

EXPLANATORY STATEMENT

STATUTORY RULES 1988 NO 317
ISSUED BY THE AUTHORITY OF THE MINISTER FOR FINANCE

SUBJECT: SUPERANNUATION ACT 1976 - SUPERANNUATION
(TRANSFER ARRANGEMENTS) REGULATIONS (AMENDMENT)

Section 168 of the Superannuation Act 1976 (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which the Act requires or permits to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Act makes provision for and in relation to an occupational superannuation scheme for persons employed by the Commonwealth, and for certain other persons. Persons eligible to contribute under the Act are referred to in the Act as "eligible employees".

Subsection 126(2) of the Act provides that the regulations may make provision for modifying the Act, or a provision of the Act specified in the regulations, in the application of the Act or that provision to and in relation to a person who is, or has ceased to be, an eligible employee and who, at any time before he became an eligible employee, was a member of a superannuation scheme, or to and in relation to a prescribed class of such persons. Subsection 126(3) provides that the modifications may include, but are not limited to, modifications providing for the payment of contributions and benefits in addition to, or in substitution for, those provided under the Act.

Certain technical and further education (TAFE) teachers employed in the Australian Capital Territory transferred from New South Wales to Commonwealth employment on 31 March 1977. The transferred TAFE teachers became contributors under the Act on that date and arrangements to protect their accrued entitlements under the New South Wales State superannuation scheme were agreed with them. It was intended that the arrangements be provided in regulations under subsection 126(2) with effect from 31 March 1977, the date of transfer. It was not possible, however, for the regulations to be made before the expiration of the time limits for retrospectivity of regulations imposed by subsections 168(2) and (3) of the Act.

Subsection 168(6) of the Act inserted by the Superannuation Legislation Amendment Act (No 2) 1986, provides that regulations made within a period of 2 years after the date of commencement of the subsection (18 December 1986) by virtue of subsection 126(2) in relation to the transferred TAFE teachers may be expressed to have taken effect from and including a day not earlier than 31 March 1977.

The Statutory Rule amends the Superannuation (Transfer Arrangements) Regulations to provide for the agreed superannuation arrangements for the transferred TAFE teachers. The provisions of the amending Regulations are outlined in the Attachment.

The amendments to the Superannuation (Transfer Arrangements) Regulations are expressed to have come into operation on 31 March 1977, the date of the transfers.

SR NO 302/88

ATTACHMENT

SUMMARY OF PROVISIONS OF SUPERANNUATION (TRANSFER ARRANGEMENTS) REGULATIONS (AMENDMENT)

The Superannuation (Transfer Arrangements) Regulations (Amendment) amend the Superannuation (Transfer Arrangements) Regulation by inserting a new regulation 11 and Schedule 8 into the Regulations to modify the Superannuation Act 1976 (the Act) in its application to technical and further education (TAFE) teachers employed in the Australian Capital Territory who transferred from New South Wales to Commonwealth employment on 31 March 1977. Schedule 8 modifies the Act by substituting a new Division 2 of Part IX comprising sections 127 to 130J. It also contains a number of consequential modifications.

2. Regulation 1 provides for the Regulations to be deemed to have come into operation on 31 March 1977, the date the transfers took place.

3. Regulation 2 provides that, in the Regulations, the term "Principal Regulations" means the Superannuation (Transfer Arrangements) Regulations.

4. Regulation 3 provides for the insertion of a new regulation 11 into the Principal Regulations to provide for the Act and the provisions of the Act specified in the new Schedule 8 to the Principal Regulations to apply, subject to the modifications specified in the new Schedule 8, to TAFE teachers who transferred from New South Wales to Commonwealth employment on 31 March 1977, who became contributors under the Act on that date and who, immediately before transfer, were members of the New South Wales State Superannuation Scheme (the State Scheme).

5. Regulation 4 inserts into the Principal Regulations a new Schedule 8 containing the modifications to the Act in relation to the transferred TAFE teachers.

SCHEDULE 8

6. Schedule 8 commences and ends with a number of modifications consequential upon the substitution, by the Schedule, of the new Division 2 of Part IX. Discussion of the consequential modifications is included with that on the relevant provisions of the new Division 2 of Part IX.

7. Section 127 is the interpretation provision for the new Division 2 of Part IX. Subsection 127(1) defines for the purposes of the Division the meaning of various terms used in the Division. In particular:

- . "relevant eligible employee" means a transferred TAFE teacher who became an eligible employee (contributor) for the purposes of the Act on the transfer day (31 March 1977) and who immediately before transfer, was a member of the State Scheme;
- . "prescribed eligible employee" means a relevant eligible employee who has paid to the Commissioner for Superannuation a transfer value from the State scheme;
- . "prescribed person" means a person who has ceased to be a prescribed eligible employee and has not again become an eligible employee; and
- . "State Act" means the Superannuation Act, 1976 of the State of New South Wales.

8. Paragraph 127(2)(a) provides that a reference to a transfer value payable from the State scheme in relation to a transferred TAFE teacher is a reference to a benefit solely in the form of a lump sum payable on termination of the person's State employment otherwise than on the ground of invalidity or physical or mental incapacity. In accordance with paragraph 127(2)(b), a transfer value is not to include an amount based on contributions like supplementary contributions under the Act or contributions for reserve units of pension under the Superannuation Act 1922. In accordance with paragraph 127(2)(c), the employer component of the pension to which the person would have been entitled under the State Scheme is the part of that pension based on contributions under the State Scheme by the employer.

9. Section 128 makes provision in relation to the payment of transfer values (as defined in paragraphs 127(2)(a) and (b)) by the transferred teachers. Subsection 128(1) provides that the section applies where a transfer value is payable from the State Scheme in relation to a transferred TAFE teacher and is paid to the Commissioner for Superannuation. Subsection 128(2) provides that where such a transfer value is paid to the Commissioner, the employee component of the transfer value is to be paid into the Superannuation Fund by the Commissioner and, subject to subsection 128(3), treated as basic contributions paid by the person under the Act and the employer component is to be paid into the Consolidated Revenue Fund. The terms "employee component" and "employer component" of a transfer value are defined in subsection 128(6).

10. Subsection 128(3) provides that where the person becomes entitled, under certain specified provisions of the Act, to a lump sum benefit of 3.5 times accumulated basic contributions, the amount of the accumulated basic contributions is to be taken, for the purposes of the calculation of the benefit, to be what that amount would have been if the amount of the employee component of the transfer value had been two-sevenths of the total amount of the transfer value. The effect is that, in such situations, the person will receive a lump sum benefit of the amount of 3.5 times the basic contributions paid by the person while a contributor plus interest together with the amount of the transfer value plus interest. Subsection 128(4) provides that, where the person ceases to be contributor and the benefit is a lump sum of the amount of his or her accumulated contributions in accordance with section 80 or 111, the person shall also be entitled to payment of a lump sum benefit of the amount of the employer component of the transfer value that would have been payable to the person under the State Scheme on termination of employment.

11. Subsection 128(5) provides for the person's period of contributory service for the purposes of the Act to be increased by the period that would have been the person's period of contributory service for benefit purposes under the State Scheme if he or she had retired from State employment on 30 March 1977.

12. Subsection 128(6) defines the "employee component" of a transfer value to be that part of the transfer value that is based on contributions by the person and the "employer component" as that part that is based on contributions by the employer.

13. Section 129 provides that, where an amount is payable under the State scheme that does not form part of a transfer value, the person may elect to have it paid into the Superannuation Fund and treated as supplementary contributions.

14. Section 130 provides, in subsection (1), that the provisions of section 16 of the Act relating to the medical examination of new contributors under the Act and the issue of benefit classification certificates do not apply to the transferred TAFE teachers. Subsection (2) and (3) provide for the issue of a benefit classification certificate to, or in relation to, a transferred TAFE teacher who was a contributor for limited benefits under the State Scheme and who dies or retires on invalidity grounds before completing 20 years contributory service or attaining maximum retiring age where the Commissioner for Superannuation is of the opinion that the death or

invalidity retirement was caused, or was substantially contributed to, by a physical or mental condition or conditions that was, or were, relevant to the person having been accepted only as a contributor for limited benefits under the State Scheme. The relevant condition (or conditions) is to be specified on the certificate and the certificate is to be deemed to have been in force immediately before the person's death or retirement. The effect is that the benefit payable will be reduced.

15. Section 130A makes provision in relation to transferred TAFE teachers who, immediately before transfer, were contributing greater or less than 5% of salary (the rate of basic contribution under the Act) under the State Scheme. A transferred TAFE teacher with State Scheme contributions (including contributions for reserve units of pension) exceeding 5% of salary would pay contributions of the same amount under the Act with the excess being treated as supplementary contributions. This would continue until the excess disappeared with increases in the amount of the basic contribution because of salary increases or the person elected that those supplementary contributions cease. If the State Scheme contributions (excluding contributions for reserve units of pension) of a transferred TAFE teacher who has not attained age 40 were less than 3% of salary, the transferee would pay basic contributions of 3% of salary; these would then increase by 1% of salary on each anniversary of the person's birth until they reached the rate of 5%. If the contributions were 3% or more but less than 4%, the person would pay 4% of salary basic contributions increasing to 5% on the next anniversary of the person's birth. If the contributions were 4% or more but less than 5%, the person would pay 5%. Where the person was contributing for reserve units of pension under the State Scheme, he or she would be required to pay, as supplementary contributions under the Act, the difference between the rate of basic contributions being paid as outlined above and 5% of salary.

16. The above is achieved by section 130A by suitable changes to sections 185 and 186 and to the Superannuation (Additional Contributions) Regulations which provided for similar treatment for contributors under the Superannuation Act 1922 who became contributors under the Superannuation Act 1976 on 1 July 1976.

17. Section 130B applies to a prescribed person (as defined in subsection 127(1)) who is entitled to an employer financed age retirement pension by virtue of subsection 55(1) or (2) of the Act or an employer financed early retirement pension by virtue of section 59 other than a person to whom section 130C applies. It provides

for the annual rate of the pension to be the sum of the annual rate that would otherwise be payable to the person under the Act and a supplement to have regard to the excess of:

- (a) the annual amount of the employer financed pension that would have been payable under the State Scheme if the person had remained a member of that Scheme and based on the person's salary and the provisions of the State Scheme immediately before the date of transfer; over
- (b) the annual rate of employer financed pension otherwise payable under the Act having regard to the person's total State and Commonwealth contributory service.

18. Consequential amendments are made to sections 55, 56, 59, 60, 90, 97 and 102 to include reference to a pension payable under section 130B.

19. Section 130C applies to a prescribed person (as defined in subsection 127(1)) like a prescribed person referred to in section 130B but who had, while a member, or while last a member, of the State Scheme, abandoned a number of units of pension exceeding one-half of the number of units for which he or she was contributing immediately before the date of transfer. The number of abandoned units of pension is not to include those abandoned and taken up before 1 February 1977 or those abandoned under subsection 10W(2) of the State Act. The number of contributory units is not to include those that had been abandoned at any time but taken up on or after 1 February 1977.

20. The section provides for the employer financed age or early retirement pension payable to the person to be at the annual rate that would have been payable under section 130B if that section had applied and the person had not abandoned any units of pension under the State Scheme (other than under subsection 10W(2) of the State Act). The annual rate of pension is then reduced by an annual amount that has regard to the number of units abandoned. The amount of the reduction is progressively reduced over the period of the person's actual contributory service, ie ignoring section 130D, from the transfer date and is fully extinguished if the person completes 30 years such contributory service from that date.

21. Consequential amendments are made to sections 55, 56, 59, 60, 90, 97 and 102 to include reference to a pension payable under section 130C.

22. Section 130D provides that, where a person to whom either section 130B or section 130C applies has total State and Commonwealth contributory service of less than 30 years and would have been entitled to a pension under section 21 of the State Act if he or she had remained a member of the State Scheme, the person is to be deemed to have completed 30 years contributory service for the purposes of the Act.

23. Section 130E applies to a prescribed person (as defined in subsection 127(1)) who is entitled to an invalidity pension by virtue of subsection 66(1) of the Act (pension not reduced on medical grounds) other than a person to whom either section 130H or 130I applies. It provides for the payment to such persons of an annual rate of pension calculated along similar lines to the pensions provided for in section 130B.

24. In calculating the pension supplement for the purposes of section 130E, however, the comparison is made between:

- (a) the annual rate of the employer financed invalidity pension that would have been payable to the person under the State Scheme on the basis that:
 - (i) if the person was a contributor for full benefits under the State Scheme immediately before the transfer day, he or she remained such a contributor until retirement; or
 - (ii) if the person was a contributor for limited benefits under the State Scheme immediately before the transfer day, he or she remained such a contributor until retirement; and
- (b) the annual rate of the employer financed invalidity pension that would otherwise be payable to the person under the Act where the pension was not reduced on medical grounds and having regard to the person's total State and Commonwealth contributory service or the person's period of prospective service.

25. Consequential amendments are made to sections 67, 68, 78, 82, 83, 98, 103 and 149 to include reference to a pension payable under section 130E.

26. Section 130F applies to a prescribed person (as defined in subsection 127(1)) who is entitled to an invalidity pension by virtue of subsection 66(2) of the Act (pension reduced in medical grounds) other than a person to whom either section 130H or 130I applies. It provides for the payment to such persons of an annual rate of pension calculated along similar lines to the pensions provided for in section 130B.

27. In calculating the pension supplement for the purposes of section 130F, however, the comparison is made between:

- (a) the annual rate of the employer financed invalidity pension that would have been payable to the person under the State Scheme on the basis that the person, having been a contributor for limited benefits under the State Scheme immediately before the transfer day, had remained such a contributor until retirement; and
- (b) the annual rate of the employer financed invalidity pension that would otherwise be payable to the person under the Act where the pension was reduced on medical grounds and having regard to the person's total State and Commonwealth contributory service.

28. Consequential amendments are made to sections 70, 71, 78, 85, 86, 100, 104 and 149 to include reference to a pension payable under section 130F.

29. Section 130G provides that sections 130H and 130I apply to a prescribed person (as defined in subsection 127(1)) who while a member, or while last a member, of the State Scheme abandoned a number of units of pension exceeding one-half of the number of units for which he or she was contributing immediately before the date of transfer. The number of abandoned units of pension is not to include those abandoned and taken up before 1 February 1977 or those abandoned under subsections 10W(2) of the State Act. The number of contributory units is not to include those that had been abandoned at any time and taken up on or after 1 February 1977.

30. Section 130H provides that, where a person to whom the section applies by virtue of section 130G is entitled to an employer financed invalidity pension under section 68 or section 71, the pension is to be at the annual rate that would have been payable under section 130E or 130F, whichever is applicable, if that section had applied and the person had not abandoned any units of pension under the State Scheme (other than under subsection 10W(2) of the State Act). The annual rate of pension is then reduced by an annual amount that has regard to the number of units abandoned. The amount of the reduction is progressively reduced over the period of the person's actual contributory service from the transfer date and is fully extinguished if the person completes 30 years such contributory service from that date.

31. Consequential amendments are made to section 68, 71, 78, 83, 86, 98, 100, 103, 104 and 149 to include reference to a pension payable under section 130H.

32. Section 130I provides that, where a person to whom the section applies by virtue of section 130G is entitled to an employer financed and employee financed invalidity pension under section 67 or 70, the pension is to be at the annual rate that would have been payable under section 130E or 130F, whichever is applicable, if that section had applied and the person had not abandoned any units of pension under the State Scheme (other than under subsection 10W(2) of the State Act). The annual rate of pension is then reduced by an annual amount that has regard to the number of units abandoned. The amount of the reduction is progressively reduced over the period of the person's actual contributory service from the transfer date and is fully extinguished if the person completes 30 years such contributory service from that date.

33. Consequential amendments are made to section 67, 70, 82, 85, 98, 100, 103, 104 and 149 to include reference to a pension payable under section 130I.

34. Section 130J provides that where the period of prospective service for the purposes of the Act of a prescribed eligible employee (as defined in subsection 127(1)) is less than 30 years it is to be deemed to be 30 years.