No 225 of 2009 published in *Gazette 27.8.2009 p 3874*

South Australia

Superannuation (Lyell McEwin Employees) Regulations 2009

under the *Superannuation Act 1988*

Contents

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Superannuation (Lyell McEwin Employees) Regulations 2009*.

2—Commencement

These regulations will come into operation on 1 September 2009.

3—Interpretation

In these regulations—

Act means the *Superannuation Act 1988*;

contributor means a person whose name appears in Schedule 1.

4—Contributors

A contributor continues to be a new scheme contributor for the purposes of the Act.

Part 2—Modification of Act

5—Modification of Act

For the purposes of clause 1(1)(b) of Schedule 1A of the Act, the provisions of the Act are modified in their application to contributors in the manner described in the following provisions of this Part.

6—Amendment of section 4—Interpretation

(1) Section 4(1), definition of ***contributor***—after "to that person under this Act" insert:

and also includes a person named in Schedule 1 of the *Superannuation (Lyell McEwin Employees) Regulations 2009*

(2) Section 4(1)—after the definition of ***deferred superannuation contributions surcharge*** insert:

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;

(3) Section 4(1)—after the definition of ***invalidity*** insert:

Lyell McEwin Employer Account means the account kept at the Treasury pursuant to an arrangement under section 5 of the Act between the Board and the Central Northern Adelaide Health Service Incorporated (formerly the North Western Adelaide Health Service) and referred to in regulation 4(4) of the revoked *Superannuation (Lyell McEwin Employees) Regulations 1999*;

(4) Section 4(1)—after the definition of ***retrenchment pension*** insert:

rollover account in relation to a contributor means the rollover account maintained by the Board in the name of the contributor under section 20ABAA;

(5) Section 4(1)—after the definition of ***the Scheme*** insert:

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

7—Amendment of section 17—The Fund

Section 17(4)(a)—delete "by contributors" and substitute:

by or on behalf of the contributors

8—Insertion of section 20ABAA

After section 20A insert:

20ABAA—Rollover accounts

(1) The Board will maintain the rollover accounts opened under regulation 4(3) of the revoked *Superannuation (Lyell McEwin Employees) Regulations 1999* in the names of all contributors.

(2) A contributor's rollover account must be debited with any payment that is, under this Act, to be charged against that account.

(3) 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.

(4) In determining a rate of return for the purposes of subsection (3), the Board should have regard to the net rate of return achieved by investment of money held by the Fund in rollover accounts.

(5) If 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.

(6) A balance determined under subsection (5) will not be adjusted when a rate of return is subsequently determined under subsection (3).

(7) A reference in this section to "rate of return" is a reference to a positive or a negative rate of return.

9—Amendment of section 20B—Payment of benefits

Section 20B(2)—delete subsection (2) and substitute:

(2) If any such payment, or a proportion of any such payment, is, under 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.

10—Amendment of section 23—Contribution rates

Section 23—delete subsections (1), (2), (2a), (2b), (3) and (3a) and substitute:

(1) Subject to this section, a contributor will make contributions to the Treasurer at the rate set out in Schedule 1 of the *Superannuation (Lyell McEwin Employees) Regulations 2009* 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 1 January 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.

11—Substitution of Part 4

Part 4—delete the Part and substitute:

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 2009* apply.

26A—Transition to retirement

(1) A contributor may apply to the Board for the benefit of this section if—

(a) the contributor has reached—

(i) the age of 55 years; and

(ii) his or her preservation age; and

(b) the contributor has entered into an arrangement with his or her employer—

(i) to reduce his or her hours of work; or

(ii) to alter his or her duties,

or both, with the effect that there is a reduction in the contributor's salary; and

(c) the purpose for establishing the arrangement referred to in paragraph (b) relates to the proposed retirement of the contributor in due course (including by allowing the contributor to scale down his or her work in the lead-up to retirement).

(2) The Board may require that an application under subsection (1)—

(a) be made in such manner as the Board thinks fit; and

(b) be accompanied by such information or other material specified by the Board to assist the Board to be satisfied as to the matters set out in paragraphs (b) and (c) of that subsection.

(3) If the Board is satisfied that a valid application has been made under subsection (1), an entitlement will arise as follows:

(a) the Board will determine a benefit (a ***draw down benefit***) on the basis of the contributor's application and on the basis that the maximum draw down benefit to which the contributor is entitled will be determined as follows:

$$B = SP \times \frac{(FS - NS)}{FS}$$

where—

B is the maximum draw down benefit

FS is the contributor's actual salary immediately before the commencement of the arrangement envisaged by subsection (1)(b)

NS is the contributor's actual salary on the commencement of the arrangement envisaged by subsection (1)(b)

SP is the amount that would be payable under section 27 if the contributor had retired from employment immediately before the date of the determination;

(b) the Board will then, according to an election made by the contributor as part of his or her application to the Board for the benefit of this section, invest (on behalf of and in the name of the contributor) the draw down benefit—

(i) with the Superannuation Funds Management Corporation of South Australia; or

(ii) with another entity that will provide a non-commutable income stream for the contributor while the contributor continues to be employed in the workforce,

so that the contributor receives (and only receives) a payment in the form of a pension or an annuity (a ***draw down payment***) on account of the benefit.

(4) The investment of a draw down benefit under subsection (3)(b)(i) will be on terms and conditions determined by the Board.

(5) An entitlement to a draw down payment is not commutable.

(6) However—

(a) a contributor may, after commencing to receive a draw down payment and before retiring from employment under this Act, take steps to bring the investment to an end and pay the balance of the investment into the contributor's rollover account (which may need to be re-established if the balance of the account maintained for the contributor under section 20ABAA has been paid); and

(b) the value of an investment under subsection (3)(b)(i) may be redeemed in due course under subsection (9); and

(c) a contributor who has reached the age of 65 years may commute an entitlement to a draw down payment so that investment of the draw down benefit on account of which the payment is made is brought to an end and the balance paid to the contributor.

(7) When the Board has determined a draw down benefit—

(a) the account maintained by the Board in the name of the contributor under section 20A, and any account maintained for the purposes of section 20ABAA, will be immediately adjusted by a percentage equal to the percentage that the draw down benefit bears to the total benefit that would have been payable had the contributor retired from employment to take into account the payment of the draw down benefit; and

(b) the contributions payable by the contributor under section 23 will (despite any provision made by section 23 to the contrary)—

(i) be fixed on the basis of the contributor's salary under the arrangement established with his or her employer (for so long as the arrangement continues); and

(ii) as so fixed, be payable in respect of this salary from the first full pay period after the Board's determination of the draw down benefit; and

(iii) be at the rate at which the contributor is required to make contributions under that section.

(8) If the employment arrangements of a contributor who is receiving a draw down payment under this section alter so that there is an alteration in his or her salary—

(a) in the case of a reduction in salary—the contributor may apply to the Board for a further benefit in accordance with the provisions of this section and this section will then apply to the application and with respect to the relevant arrangement—

(i) as if FS under subsection (3)(a) is the contributor's actual salary immediately before the relevant reduction in salary; and

(ii) as if NS is the contributor's actual salary immediately after the relevant reduction in salary; and

(iii) by applying such other modifications as may be necessary for the purpose; and

(b) in the case of an increase in salary—the draw down payment will continue as if the increase had not occurred and where the contributor makes contributions to the scheme under this Act in respect of the increase in salary the contributions payable by the contributor and the value of the factor "P" in section 27, 29 or 30 (as the case requires) must be adjusted to take into account the increase.

(9) When a contributor retires from employment (and is thus entitled to a benefit under section 27)—

(a) the contributor's entitlement under section 27 will be reduced to the extent necessary to take into account, to its full extent, the aggregate value of all draw down benefits determined for the contributor; and

(b) an investment being held under subsection (3)(b)(i) may, at the option of the contributor, be redeemed and paid to the contributor.

(10) If the employment of a contributor for whom a draw down benefit has been determined is terminated by the contributor's death, an entitlement under section 29 or 30 will be reduced to the extent necessary to take into account, to its full extent, the aggregate value of all draw down benefits determined for the contributor.

(11) When a contributor dies, an investment being held under subsection (3)(b)(i) is to be redeemed and paid, in the discretion of the Board—

(a) to such of the dependants of the contributor as the Board thinks fit and, if payment is made to 2 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.

(12) Despite a preceding subsection, if the maximum draw down benefit under subsection (3)(a) is not sufficient to be invested under subsection (3)(b) to obtain a draw down payment—

(a) unless paragraph (b) applies—the draw down benefit must be an amount equal to the minimum required to obtain a draw down payment (and subsection (3)(a) will apply accordingly);

(b) if the minimum amount required to obtain a draw down payment is greater than SP under subsection (3)(a), the Board must reject the application under this section (and no entitlement will arise under subsection (3)).

(13) The determination of a benefit under this section must take into account the operation of any provision under Part 5A.

27—Retirement, resignation and retrenchment

(1) A contributor who retires from employment or whose employment is terminated by retrenchment is entitled to a superannuation payment made up of 2 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 3 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% of the contributor's notional salary.

(5) If 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 1 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) If 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) If 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 6 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 2 or more years or for 2 or more periods that aggregate a period of 2 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 31 August 2009 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;

(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) If the employment is terminated on the ground of total and permanent disablement, the superannuation payment will be made to the contributor.

(4) If 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 2 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 2 or more limbs; or

(ii) permanent loss of sight in both eyes; or

(iii) the loss of 1 limb and permanent loss of sight in 1 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 6 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;

(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 2 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.

12—Repeal of sections 45 and 46

Sections 45 and 46—delete the sections

Schedule 1—Contributors

Contributor	**Contribution rate**
Elizabeth Louise Bice	5.7%
Agnelo Francis De Sousa	6.0%
Norman Bruce Willoughby	5.8%

Schedule 2—Revocation of *Superannuation (Lyell McEwin Employees) Regulations 1999*

The *Superannuation (Lyell McEwin Employees) Regulations 1999* are revoked.

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 27 August 2009

No 225 of 2009

T&F09/053CS