

South Australia

## **Superannuation (Lyell McEwin Employees) Regulations 1999**

under the *Superannuation Act 1988*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Superannuation (Lyell McEwin Employees) Regulations 1999*.

#### **2—Commencement**

These regulations will come into operation on 1 January 1999.

#### **3—Interpretation**

In these regulations, unless the contrary intention appears—

*the Act* means the *Superannuation Act 1988*;

*contributor* means a person whose name appears in the Schedule.

## Part 2—Assets of Lyell McEwin Health Service Inc. Superannuation Fund

### 4—Transfer of the assets of the Fund

- (1) The assets of the Lyell McEwin Health Service Inc. Superannuation Fund are transferred in accordance with this regulation.
- (2) The sum of \$2 811 948 being the aggregate of the amounts appearing opposite the names of the contributors in the Schedule is transferred to the South Australian Superannuation Fund.
- (3) A rollover account must be opened in the name of each contributor and the amount appearing opposite the contributor's name in the Schedule must be credited to the account.
- (4) The balance of the assets of the Fund are transferred to an account (the "Lyell McEwin Employer Account") to be kept at the Treasury pursuant to an arrangement under section 5 of the Act between the Board and the North Western Adelaide Health Service.

## Part 3—Modification of Act

### 5—Modification of Act

The provisions of the Act are modified in their application to the contributors as follows:

- (a) the contributors are new scheme contributors;
- (b) the definition of *contributor* in section 4(1) is amended by inserting "and also includes a person named in the Schedule of the *Superannuation (Lyell McEwin Employees) Regulations 1999*" after "to that person under this Act";
- (c) the following definition is inserted in section 4(1) after the definition of *contributor*:

*dependant* in relation to a contributor means—

- (a) the spouse of the contributor; or
  - (b) a child (whether natural or adopted) of the contributor; or
  - (c) a child (whether natural or adopted) of the spouse, or a former spouse, of the contributor; or
  - (d) any other person who, in the opinion of the Board, was, on the entitlement day, wholly or partially dependent on the contributor or entitled to be supported by the contributor;
- (d) the following definition is inserted in section 4(1) of the Act after the definition of *invalidity*:

*the Lyell McEwin Employer Account* means the account kept at Treasury referred to in regulation 4(4) of the *Superannuation (Lyell McEwin Employees) Regulations 1999*;;

- (e) the following definition is inserted in section 4(1) after the definition of *retrenchment pension*:

*rollover account* in relation to a contributor means the rollover account maintained by the Board in the name of the contributor pursuant to section 20AAA.;

- (f) the following definition is inserted in section 4(1) of the Act after the definition of *the Scheme*:

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

- (g) strike out the definition of *spouse* from section 4(1) and substitute the following definition:

*spouse* of a contributor includes a person of the opposite sex who although not legally married to the contributor is living with the contributor on a genuine domestic basis as the husband or wife of the contributor;;

- (h) strike out "by contributors" from section 17(4) and substitute "by or on behalf of the contributors";

- (i) the following section is inserted after section 20A:

#### **20AAA—Rollover Accounts**

- (1) The Board will maintain rollover accounts in the names of all contributors.
- (2) The amount referred to in regulation 4(3) of the *Superannuation (Lyell McEwin Employees) Regulations 1999* in relation to each contributor must be credited to the contributor's rollover account.
- (3) A contributor's rollover account must be debited with any payment that is, in pursuance of this Act, to be charged against that account.
- (4) At the end of each financial year, each contributor's rollover account that has a credit balance will be varied to reflect a rate of return determined by the Board in relation to rollover accounts for the relevant financial year.
- (5) In determining a rate of return for the purposes of subsection (4), the Board should have regard to the net rate of return achieved by investment of money held by the Fund in rollover accounts.
- (6) Where it is necessary to determine the balance of a contributor's rollover account and the Board has not yet determined a rate of return in relation to the relevant financial year, the balance will be determined by applying a percentage rate of return on accounts estimated by the Board.

- (7) A balance determined under subsection (6) will not be adjusted when a rate of return is subsequently determined under subsection (4).
- (8) A reference in this section to "rate of return" is a reference to a positive or a negative rate of return.;
- (j) strike out "a spouse or child" from section 20B(1) and substitute "a dependant";
- (k) strike out subsection (2) of section 20B and substitute the following subsection:
  - (2) If any such payment, or a proportion of any such payment, is, in pursuance of this Act, to be charged against the contributor's contribution account or rollover account or the Lyell McEwin Employer Account, the Treasurer may reimburse the Consolidated Account or special deposit account by charging—
    - (a) the relevant division of the Fund with the amount to be charged against the contribution account or rollover account; or
    - (b) the Lyell McEwin Employer Account with the amount to be charged against that account.;
- (l) strike out subsections (1), (2), (3) and (3a) of section 23 and substitute the following subsections:
  - (1) Subject to this section, a contributor will make contributions to the Treasurer at the rate set out in the Schedule of the *Superannuation (Lyell McEwin Employees) Regulations 1999* opposite the contributor's name until he or she reaches the age of 60 years.
  - (2) Subject to subsection (3), contributions to be made by contributors will be paid to the Treasurer from the Lyell McEwin Employer Account.
  - (3) If—
    - (a) after taking advice from an actuary, the Board forms the view that the Lyell McEwin Employer Account will, or may, not be able to meet the payment of the contributions under subsection (2) and the other amounts to be paid from the account; and
    - (b) the Board serves written notice of that opinion on the Treasurer,the Treasurer may direct that contributions no longer be paid from that account but instead be paid by individual contributors by deduction from their salary.

- (3a) A contributor who was employed on a part time basis on 1 January 1999 will, for the purposes of determining the amount of the contribution payable by the contributor, be taken to be receiving the salary that he or she would be receiving if he or she were employed on a full time basis.
- (3b) If, immediately before the commencement of the *Superannuation (Lyell McEwin Employees) Regulations 1999*, a contributor's contributions and benefits were based on a higher salary than that being received by the contributor because of a previous reduction in the contributor's salary, the contributor will be taken to have made an election under section 4(4) in respect of the reduction.;
- (m) strike out Part 4 and insert the following Part:

## **Part 4—Superannuation benefits—Lyell McEwin contributors**

### **26—Application of this Part**

This Part applies only to contributors to whom the *Superannuation (Lyell McEwin Employees) Regulations 1999* apply.

### **27—Retirement, resignation and retrenchment**

- (1) A contributor who has reached the age of 55 years and who retires from employment and a contributor who has not reached that age who resigns from employment or whose employment is terminated by retrenchment is entitled to a superannuation payment made up of two components—
- (a) a component (the "rollover component") to be charged against the contributor's rollover account equivalent to the amount standing to the credit of that account; and
- (b) a component calculated in accordance with subsection (2) to be charged firstly against the contributor's contribution account until that account is exhausted and then against the Lyell McEwin Employer Account.
- (2) The component referred to in subsection (1)(b) is determined in accordance with the following formula:

$$A = 4.25 \times FS \times \frac{M}{204} \times P$$

Where—

*A* is the amount of the component

***FS*** is the contributor's actual or attributed salary immediately before termination of the employment (expressed as an annual amount)

***M*** is—

- (a) if the contributor reached the age of 65 years on or before 31 December 2010 or will reach that age (if he or she survives) on or before that date—the lesser of the following:
  - (i) 144;
  - (ii) the number of months between 31 December 1998 and the termination of the contributor's employment;
- (b) if the contributor reached the age of 65 years after 31 December 2010 or will reach that age (if he or she survives) after that date—the lesser of the following:
  - (i) 204;
  - (ii) the number of months between 31 December 1998 and the termination of the contributor's employment

***P*** is—

- (a) in the case of a contributor who was in full time employment from 1 January 1999 until the termination of his or her employment—1;
  - (b) in the case of a contributor who was in part time employment immediately before 1 January 1999—1;
  - (c) in the case of a contributor who was in full time employment immediately before 1 January 1999 but whose employment subsequently changed to part time employment — the numerical value arrived at by expressing the contributor's employment between 31 December 1998 and the termination of the employment as a proportion of full time employment during that period.
- (3) On the retirement or resignation of a contributor—
- (a) the provisions of the SIS Act relating to preservation of benefits will be taken to apply to, and in relation to, the contributor; and
  - (b) subject to compliance with those requirements, the contributor will be entitled to the immediate payment of benefits under this section.

- (4) For the purposes of this section, a contributor retires from employment if—
- (a) the contributor has reached the age of 55 years; and
  - (b) the contributor's employment terminates or is terminated for any reason except—
    - (i) the total and permanent disablement of the contributor before he or she reaches the age of 60 years; or
    - (ii) the contributor's death.

## **28—Disability pension**

- (1) Subject to this section, a contributor who has not reached the age of retirement and who is totally disabled is entitled to a disability pension.
- (2) The pension is not payable in respect of the first three months of the period of total disablement.
- (3) A disability pension is not payable to a contributor who has received the benefits to which he or she is entitled under another provision of this Part.
- (4) The pension is 75 per cent of the contributor's notional salary.
- (5) Where in relation to a particular period—
  - (a) a contributor is receiving, or would but for this subsection be entitled to receive, a disability pension under this section; and
  - (b) the contributor is also receiving or entitled to receive income of one or more of the following kinds:
    - (i) weekly workers compensation payments;
    - (ii) payment of benefits under the Social Security Act 1991 of the Commonwealth in relation to the contributor's disability;
    - (iii) payments by way of salary or wages in the circumstances referred to in subsection (6),

the pension will be reduced by the aggregate amount of those payments and if the aggregate amount exceeds the amount of the pension, the pension will be suspended.
- (6) Where a contributor who is in receipt of a disability pension under this section returns to work at reduced hours because of the disability, the pension continues to be payable to the contributor but is subject to reduction under subsection (5).

- (7) Where a contributor who was in receipt of a disability pension under this section returns to work without a reduction in hours but is subsequently forced by the same, or a related disability, to cease work within six months of returning, the pension will again become payable under this section at the expiration of 14 days after he or she ceases work.
- (8) For the purposes of this section a contributor will be regarded as totally disabled if—
- (a) the Board is satisfied that the contributor is incapacitated by injury or illness from performing the duties of his or her employment and that the incapacity is likely to be temporary; and
  - (b) the incapacity is not, in the opinion of the Board, wholly or partly attributable to—
    - (i) intentional self injury; or
    - (ii) service in the armed forces; and
  - (c) the Board has not terminated the contributor's status as totally disabled under subsection (9).
- (9) The Board may review the status of the contributor from time to time and may, by notice in writing to the contributor, terminate his or her status as totally disabled—
- (a) if it is satisfied that he or she can once again perform the duties of his or her employment; or
  - (b) if from the time when the pension was first paid the contributor has been totally disabled by reason of the same cause, or a related cause, for a continuous period of two or more years or for two or more periods that aggregate a period of two or more years and the Board is satisfied that the incapacity does not prevent the contributor from engaging in all remunerative employment for which he or she is reasonably qualified by education, training or experience; or
  - (c) with the contributor's consent.
- (10) A disability pension that a contributor was in receipt of immediately before the commencement of the *Superannuation (Lyell McEwin Employees) Regulations 1999* will be taken to be a disability pension under this section.
- (11) A contributor is not required to make any contribution over a period for which the contributor receives a disability pension.



## 29—Total and permanent disablement and death before 60

- (1) A superannuation payment made up of the following components is payable to, or in relation to, a contributor whose employment is terminated by total and permanent disablement or by death before he or she reaches the age of 60 years:
- (a) a component ("the rollover component") to be charged against the contributor's rollover account equivalent to the amount standing to the credit of that account; and
  - (b) a component calculated in accordance with subsection (2) to be charged firstly against the contributor's contribution account until that account is exhausted and then against the Lyell McEwin Employer Account.
- (2) The component referred to in subsection (1)(b) is determined in accordance with the following formula:

$$A = 4.25 \times FS \times \frac{M}{204} \times P$$

Where—

*A* is the amount of the component

*FS* is the contributor's actual or attributed salary immediately before termination of the employment (expressed as an annual amount)

*M* is the lesser of the following:

- (a) 204;
- (b) the number of months between 31 December 1998 and the day on which the contributor would reach, or would have reached, the age of 60 years if he or she should live, or had lived, to that age

*P* is—

- (a) in the case of a contributor who was in full time employment from 1 January 1999 until the termination of his or her employment—1;
- (b) in the case of a contributor who was in part time employment immediately before 1 January 1999—1;

- (c) in the case of a contributor who was in full time employment immediately before 1 January 1999 but whose employment subsequently changed to part time employment—the numerical value arrived at by expressing the contributor's employment between 31 December 1998 and the termination of the employment as a proportion of full time employment during that period.
- (3) Where the employment is terminated on the ground of total and permanent disablement, the superannuation payment will be made to the contributor.
- (4) Where the employment is terminated by death, the superannuation payment may, in the discretion of the Board, be paid—
  - (a) to such of the dependants of the contributor as the Board thinks fit and, if payment is made to two or more dependants, then in such shares as the Board thinks fit; or
  - (b) to the contributor's estate; or
  - (c) under paragraphs (a) and (b) in such proportions as the Board thinks fit.
- (5) A contributor will be regarded as totally and permanently disabled for the purposes of this section if—
  - (a) he or she has suffered—
    - (i) the loss of two or more limbs; or
    - (ii) permanent loss of sight in both eyes; or
    - (iii) the loss of one limb and permanent loss of sight in one eye; or
  - (b) the Board is satisfied that—
    - (i) the contributor is, because of injury or illness, unable at the moment and unlikely in the future to engage in any remunerative employment for which he or she is reasonably qualified by education, training or experience; and
    - (ii) the contributor has been incapacitated by injury or illness from performing the duties of his or her employment for a continuous period of at least six months.
- (6) For the purposes of subsection (5)—
  - (a) the loss of the whole of a hand or a foot will be taken to amount to the loss of a limb;

- (b) permanent loss of sight in an eye is loss of sight that cannot be fully remedied by medical treatment or by the use of glasses or any other device.

### 30—Death after 60

- (1) A superannuation payment made up of the following components is payable in relation to a contributor whose employment is terminated by death on or after the day on which he or she reached the age of 60 years:
  - (a) a component (the "rollover component") to be charged against the contributor's rollover account equivalent to the amount standing to the credit of that account; and
  - (b) a component calculated in accordance with subsection (2) to be charged firstly against the contributor's contribution account until that account is exhausted and then against the Lyell McEwin Employer Account.
- (2) The component referred to in subsection (1)(b) is determined in accordance with the following formula:

$$A = 4.25 \times FS \times \frac{M}{204} \times P$$

Where—

*A* is the amount of the component

*FS* is the contributor's actual or attributed salary immediately before termination of the employment (expressed as an annual amount)

*M* is—

- (a) if the contributor reached the age of 65 years on or before 31 December 2010 or would have reached that age (if he or she had survived) on or before that date—the lesser of the following:
  - (i) 144;
  - (ii) the number of months between 31 December 1998 and the termination of the contributor's employment;
- (b) if the contributor reached the age of 65 years after 31 December 2010 or would have reached that age (if he or she had survived) after that date—the lesser of the following:
  - (i) 204;

- (ii) the number of months between 31 December 1998 and the termination of the contributor's employment

*P* is—

- (a) in the case of a contributor who was in full time employment from 1 January 1999 until the termination of his or her employment—1;
  - (b) in the case of a contributor who was in part time employment immediately before 1 January 1999—1;
  - (c) in the case of a contributor who was in full time employment immediately before 1 January 1999 but whose employment subsequently changed to part time employment — the numerical value arrived at by expressing the contributor's employment between 31 December 1998 and the termination of the employment as a proportion of full time employment during that period.
- (3) The superannuation payment may, in the discretion of the Board, be paid—
- (a) to such of the dependants of the contributor as the Board thinks fit and, if payment is made to two or more dependants, then in such shares as the Board thinks fit; or
  - (b) to the contributor's estate; or
  - (c) under paragraphs (a) and (b) in such proportions as the Board thinks fit.;
- (n) strike out section 45;
  - (o) strike out section 46.

## Schedule—Contributors

| Contributor             | Contribution rate | Rolled over amount |
|-------------------------|-------------------|--------------------|
| Elizabeth Louise Bice   | 5.7%              | \$336 991          |
| Irene Margaret Campbell | 6.0%              | \$167 759          |
| Agnelo Francis De Sousa | 6.0%              | \$586 759          |
| Richard Ian Hicks       | 6.0%              | \$286 647          |
| Rosalind Kay Jamieson   | 6.0%              | \$357 465          |
| Janice Helen Kavanagh   | 6.0%              | \$136 807          |
| Judith Ann Lambe        | 6.0%              | \$255 495          |
| Barbara Elsie Seery     | 6.0%              | \$115 133          |
| Jeniffer Yvone Silk     | 6.0%              | \$190 288          |

| <b>Contributor</b>      | <b>Contribution rate</b> | <b>Rolled over amount</b> |
|-------------------------|--------------------------|---------------------------|
| Esther Willoughby       | 6.0%                     | \$237 917                 |
| Norman Bruce Willoughby | 5.8%                     | \$140 687                 |

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Revocation of regulations

The *Superannuation (Lyell McEwin Employees) Regulations 1999* were revoked by Sch 2 of the *Superannuation (Lyell McEwin Employees) Regulations 2009* on 1.9.2009.

### Principal regulations and variations

| Year | No  | Reference                       | Commencement   |
|------|-----|---------------------------------|----------------|
| 1998 | 213 | <i>Gazette 17.12.1998 p1961</i> | 1.1.1999: r 2  |
| 2003 | 147 | <i>Gazette 12.6.2003 p2500</i>  | 12.6.2003: r 2 |

### Provisions varied

| Provision | How varied                            | Commencement |
|-----------|---------------------------------------|--------------|
| Sch       | heading substituted by 147/2003 Sch 1 | 12.6.2003    |