

South Australia

Superannuation (Salary) Variation Regulations 2008

under the *Superannuation Act 1988*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Superannuation (Salary) Variation Regulations 2008*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Superannuation Regulations 2001*

4—Variation of regulation 25—Exclusion of certain remuneration from salary

Regulation 25(1)—after "allowances for rent, house allowed rent free, light and fuel" insert:

the Dental Services Officer Country Incentive Allowance

5—Insertion of regulation 25A

After regulation 25 insert:

25A—Inclusion of certain allowances as component of salary

- (1) This regulation applies to the following allowances:
 - (a) Intensive Care Unit Consultant Allowance;
 - (b) Dental Services Officer Attraction and Retention Allowance;
 - (c) Dental Services Officer Clinical Leader Management/Leadership Allowance;
 - (d) Dental Services Officer Regional Director/Evaluation Director Management/Leadership Allowance;
 - (e) Dental Services Officer Registered Dental Specialists Management/Leadership Allowance;
 - (f) Dental Services Officer Policy and Program Director Management/Leadership Allowance;
 - (g) Psychiatrists Attraction and Retention Loading.
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), an allowance to which this regulation applies will be included as a component of salary for the purposes of determining benefits payable to a contributor who has received the allowance during his or her membership of the scheme in accordance with the following formula:

$$FS = S_1 \left[\frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

FS is the salary

*S*₁ is the contributor's actual or attributed salary, excluding the allowance, immediately before the cessation of his or her employment

*S*₂ is the contributor's actual or attributed salary, including the allowance, immediately before the cessation of his or her employment

CM is the number of contribution months in the contributor's contribution period

X is the number of contribution months in that part of the contributor's contribution period during which the contributor was in receipt of the allowance (with any part of a contribution month being taken to be a full contribution month).

6—Insertion of regulation 28A

Part 4 Division 3—before regulation 29 insert:

28A—Interpretation

In this Division—

relevant entity means an entity that has entered into an arrangement with the Board under section 5 of the Act;

salary means the salary defined by the first or second definitions of *salary* in the Act as modified by the provisions of Division 1 or 2 applicable from time to time in relation to a contributor.

7—Variation of regulation 29—Salary in relation to fixed term appointments

Regulation 29(12), definition of *salary*—delete the definition

8—Variation of regulation 29A—Special provision relating to certain TEC contracts without tenure

Regulation 29A(2)—after paragraph (b) insert:

or

- (c) in respect of a contributor if—
- (i) the contributor has, during his or her membership of the scheme, been appointed to a position with permanency, or for a limited term of 5 years or more (or is taken for the purposes of regulation 29 to have been so appointed); and
 - (ii) the contributor has not, or has not been taken to have, made an election under regulation 29(7) or 30(2) (or any such election made by the contributor has been revoked); and
 - (iii) the highest level of salary received by the contributor during his or her membership of the scheme before he or she entered into the TEC contract without tenure is higher than the amount that would, but for this paragraph, be taken under subregulation (1) to be the contributor's salary for the purpose of determining contributions and benefits with respect to the contributor's membership of the Scheme.

9—Variation of regulation 29B—Special provisions relating to certain transferred contributors

- (1) Regulation 29B(1)(b)—delete "within or for an administrative unit (the *alternative position*)" and substitute:

in the Public Service (an *alternative position*)

- (2) Regulation 29B(2)—delete "be taken to be—" and substitute:

be determined in accordance with the following:

- (3) Regulation 29B(2)(a) to (c)—delete paragraphs (a) to (c) (inclusive) and substitute:

- (a) if the contributor has occupied an alternative position for less than 12 months, the contributor's salary for the purpose of determining contributions and benefits will be taken to be the salary received by the contributor in respect of the substantive position immediately before beginning to occupy an alternative position;

- (b) if—

- (i) the contributor has occupied an alternative position for 12 months or more; and
- (ii) the contributor's remuneration in respect of such a position is the same as, or less than 25% higher than, his or her remuneration in respect of the substantive position immediately before beginning to occupy an alternative position,

the contributor's salary for the purpose of determining contributions and benefits will be taken to be the highest level of salary received by the contributor in respect of an alternative position occupied by the contributor; and

- (c) if—

- (i) the contributor has occupied an alternative position for 12 months or more; and
- (ii) the contributor's occupation of such a position commenced before the relevant day; and
- (iii) the contributor's remuneration in respect of such a position is at least 25% higher than his or her remuneration in respect of the substantive position immediately before beginning to occupy an alternative position,

the contributor's salary for the purpose of determining contributions and benefits will be taken to be salary determined in accordance with subregulation (4);

- (d) if—

- (i) the contributor has occupied an alternative position for 12 months or more; and
- (ii) the contributor's occupation of such a position commenced on or after the relevant day; and

- (iii) the contributor's remuneration in respect of such a position is at least 25% higher than his or her remuneration in respect of the substantive position immediately before beginning to occupy an alternative position,

the following provisions apply:

- (iv) the contributor's salary for the purpose of determining contributions while he or she is occupying an alternative position will be taken to be the highest level of salary received by the contributor in respect of any such position;
 - (v) the contributor's salary for the purpose of determining benefits will be taken to be salary determined in accordance with subregulation (4a).
- (4) Regulation 29B(3)—delete "an administrative unit" and substitute:
the Public Service
- (5) Regulation 29B(3)—delete "be taken to be—" and substitute:
be determined in accordance with the following:
- (6) Regulation 29B(3)(a) and (b)—delete paragraphs (a) and (b) and substitute:
- (a) if the contributor's remuneration in respect of employment with the Public Service is the same as, or less than 25% higher than, his or her remuneration in respect of employment with the entity immediately before his or her transfer to the Public Service, the contributor's salary for the purpose of determining contributions and benefits will be taken to be the highest level of salary received by the contributor in respect of his or her employment with the Public Service;
 - (b) if—
 - (i) the contributor's remuneration in respect of employment with the Public Service is at least 25% higher than his or her remuneration in respect of employment with the entity immediately before his or her transfer to the Public Service; and
 - (ii) the contributor's employment with the Public Service commenced before the relevant day,the contributor's salary for the purpose of determining contributions and benefits will be taken to be salary determined in accordance with subregulation (4);
 - (c) if—
 - (i) the contributor's remuneration in respect of employment with the Public Service is at least 25% higher than his or her remuneration in respect of employment with the entity immediately before his or her transfer to the Public Service; and
 - (ii) the contributor's employment with the Public Service commenced on or after the relevant day,

the following provisions apply:

- (iii) the contributor's salary for the purpose of determining contributions during the period of his or her employment in the Public Service will be taken to be the highest level of salary received by the contributor in respect of that employment;
- (iv) the contributor's salary for the purpose of determining benefits will be taken to be salary determined in accordance with subregulation (4a).

(7) Regulation 29B(4)—delete subregulation (4) and substitute:

- (4) Salary for the purposes of determining contributions and benefits under subregulation (2)(c) and subregulation (3)(b) is to be determined in accordance with the following formula:

$$S = S_1 + ((S_2 - S_1) \times 25\%)$$

where—

S is the salary

S_1 is the highest level of salary received by the contributor while employed by, and undertaking duties for, the relevant entity, adjusted to reflect any movement in salaries for the same classification with that employer

S_2 is the highest level of salary received by the contributor in respect of his or her employment with the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer.

- (4a) Salary for the purposes of determining benefits under subregulation (2)(d)(v) and subregulation (3)(c)(iv) is to be determined in accordance with the following formula:

$$S = S_1 \left[\frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

S is the salary

S_1 is the highest level of salary received by the contributor while employed by, and undertaking duties for, the relevant entity, adjusted to reflect any movement in salaries for the same classification with that employer

S_2 is the highest level of salary received by the contributor in respect of his or her employment with the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer

CM is the number of contribution months in the contributor's contribution period

X is the number of contribution months in that part of the contributor's contribution period during which he or she was employed with the Public Service (with any part of a contribution month being taken to be a full contribution month).

- (8) Regulation 29B(5)—delete "the definition of S_1 and S_2 in subregulation (4)" and substitute:

the definitions of S_1 and S_2 in subregulations (4) and (4a)

- (9) Regulation 29B(5)—delete "under that subregulation"

- (10) Regulation 29B—delete subregulation (6) and substitute:

- (6) In this regulation—

relevant day means the day on which the *Superannuation (Salary) Variation Regulations 2008* came into operation.

10—Insertion of regulations 29BA and 29BB

After regulation 29B insert:

29BA—Determination of salary for contributor transferred to entity outside of public service

- (1) This subregulation applies to a contributor who—
- is employed in the Public Service; and
 - is, while retaining a position in the Public Service (a *substantive position*), occupying a position with a host employer (the *alternative position*).
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), the salary of a contributor to whom subregulation (1) applies will, for the purposes of determining contributions and benefits, be determined in accordance with the following:
- if—
 - the contributor has occupied the alternative position for 12 months or more; and
 - the contributor's host employer has entered into an arrangement with the Board under which the employer agrees to pay to the Treasurer an amount sufficient to meet the cost of the employer financed share of benefits payable to the contributor that is attributable to the contributor's employment with the host employer,

the following provisions apply:

- (iii) if the contributor's remuneration in respect of the alternative position is the same as, or less than 25% higher than, his or her remuneration in respect of a substantive position occupied by the contributor immediately before beginning to occupy the alternative position, the contributor's salary for the purpose of determining contributions and benefits will be taken to be his or her salary in respect of the alternative position;
- (iv) if the contributor's remuneration in respect of the alternative position is at least 25% higher than his or her remuneration in respect of a substantive position occupied by the contributor immediately before beginning to occupy the alternative position, the contributor's salary for the purpose of determining contributions and benefits will be taken to be salary determined in accordance with the following formula:

$$S = S_1 + ((S_2 - S_1) \times 25\%)$$

where—

S is the salary

S_1 is the highest level of salary received by the contributor in his or her employment in the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer

S_2 is the highest level of salary received by the contributor in respect of his or her employment in the alternative position, adjusted to reflect any movement in salaries for the same classification with that employer;

- (b) if paragraph (a) does not apply to the determination of the contributor's salary, the contributor's salary for the purpose of determining contributions and benefits will be taken to be his or her salary in respect of the substantive position occupied by the contributor immediately before beginning to occupy the alternative position.
- (3) If—
- (a) subregulation (1) ceases to apply to a contributor because he or she is no longer occupying a position with a host employer and has returned to a substantive position; and

- (b) the contributor's remuneration in respect of such a substantive position is lower than his or her remuneration in respect of the alternative position immediately before he or she ceased to occupy that position,

the contributor's salary for the purpose of determining benefits is, subject to subregulation (4), to be determined in accordance with the following formula:

$$S = S_1 \left[\frac{CM - X}{CM} \right] + \frac{S_2 \times X}{CM}$$

where—

S is the salary

*S*₁ is the highest level of salary received by the contributor in his or her employment in the Public Service, adjusted to reflect any movement in salaries for the same classification with that employer

*S*₂ is the highest level of salary received by the contributor in his or her employment with the host employer, adjusted to reflect any movement in salaries for the same position with that employer

CM is the number of contribution months in the contributor's contribution period

X is the number of contribution months in that part of the contributor's contribution period during which he or she was employed by the host employer (with any part of a contribution month being taken to be a full contribution month).

- (4) If the contributor's salary for the purpose of determining benefits would, but for subregulation (3), exceed the salary determined in accordance with that subregulation, subregulation (3) does not apply.
- (5) For the purposes of the definition of *S*₁ and *S*₂ in subregulations (2)(a)(iv) and (3), if the position, or the classification level of the position, occupied by a contributor no longer exists when his or her salary is to be determined, adjustments will then be made according to changes in the Consumer Price Index from the day on which the position or classification level ceased to exist.
- (6) In this regulation—

host employer means—

- (a) a body owned, or substantially or wholly funded, by the Government of the State; or
- (b) a body owned, or substantially or wholly funded, by the Government of the Commonwealth; or
- (c) a body owned, or substantially or wholly funded, by—
- (i) the Government of the State; and

- (ii) the Government of the Commonwealth or the Government of another State.

29BB—Determination of salary for contributor returning to public service after employment with relevant entity

- (1) This regulation applies to a contributor employed in the Public Service after having occupied a position with a relevant entity if—
 - (a) the contributor was employed by the entity pursuant to an arrangement under which the definition of salary in the Act was modified in its application to, or in relation to, employees to which the arrangement related; and
 - (b) a purpose of the modification was to ensure that the salary received by employees in their employment with the relevant entity was recognised for the purposes of the definition of salary only in respect of the period of the employee's service with the entity.
- (2) Despite any other regulation (and despite any provision to the contrary in the Act), if the highest level of salary received by a contributor to whom this regulation applies in his or her position with the relevant entity was higher than the salary received by the contributor in his or her employment with the Public Service, the contributor's salary will, for the purposes of determining contributions and benefits, be determined in accordance with the method for determining salary specified under the arrangement.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 24 April 2008

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