

## State Superannuation Amendment Regulations 2012

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

### 1. Citation

These regulations are the *State Superannuation Amendment Regulations 2012*.

### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *State Superannuation Amendment Act 2011* Part 5 comes into operation.

### 3. Regulations amended

These regulations amend the *State Superannuation Regulations 2001*.

### 4. Part 2A inserted

After regulation 11 insert:

## Part 2A — Employer contribution obligations

### 12A. Terms used

In this Part —

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

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

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

- (a) is part of the employee's remuneration; but

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

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

## **12B. Default funds**

For the purposes of the definition of *default fund* paragraph (a), in section 4A(1) of the Act, the default fund for an employee is —

- (a) if the employee is a West State Super Member — the West State Super Scheme;
- (b) in any other case — the GESB Super Scheme.

## **12C. Employer contributions**

- (1) An Employer that is required, under section 4B of the Act, to make superannuation contributions for an employee, must —
  - (a) make those contributions in accordance with regulation 12D; and
  - (b) make contributions in accordance with regulation 12E.
- (2) An Employer that would be required, under section 4B of the Act, to make superannuation contributions for an employee, but for the SGA Act sections 26 to 29, must make contributions for the employee in accordance with subregulation (1) as if the SGA Act sections 26 to 29 did not apply.
- (3) An Employer that would be required, under section 4B of the Act, to make superannuation contributions for a worker, but for the worker not being an employee, must make contributions for the worker in accordance with subregulation (1) as if the worker were an employee.
- (4) Subregulations (1), (2) and (3) do not apply to the following Employers —
  - (a) the Architects Board of Western Australia;
  - (b) the Australian Health Practitioner Regulation Agency;
  - (c) the Bunbury Water Board;
  - (d) Gold Corporation;
  - (e) the Legal Practice Board;
  - (f) the office of Inspector of Custodial Services;
  - (g) the Pharmaceutical Council of Western Australia;

- (h) the Veterinary Surgeons' Board;
  - (i) the Water Corporation;
  - (j) the Western Australian College of Teaching;
  - (k) the Western Australian Electricity Review Board;
  - (l) the Western Australian Energy Disputes Arbitrator;
  - (m) the Western Australian Greyhound Racing Association;
  - (n) the Western Australian Institute of Sport.
- (5) Subregulations (1), (2) and (3) do not apply in respect of a worker who —
- (a) is a Gold State Super Member, other than a Member who is entitled to a preserved GSS withdrawal benefit (as defined in regulation 12); or
  - (b) is a Pension Scheme Member (other than a person who has determined his or her pension under the *Superannuation and Family Benefits Act 1938* section 60AA) or a Provident Scheme Member; or
  - (c) holds a pensionable office as defined in the *Judges' Salaries and Pensions Act 1950* section 2(4); or
  - (d) works outside Australia and is not a resident of Australia (as defined in the SGA Act); or
  - (e) is a person in respect of whom contributions are being made under the *Parliamentary Superannuation Act 1970* section 11 to the superannuation scheme provided for by that Act; or
  - (f) is a non-participant, as defined in the *Parliamentary Superannuation Act 1970* section 29, in respect of whom contributions are being made in accordance with a determination made under that section to a superannuation fund other than the West State Super Scheme or the GESB Super Scheme.
- (6) Subregulation (4) does not limit an Employer to making contributions in accordance with section 4B of the Act.
- (7) If an Employer is unable to make a contribution under subregulation (1), (2) or (3) to a fund because the fund is unable to receive it under the SIS Act, the Employer must make the contribution to the Fund.

**12D. Making SG contributions**

- (1) The Employer must make those contributions for each of the employee's contribution periods.
- (2) The amount of the contributions for a contribution period must be equal to the amount that the Employer would be required under section 4B of the Act to contribute for the employee if —
  - (a) that contribution period were the only period during which the employee was an employee of the Employer; and
  - (b) the Employer had not previously made any contributions for the employee.
- (3) Contributions for a contribution period must be paid —
  - (a) if the contribution period is the employee's pay period — within 14 days after the end of that period; or
  - (b) otherwise — within 28 days after the end of the contribution period.

**12E. Certain additional contributions**

- (1) For each contribution period of the employee in which the employee receives an over-OOTE item, the Employer must make a contribution for the employee of an amount equal to the monetary value, determined by the Employer, of that over-OOTE item multiplied by the charge percentage applicable, at the time of making the contribution, under the SGA Act section 19.
- (2) Contributions for a contribution period must be paid —
  - (a) if the contribution period is the employee's pay period — within 14 days after the end of that period; or
  - (b) otherwise — within 28 days after the end of the contribution period.
- (3) A determination by an Employer as to the value of a non-monetary over-OOTE item that would reduce the value of the item for a person who was an employee at the time the determination was made, does not apply to the person unless he or she gives notice to the Employer consenting to its application to him or her.
- (4) Contributions under this regulation must be made to the fund to which the Employer is required to make contributions under section 4B of the Act.

**12F. Standard choice forms — transitional provision**

- (1) This regulation applies for the purposes of section 4B(3) of the Act and in relation to an employee

who was an employee of an Employer immediately before this regulation came into operation.

- (2) The Employer need not give the employee a standard choice form in writing if the Employer gives the employee a standard choice form in an electronic form that can be printed.
- (3) Subregulation (2) does not apply if the employee gives a written request to the Employer that the employee be given a standard choice form.
- (4) This regulation ceases to have effect at the end of the period of 2 months commencing on the day on which this regulation came into operation.

**5. Regulation 31 amended**

In regulation 31(2) delete “on the advice of an actuary,” and insert:

with the concurrence of the Treasurer,

**6. Regulation 50 amended**

In regulation 50(1) in the definition of *eligible statutory WSS Member* delete “(3)” and insert:

(3), (4A)

**7. Regulation 51 amended**

- (1) Delete regulation 51(3)(c) and insert:

(c) as a consequence, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

- (2) After regulation 51(3) insert:

(4A) A worker is excluded by this subregulation from being a statutory WSS Member if, as a consequence of the worker choosing a fund that is not a scheme, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

**8. Regulation 52 amended**

In regulation 52(1)(a) and (b) delete “(3)” and insert:

(3), (4A)

**9. Regulation 54A deleted**

Delete regulation 54A.

**10. Regulations 54 and 55 deleted**

Delete regulations 54 and 55.

**11. Regulation 62 amended**

In regulation 62(1) delete “regulation 54 or 55” and insert:

section 4B of the Act or regulation 12C

**12. Regulation 64 amended**

In regulation 64(2) delete “7 days” and insert:

14 days

**13. Regulation 79 amended**

Delete regulation 79(2) and insert:

- (2) A West State Super Member may request the Board to transfer the member’s benefit to another superannuation fund that is not a scheme, and the Board is to comply with that request.

**14. Regulation 83 amended**

In regulation 83(1) in the definition of *eligible statutory GESB Super Member* delete “(3)” and insert:

(3), (4A)

**15. Regulation 84 amended**

- (1) Delete regulation 84(3)(c) and insert:

- (c) as a consequence, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

(2) After regulation 84(3) insert:

- (4A) A worker is excluded by this subregulation from being a statutory GESB Super Member if, as a consequence of the worker choosing a fund that is not a scheme, no contributions under section 4B of the Act are made to the Fund for the worker, for a contribution period of the worker.

**16. Regulations 88 and 89 deleted**

Delete regulations 88 and 89.

**17. Regulation 91 amended**

- (1) In regulation 91(1) delete “Subject to regulation 100, an” and insert:

An

- (2) In regulation 91(3) delete “regulation 88 or 89.” and insert:

section 4B of the Act or regulation 12C.

**18. Regulation 94 amended**

- (1) In regulation 94(1) delete “regulation 100 and”.
- (2) In regulation 94(5) delete “7 days” and insert:

14 days

**19. Regulation 95 amended**

In regulation 95(1) delete “regulation 100 and”.

**20. Part 3A Division 3 Subdivision 5 deleted**

Delete Part 3A Division 3 Subdivision 5.

**21. Regulation 120 amended**

- (1) In regulation 120 delete “A GESB Super” and insert:

(1) A GESB Super

(2) At the end of regulation 120 insert:

- (2) A GESB Super Member may request the Board to transfer the member's benefit to a superannuation fund that is not a scheme and the Board is to comply with that request.

**22. Regulation 122 amended**

In regulation 122(2) delete "West State" and insert:

GESB

**23. Regulation 224D amended**

Delete regulation 224D(3)(c) and insert:

- (c) the report relating to the most recent actuarial investigation of the Fund; or

**24. Various references to "Minister" amended**

In the provisions listed in the Table:

- (a) delete "Minister" (each occurrence) and insert:

Treasurer

- (b) delete "Minister's" and insert:

Treasurer's

**Table**

r. 21(1)	r. 50A(2)
r. 52B(2)	r. 231(2)(b)
r. 238(2) and (3)	r. 240(1), (2) and (3)

Note: The heading to amended regulation 21 is to read:

**Treasurer may direct Board to accept ineligible worker as a Member**

By Command of the Lieutenant-Governor and deputy of the Governor,

PETER CONRAN, Clerk of the Executive Council.

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