commissioner.

**19. Part 6 Members**

- (1) A Gold State Super Member who —
- (a) is a police officer, magistrate or industrial commissioner; and

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- (b) whose —
  - (i) average contribution rate is 5%; or
  - (ii) current member contribution rate is 7%,

may, at any time before the end day, elect to become a Part 6 Member by giving notice to the Board.

- (2) An election under subclause (1) takes effect on the later of —
  - (a) the Member's 45th birthday; and
  - (b) the day on which it is made.
- (3) A Part 6 Member may withdraw from Part 6 at any time by giving notice to the Board.
- (4) A person ceases to be a Part 6 Member —
  - (a) if, before the end day, the person —
    - (i) ceases to be an eligible Gold State worker;
    - (ii) withdraws from Part 6 under subclause (3); or
    - (iii) ceases to be a police officer, magistrate or industrial commissioner,on the day on which the person so ceases or withdraws; or
  - (b) otherwise, on the end day.

**20. Extra contributions**

- (1) A Part 6 Member is to select a contribution rate of —
  - (a) in the case of a police officer, 1%, 2% or 2.5%; or
  - (b) in the case of a magistrate or industrial commissioner, 1%, 2%, 3%, 4% or 5%,

and give notice of that selection to the Board.

- (2) Regulation 33(3), (4) and (8) apply to a selection under subclause (1) as if it were a selection under regulation 33(1).
- (3) Subject to regulations 35 and 36 a Part 6 Member is to contribute to the Fund for each complete contribution period during which the person is a Part 6 Member an amount equal to —

- (a) the rate selected by a Part 6 Member under subclause (1); multiplied by
- (b) the Member's superannuation salary in respect of the contribution period,

rounded up or down to the nearest whole dollar.

- (4) For the purposes of regulations 34 and 35 contributions under subclause (3) are taken to be member contributions.

**21. Increased Employer contributions**

- (1) While a person is a Part 6 Member the amount of the contributions payable under regulation 29 by the person's Employer is to be calculated as if M in the formula in regulation 29(3) was the Member's member contribution rate plus the rate selected by the Member under clause 20.
- (2) The Crown is to contribute to the Fund under regulation 31 for a person whose benefit is increased under this Part even if he or she is not a Member of the kind described in regulation 31(1)(a) or (b).

**22. Retirement benefit**

If a person who is, or was at any time, a Part 6 Member becomes entitled to a benefit under regulation 38 the benefit is to be increased by adding to it an amount equal to B in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

R is the Member's final remuneration;

M is the number of complete months during which the person was a Part 6 Member;

C is the Member's average Part 6 contribution rate; and

N is —

- (i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or

(ii) in any other case, zero.

**23. Death benefit**

- (1) If a benefit becomes payable under regulation 39 in respect of a police officer, magistrate or industrial commissioner who was under 45 when he or she died the benefit is to be increased by adding to it an amount equal to B in the formula —

$$B = R \times \frac{C}{5}$$

where —

R is the Member's final remuneration; and

C is the Member's average contribution rate.

- (2) If a benefit becomes payable under regulation 39 in respect of a Gold State Super Member who was at any time a Part 6 Member the benefit is to be increased by adding to it an amount equal to B in the formula —

$$B = \left[ R \times \frac{M + (F \times P)}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

R is the Member's final remuneration;

M is the number of complete months during which the person was a Part 6 Member;

F is —

- (i) if the Member —

(I) was a Part 6 Member when he or she died; and

(II) died before the end day,

the number of complete months from the day on which the Member died to the end day; or

- (ii) otherwise, zero;

P is —

- (i) if the Member was working on a part-time basis at the time the Member died, the number of hours

customarily worked in a week by the Member divided by the number of hours customarily worked in a week by a comparable full-time employee (excluding overtime); or

(ii) otherwise, one;

C is the Member's average Part 6 contribution rate; and

N is —

(i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or

(ii) in any other case, zero.

**24. Total and permanent disablement benefit**

If a police officer, magistrate or industrial commissioner —

(a) who is under 45; or

(b) who is or was at any time a Part 6 Member,

becomes entitled to a benefit under regulation 40, the benefit that is to be paid is a benefit equal to the benefit that would have been payable under regulation 39 if the Member had died on the day the Member ceased to be an eligible Gold State worker, as increased in accordance with clause 23.

**25. Partial and permanent disablement**

(1) If a police officer, magistrate or industrial commissioner who is under 45 becomes entitled to a benefit under regulation 41 the benefit is to be increased by adding to it an amount equal to B in the formula —

$$B = R \times \frac{C}{5}$$

where —

R is the Member's final remuneration; and

C is the Member's average contribution rate.

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- (2) If a person who is or was at any time a Part 6 Member becomes entitled to a benefit under regulation 41 the benefit is to be increased by adding to it an amount equal to B in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ (R - E) \times \frac{F}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

R is the Member's final remuneration;

M is the number of complete months during which the person was a Part 6 Member;

C is the Member's average Part 6 contribution rate;

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

F is —

(i) if the Member —

(I) was a Part 6 Member when he or she ceased to be an eligible Gold State worker; and

(II) ceased to be an eligible Gold State worker before the end day,

the number of complete months from the day on which the Member ceased to be an eligible Gold State worker to the end day; or

(ii) otherwise, zero;

and

N is —

(i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or

(ii) in any other case, zero.

- (3) Subregulation 41(2) applies in respect of the determination of the value of E in the formula in subclause (1).

**26. Benefit in other circumstances**

If a person who is or was at any time a Part 6 Member becomes entitled to a benefit under regulation 43 or 44 the benefit is to be increased by adding to it an amount equal to B in the formula —

$$B = \left[ R \times \frac{M}{12} \times \frac{C}{2.5} \times \frac{10}{100} \right] + \left[ R \times \frac{N}{12} \times \frac{C}{2.5} \times \frac{6}{100} \right]$$

where —

- R is the Member's final remuneration;
- M is the number of complete months during which the person was a Part 6 Member;
- C is the Member's average Part 6 contribution rate; and
- N is —
  - (i) in the case of an over 50 transferee police officer, the number of complete months from the person's 50th birthday to the day on which he or she became a Part 6 Member; or
  - (ii) in any other case, zero.

**27. Transitional provisions**

- (1) If a person was, immediately before the commencement day, making higher contributions to the 1987 scheme under the GES Act in accordance with a discretion notice, then on and from that day, the person continues as a Part 6 Member subject to this Part.
- (2) If, at any time before the commencement day, a person made higher contributions to the 1987 scheme under the GES Act in accordance with a discretion notice, then on and from that day this Part applies to and in relation to the person as if —
  - (a) at all times while the person had been so contributing —
    - (i) this Part had been in operation; and
    - (ii) the person had been a Part 6 Member;and
  - (b) the contribution rates elected by the person, and the contributions paid by and in respect of, the person in

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accordance with the discretion notice, had been selected and paid under this Part.

(3) In relation to a person who at any time before the commencement day, made higher contributions to the 1987 scheme under the GES Act in accordance with a discretion notice, a reference in this Part to the person being a Gold State Super Member includes a reference to the person being a member of the 1987 scheme under the GES Act.

(4) In this clause —

**“discretion notice”** means —

- (a) the notice purportedly given to the Board by the Treasurer under section 49 of the GES Act on 28 December 1987 relating to contributions and benefits for certain police officers, magistrates and industrial commissioners; or
- (b) the notice purportedly given to the Board by the Treasurer under section 49 of the GES Act on 15 September 1988 relating to contributions and benefits for certain police officers,

in each case, as validated by section 58 of the *Government Employees Superannuation Amendment Act (No. 2) 1995*.



## Schedule 3 — Transitional provisions

[r. 254]

### Part 1 — Preliminary

#### 1. Interpretation — this Schedule

(1) In this Schedule —

“**1987 scheme**” means the superannuation scheme continued by section 29(b) of the Act as it was immediately before the commencement day;

“**1993 scheme**” means the superannuation scheme continued by section 29(a) of the Act as it was immediately before the commencement day;

“**continues**” means continues on and after the commencement day;

“**continuing Gold State Super Member**” means a Gold State Super Member who was a member of the 1987 scheme immediately before the commencement day;

“**continuing Member**” means a continuing West State Super Member or a continuing Gold State Super Member;

“**continuing West State Super Member**” means a West State Super Member who was a member of the 1993 scheme immediately before the commencement day;

“**current**” means in force immediately before the commencement day.

(2) Words and phrases defined in Part 2, 3 or 7 of these regulations have the same meanings when used in Part 2, 3 or 5 (respectively) of this Schedule as they have in that Part of the regulations.

#### 2. Interpretation — general

In the regulations, in relation to a continuing Member —

“**preserved benefit**” includes a benefit to which the Member became entitled under the GES Act before the commencement day but which, as at that day, had not been paid by reason of the operation of section 38 or 38K of the GES Act.

**3. Meaning of “remuneration” (regulation 5)**

- (1) A current determination made by an Employer for the purposes of section 4(5) of the GES Act as to the value of any non-monetary remuneration or benefit continues as a determination for the purposes of the definition of “remuneration” in regulation 5(1).
- (2) A current certification given by an Employer or an authorised person for the purposes of section 4(1) or 4AA(1)(b) of the GES Act that a person is entitled to remuneration or a benefit on a continuing basis continues as a certification for the purposes of the definition of “remuneration” in regulation 5(1).
- (3) A current authorisation given by an Employer for the purposes of section 4(1) or 4AA(1)(b) of the GES Act authorising a person to certify matters under that section on behalf of the Employer continues as an authorisation for the purposes of the definition of “remuneration” in regulation 5(1).
- (4) A current determination made by the Board under section 4(4)(b)(vii) or 4AA(4)(f) of the GES Act that an allowance is to be excluded from a member’s remuneration continues as a determination under regulation 5(2)(h).
- (5) A current determination made by the Treasurer under section 4(4)(c) of the GES Act that a class of remuneration or benefit is to be excluded from a member’s remuneration continues as a determination under regulation 5(3)(f).
- (6) A current notice given by a continuing Gold State Super Member for the purposes of section 4(6) of the GES Act consenting to the application of a determination, continues as a notice for the purposes of regulation 5(5).
- (7) A current permission granted by the Board under section 26(2) of the GES Act allowing a continuing Gold State Super Member to contribute at his or her elected rate applied to the amount of a former or notional relevant remuneration continues as a determination under regulation 5(6) that the Member’s remuneration is the amount of that former or notional relevant remuneration.

- (8) A current determination by the Board under section 39A(1) of the GES Act that a continuing West State Super Member's benefit is to be assessed as if the Member's relevant remuneration were the amount of a former or notional relevant remuneration continues as a determination under regulation 5(6) that the Member's remuneration is the amount of that former or notional relevant remuneration.

**4. The Government, departments and unincorporated entities as Employers (regulation 9)**

- (1) A current order made by the Treasurer under section 3(6) of the GES Act specifying that a person, department or authority is to be treated as the employer of an office holder continues as an order under regulation 9(1)(b) specifying that person, department or authority.
- (2) If an order continued by subclause (1) specifies that the person, department or authority is to be deemed to be listed in Part A of Schedule 1 to the GES Act, the order as so continued is taken to specify that in relation to the office holder to whom the order relates the Government of Western Australia is a Division 1 Employer.

**Part 2 — Gold State Super Scheme**

**5. Interpretation (regulation 12)**

In these regulations, in relation to a continuing Gold State Super Member —

**“adjustment day”** means, in relation to a period before the commencement day, the Member's birthday;

**“contributory membership period”** includes the Member's contributory period under the GES Act;

**“member contribution rate”** means, in relation to time before the commencement day, the rate elected by the Member under section 22 of the GES Act that applied at that time.

**6. Meaning of “contributory membership period” (regulation 14)**

A current exercise of discretion by the Treasurer under section 49(1)(a) of the GES Act deeming a continuing Gold State Super Member to have a greater contributory period than he or she would otherwise have had, continues as a direction under

regulation 14(3) that the Member is to be treated as having a longer contributory membership period than he or she would otherwise have.

**7. Meaning of “eligible Gold State worker” (regulation 15)**

A current decision by the Board under section 17B(2)(i) of the GES Act that that paragraph does not apply to a particular person continues as a decision under regulation 15(3) that regulation 15(2)(j) does not apply to that person.

**8. Meaning of “final remuneration” (regulation 16)**

For the purpose of determining the value of D in the formula in the definition of “final remuneration” in regulation 16(1), a continuing Gold State Super Member is taken to have been a Gold State Super Member on each day on which he or she was a member of the 1987 scheme.

**9. Limits of insurance cover — health conditions (regulation 18)**

- (1) The Board is taken to have imposed a health condition of the kind referred to in paragraph (a) of the definition of “health condition” in regulation 12 on a continuing Gold State Super Member if —
- (a) the Board accepted the Member’s election to become a member of the 1987 scheme subject to a condition of the kind referred to in section 18(5)(a) of the GES Act;
  - (b) the Board made a determination under section 24(3) of the GES Act to vary the Member’s contributions subject to a condition of the kind referred to in section 18(5)(a) of the GES Act;
  - (c) the Member transferred to the 1987 scheme under Schedule 4 to the GES Act and was a transferred contributor for limited benefits within the meaning of that Schedule; or
  - (d) the Member was a subscriber to the Provident Account under the S&FB Act whose election to transfer to the 1987 scheme under Schedule 4 to the GES Act was accepted subject to a condition of the kind referred to in clause 10(4)(a) in Schedule 4 to the GES Act.



referred to in section 18(5) of the GES Act when it might have done so and the Board subsequently becomes aware that —

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

the Board may impose a health condition on the Member.

**10. Membership (regulation 19)**

- (1) Every person who was a member of the 1987 scheme immediately before the commencement day continues as a Gold State Super Member subject to these regulations.
- (2) If a person was, immediately before the commencement day, entitled to a benefit from the 1987 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38 of the GES Act or otherwise), the person is taken to have been a member of the 1987 scheme immediately before the commencement day.
- (3) If a member of the 1987 scheme was retired on the grounds of physical or mental incapacity to perform his or her duties not more than 12 months before the commencement day but as at that day had not applied for a benefit under section 32, 33 or 34 of the GES Act, the person is taken to have been a member of the 1987 scheme immediately before the commencement day.
- (4) If, before the commencement day, a person lodged —
  - (a) an election under section 18(1) of the GES Act to become a member of the 1987 scheme; or
  - (b) an election under Schedule 4 to the GES Act to transfer to the 1987 scheme,

but as at that day the Board had not dealt with it, the election continues as an application under regulation 19(1) to become a Gold State Super Member.

- (5) A current approval granted by the Treasurer under clause 7B(2)(c) of Schedule 4 to the GES Act of other circumstances that constitute retrenchment continues as an approval for the purposes of regulation 19(2)(c).



continues as an application under regulation 22(2) or 23(1) (as the case requires) to continue as a Gold State Super Member.

- (3) A current determination by the Board under section 20(2)(a) of the GES Act as to the rate of interest to apply to a refund of contributions under that paragraph continues as a determination under regulation 22(3)(b).

**14. Member who becomes ineligible due to reduced working hours then becomes eligible again (regulation 23)**

If —

- (a) within 12 months before the commencement day, a member of the 1987 scheme became excluded under section 17C(1) of the GES Act because his or her working hours were reduced to less than one hour a week; and
- (b) within 12 months of becoming so excluded becomes a worker who is not excluded by regulation 15(2) from being an eligible Gold State worker,

regulation 23 applies to and in relation to the person as if he or she had been a Gold State Super Member who ceased to be an eligible Gold State worker on the day he or she became so excluded.

**15. Voluntary withdrawal from the Gold State Super Scheme (regulation 24)**

If, before the commencement day, a continuing Gold State Super Member lodged a notice with the Board under section 19A(1) of the GES Act terminating his or her membership of the 1987 scheme but as at that day the Board had not dealt with it, the notice continues as an application under regulation 24(1) to withdraw from the Gold State Super Scheme.

**16. Contributions**

Any contribution in respect of a period before the commencement day that would have become payable under Part V or VI of the GES Act if that Act had not been repealed, becomes payable and is to be paid in accordance with that Act as if it had not been repealed.





- (3) A current determination by the Board under section 23(4) of the GES Act as to the rate of interest to apply to deferred elective contributions, continues as a determination under regulation 35(6)(b).

**21. Unrecognised unpaid leave — no contributions (regulation 36)**

If, before the commencement day, the Board granted an exemption under section 23A of the GES Act allowing a continuing Gold State Super Member to continue his or her entitlement to death and disability benefits, the determination by the Board as to the amount to be paid by the Member in lieu of contributions continues as a determination under regulation 36(2) as to the cost of continuing the Member's entitlement.

**22. Entitlement to benefits**

If a continuing Gold State Super Member was, immediately before the commencement day, entitled to a benefit from the 1987 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38 of the GES Act or otherwise), the entitlement continues as an entitlement to a benefit from the Gold State Super Scheme.

**23. Total and permanent disablement (regulation 40)**

- (1) If a continuing Gold State Super Member was retired on the grounds of physical or mental incapacity to perform his or her duties not more than 12 months before the commencement day but as at that day had not applied for a benefit under section 32, 33 or 34 of the GES Act, these regulations apply to and in relation to the person as if he or she ceased to be an eligible Gold State worker on the day, and for the reasons, that he or she was retired.
- (2) If, before the commencement day, a continuing Gold State Super Member applied for a benefit under section 32, 33 or 34 of the GES Act but as at that day the Board had not dealt with it, the application continues as an application for a benefit under regulation 40, 41 or 43 (as the case requires) as if the Member had ceased to be an eligible Gold State worker on the day, and for the reasons, that he or she was retired.



- (2) A current approval given by the Treasurer for the purposes of section 13C(3)(a) of the GES Act approving the transfer of benefits to other superannuation funds, continues as an approval for the purposes of regulation 47(3).

**27. Payment of death benefits (regulation 48)**

If, before the commencement day, a benefit became payable under the GES Act as a result of the death of a member of the 1987 scheme but as at that day the benefit had not been paid, regulation 48 applies to and in relation to the benefit as if it were a death benefit as defined in that regulation.

**28. Application for disablement benefits (regulation 49)**

A current authorisation given by a continuing Gold State Super Member for the purposes of section 53(3)(b) of the GES Act allowing the Board to obtain medical and other information and evidence continues as an authorisation for the purposes of regulation 49(3)(c).

**29. Certain Members who transferred to the 1987 scheme and left within 2 years entitled to further benefit**

- (1) On the commencement day a relevant Member becomes entitled to a benefit of an amount equal to —
- (a) the amount of the benefit the Member would have become entitled to on the resignation day if —
    - (i) clause 13(2) of Schedule 4 to the GES Act had not applied to the Member; and
    - (ii) clause 13(4) of that Schedule had applied to the Member notwithstanding that his or her membership period under the GES Act was less than 24 months;less
  - (b) the amount of the benefit the Member received under clause 13(2) of that Schedule.
- (2) A benefit under this clause is a preserved benefit to the extent that the benefit referred to in subclause (1)(a)(ii) would have been a deferred benefit if the relevant Member had become entitled to it on the resignation day.



contributions continues as an approval under regulation 52(4) allowing the person to become a voluntary member.

**32. Contributions**

Any contribution in respect of a period before the commencement day that would have become payable under Part VIIA of the GES Act if that Act had not been repealed, becomes payable and is to be paid in accordance with that Act as if it had not been repealed.

**33. Treasurer may increase compulsory contributions (regulation 55)**

A current notice given by the Treasurer under section 38PA(1) of the GES Act increasing the amount an Employer is to contribute continues as a notice under regulation 55(1).

**34. Voluntary employer contributions (regulation 57)**

- (1) A current approval given by the Treasurer for the purposes of section 38E of the GES Act permitting an Employer to make voluntary employer contributions continues as an approval under regulation 57(1).
- (2) A current permission granted by the Board under section 38E of the GES Act allowing an Employer to make voluntary employer contributions and specifying the amount of, and timing and manner of payment of, those contributions continues as an agreement between the Board and the Employer under regulation 57(2).

**35. Employer contribution returns (regulations 60 and 61)**

- (1) As soon as practicable after the commencement day an Employer to whom Part VIIA of the GES Act applied immediately before that day is to give to the Board a contribution return relating to each contribution period in which an employee of the Employer was a statutory member under that Part except a contribution period that has been the subject of a return under section 38F of that Act.
- (2) Regulation 61 applies to and in relation to —
  - (a) a contribution return made under this clause; or
  - (b) a return made under section 38F of the GES Act but in respect of which a notice has not been given under section 38G(1) of that Act,



- (ii) are received by the Board after that day; and
    - (iii) would have been credited to the Member's account under Part VIIA of the GES Act had they been received before the commencement day;
  - and
  - (b) any contributions paid by or in respect of the Member under clause 32 of this Schedule.
- (3) In relation to a continuing West State Super Member, a reference in regulation 68(1) to costs includes a reference to costs incurred before the commencement day.

**39. Interest (regulation 69)**

- (1) A current determination by the Board under section 38I(2) of the GES Act as to the calculation and crediting of interest to member's accounts continues as a decision of the Board under regulation 69(2).
- (2) The time at which the Board first credits interest to the benefit account of a continuing West State Super Member must not be more than 12 months after interest was last credited to the member's account under section 38I(1) of the GES Act.

**40. Entitlement to benefits**

If a continuing West State Super Member was, immediately before the commencement day, entitled to a benefit from the 1993 scheme but as at that day the benefit had not been paid (whether as a result of the operation of section 38K of the GES Act or otherwise), the entitlement continues as an entitlement to a benefit from the West State Super Scheme.

**41. Death and disablement benefits (regulations 70, 71 and 72)**

- (1) For the purposes of regulations 70, 71 and 72 the period during which a continuing West State Super Member has been a statutory Member includes the period during which he or she was a statutory member of the 1993 scheme.





- (2) Despite regulation 76(1) the Board is to pay a continuing West State Super Member's preserved benefit if —
- (a) the benefit is \$500 or less;
  - (b) the Member became entitled to the benefit before the commencement day; and
  - (c) the Member applies to the Board for payment of the benefit before, or within 3 months after, the commencement day.

**43A. Preserved benefits for former contributory members**

- (1) A continuing West State Super Member who —
- (a) was formerly a contributory member under the GES Act;
  - (b) before 28 September 1993, terminated his or her contributory membership under section 19A of that Act; and
  - (c) as a result of that termination became entitled to a deferred benefit under section 35(1)(b) of that Act,
- may apply to the Board to crystallise that deferred benefit.
- (2) On receipt by the Board of an application under subclause (1) —
- (a) the Board is to calculate the amount of the deferred benefit as if the Member has ceased to be an employee on the date the application is received by the Board; and
  - (b) the Member —
    - (i) ceases to be entitled to the deferred benefit referred to in subclause (1)(c); and
    - (ii) becomes entitled to a preserved benefit of an amount equal to the amount calculated under paragraph (a).
- (3) Part 2 Division 5 applies to a benefit referred to in subclause (2)(b)(ii) as if the Member were a Gold State Super Member and became entitled to the benefit under regulation 44.

*[Clause 43A inserted in Gazette 26 May 2006 p. 1925-6.]*

**44. Interest on preserved benefits (regulation 78)**

A current determination by the Board under section 40(3) of the GES Act as to the manner in which interest is to be calculated in relation to benefits the payment of which is deferred under

section 38K of the GES Act continues as a determination under regulation 78(c).

**45. Transfer of benefits to another superannuation fund (regulation 79)**

If, before the commencement day, a continuing West State Super Member made a request under section 13B(6) or 13D(1) of the GES Act to transfer an amount to another superannuation fund but as at that day the Board had not dealt with it, the request continues a request under regulation 79(1).

**46. Payment of death benefits (regulation 80)**

If, before the commencement day, a benefit became payable under the GES Act as a result of the death of a member of the 1993 scheme but as at that day the benefit had not been paid, regulation 80 applies to and in relation to the benefit as if it were a death benefit as defined in that regulation.

**47. Application for disablement benefits (regulation 81)**

A current authorisation given by a continuing West State Super Member for the purposes of section 53(3)(b) of the GES Act allowing the Board to obtain medical and other information or evidence continues as an authorisation for the purposes of regulation 81(3)(c).

**Part 4 — Information requirements**

**48. Annual statement for Members (regulation 221)**

- (1) The first annual reporting day for a continuing Member must be on or before 30 June 2001.
- (2) For the purposes of regulation 221(5), the first reporting period for a continuing Member is the period from 1 July 2000 to the Member's first annual reporting day.

**49. Information to exiting Members (regulation 222)**

If a continuing Member ceases to be a Member before being given an annual statement under regulation 221(5), then the statement given to the person under regulation 222(1) is to set out the information

referred to in regulation 222(1)(c) in relation to the period from 1 July 2000 to the day the person ceases to be a Member.

**50. Employers to provide information to the Board (regulation 224C)**

A current direction given by the Board under section 52(1) of the GES Act specifying information or evidence to be provided by Employers continues as a direction under regulation 224C(1).

*[Clause 50 amended in Gazette 29 Jun 2001 p. 3105.]*

**51. Member may request information from the Board (regulation 224D)**

If, before the commencement day, a continuing Member made a request under regulation 8 of the *Government Employees Superannuation (General) Regulations 1992*<sup>6</sup> but as at that day the Board had not dealt with it, the request continues as a request under regulation 224D(1) or (3).

*[Clause 51 amended in Gazette 29 Jun 2001 p. 3105.]*

**Part 5 — Board elections**

**52. Elections underway at commencement day**

If, before the commencement day, the Board notified the Trades and Labor Council of Western Australia (as it was then called) under regulation 4 of the *Government Employees Superannuation (Board Elections) Regulations 1988*<sup>6</sup> that a vacancy had occurred or was about to occur but as at that day the vacancy had not been filled —

- (a) the process of filling the vacancy is to be completed in accordance with those regulations as if they were still in force; and
- (b) for the purposes of section 6(3) of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* the person elected to fill that vacancy is taken to have been elected under section 5(3)(c) of the GES Act.

**53. Dispute in progress at commencement day**

If, before the commencement day, a person lodged a dispute with the Minister under regulation 25 of the *Government Employees*

*Superannuation (Board Elections) Regulations 1988*<sup>6</sup> but as at that day the Minister had not dealt with it, the Minister is to deal with the dispute in accordance with those regulations as if they were still in force.

### **Part 6 — General**

#### **54. Interest if payment delayed (regulation 243)**

- (1) If a benefit became payable under the GES Act but as at the commencement day had not been paid, the interest payable under regulation 243 on the benefit is to be calculated —
  - (a) for a Gold State Member —
    - (i) from the day on which the benefit became payable up to, but not including, the commencement day, at a rate equal to the CPI rate plus 1%; and
    - (ii) on and after the commencement day, at a rate equal to the CPI rate plus 2%;
  - or
  - (b) for a West State Member —
    - (i) from the day on which the benefit became payable up to, but not including 1 July 2001, at a rate equal to the CPI rate plus 2%; and
    - (ii) on and after 1 July 2001, at a rate equal to the Member's earning rate.
- (2) A current determination by the Board under section 40(3) of the GES Act as to the manner in which interest is to be calculated in relation to benefits that are not paid when they become payable, continues as a determination for the purposes of regulation 243(c).

*[Clause 54 amended in Gazette 29 Jun 2001 p. 3105-6.]*

#### **55. Benefit in special circumstances (regulation 244)**

- (1) A current notice given by the Treasurer under section 49(1)(c) of the GES Act deeming a person to be entitled to a benefit to which he or she would not otherwise be entitled, continues as a direction under regulation 244(1).
- (2) In regulation 244 —

**“former Member”** includes a person who was formerly a member of the 1987 scheme or the 1993 scheme.

**56. Power to restore lost rights (regulation 249)**

- (1) A current permission to exercise a right, or a current privilege, granted by the Board under section 55(1) of the GES Act continues as a permission or privilege granted under regulation 249(1).
- (2) In regulation 249, in relation to a continuing Member —  
**“the Act”** includes the GES Act.

**57. Approved forms (regulation 251)**

A form currently approved by the Board for use for the purposes of the GES Act continues, so far as it is relevant, as a form approved for use for the purposes of these regulations.

**58. Policy and administrative matters**

All current decisions of the Board in relation to policy or administrative matters made for the purposes of the GES Act continue, so far as they are relevant, for the purposes of these regulations.

### Notes

<sup>1</sup> This is a compilation of the *State Superannuation Regulations 2001* and includes the amendments made by the other written laws referred to in the following table <sup>8</sup>. The table also contains information about any reprint.

#### Compilation table

Citation	Gazettal	Commencement
<i>State Superannuation Regulations 2001</i>	16 Feb 2001 p. 921-1074	17 Feb 2001 (see r. 2 and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>State Superannuation Amendment Regulations 2001</i>	29 Jun 2001 p. 3077-107	1 Jul 2001 (see r. 2)
<i>Corporations (Consequential Amendments) Regulations 2001 Pt. 6</i>	28 Sep 2001 p. 5353-8	15 Jul 2001 (see r. 2 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>State Superannuation Amendment Regulations (No. 2) 2002</i>	28 Jun 2002 p. 3009-28	1 Jul 2002 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 3) 2002</i>	28 Jun 2002 p. 3029-33	21 Sep 2002 (see r. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>State Superannuation Amendment (Retirement Income Scheme) Regulations 2003</i>	19 Mar 2003 p. 813-42	19 Mar 2003
<i>State Superannuation Amendment Regulations 2003</i>	13 Jun 2003 p. 2105-14	13 Jun 2003
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 19</i>	15 Aug 2003 p. 3685-92	15 Sep 2003 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 2) 2003</i>	26 Aug 2003 p. 3756-7	26 Aug 2003
<b>Reprint 1: The State Superannuation Regulations 2001 as at 7 Nov 2003</b> (includes amendments listed above excluding the retrospective amendment published in <i>Gazette</i> 25 Jun 2004 p. 2233-4)		
<i>Inspector of Custodial Services Act 2003 s. 56(1)</i>		15 Dec 2003 (see s. 2) assented to 15 Dec 2003
<i>State Superannuation Amendment Regulations (No. 4) 2003</i>	30 Dec 2003 p. 5725-6	30 Dec 2003
<i>State Superannuation Amendment Regulations 2004</i>	25 Jun 2004 p. 2228-33	25 Jun 2004
<i>State Superannuation Amendment Regulations (No. 2) 2004</i>	25 Jun 2004 p. 2233-4	1 Aug 2003 (see r. 2)

## State Superannuation Regulations 2001

Citation	Gazettal	Commencement
<i>State Superannuation Amendment Regulations (No. 6) 2004</i>	26 Nov 2004 p. 5311	26 Nov 2004
<i>State Superannuation Amendment Regulations (No. 3) 2004</i>	1 Dec 2004 p. 5703-4	1 Jan 2004 (see r. 2)
<i>State Superannuation Amendment Regulations (No. 4) 2004</i>	1 Dec 2004 p. 5705-18	1 Dec 2004
<i>State Superannuation Amendment Regulations (No. 5) 2004</i>	10 Dec 2004 p. 5894-908	10 Dec 2004
<b>Reprint 2: The State Superannuation Regulations 2001 as at 2 Sep 2005</b> (includes amendments listed above)		
<i>Electricity Corporations (Consequential Amendments) Regulations 2006 r. 87</i>	31 Mar 2006 p. 1299-57	1 Apr 2006 (see r. 2)
<i>State Superannuation Amendment Regulations 2006 Pt. 1-3<sup>7</sup></i>	26 May 2006 p. 1915-33	26 May 2006
<i>State Superannuation Amendment Regulations (No. 2) 2006</i>	21 Jul 2006 p. 2651-2	21 Jul 2006

<sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional And Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section. Part 9 of these regulations were amending regulations under that subsection. The text of the *Superannuation and Family Benefits Act 1938* as continued and amended under the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 may be viewed in the Acts database of the Statutes of Western Australia.

<sup>3</sup> Now see the *Workplace Relations Act 1996* of the Commonwealth.

<sup>4</sup> Formerly referred to the *Water Services Coordination Act 1995* the short title of which was changed to the *Water Services Licensing Act 1995* by the *Economic Regulation Authority Act 2003* s. 62. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

<sup>5</sup> Formerly referred to the *Workers' Compensation and Rehabilitation Commission* constituted under the *Workers' Compensation and Rehabilitation Act 1981*. The name of the Commission was changed to WorkCover Western Australia Authority and the short title of the Act was changed to the *Workers' Compensation and Injury Management Act 1981* by the *Workers' Compensation Reform Act 2004* s. 5 and 81. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb) and (h).

<sup>6</sup> Repealed by the *State Superannuation Act 2000*.

<sup>7</sup> The *State Superannuation Amendment Regulations 2006* r. 20(2) reads as follows:



“

- (2) If a preserved benefit of less than \$200 has not been paid because of the operation of regulation 76(4) (as in force before this regulation came into operation), the benefit ceases to be a preserved benefit when this regulation comes into operation even if, at that time, the benefit plus interest on it, is or exceeds \$200.

”

<sup>8</sup> The *Superannuation Legislation Amendment and Validation Act 2006* s. 19 reads as follows:

“

**19. Validation of statutory membership of workers who ceased to be excluded**

- (1) A person who —
- (a) when the *State Superannuation Regulations 2001* came into operation —
    - (i) was a worker; and
    - (ii) was excluded from becoming a statutory Member (as defined in those regulations) by the *State Superannuation Regulations 2001* regulation 51(2), (3) or (4);
  - and
  - (b) before the *State Superannuation Amendment Regulations 2006* came into operation, ceased to be so excluded,

is taken to have become a statutory Member when he or she ceased to be so excluded.

- (2) Anything done or purported to have been done under the *State Superannuation Regulations 2001* before this Act came into operation in relation to a person to whom subsection (1) applies, is as valid as it would have been if the *State Superannuation Amendment Regulations 2006* had come into operation immediately after the *State Superannuation Regulations 2001* came into operation.

”