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Statutory Rules 1990 No. *1*

140/

Superannuation (Transfer Arrangements) Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,
acting with the advice of the Federal Executive Council, hereby make
the following Regulations under the *Superannuation Act 1976*.

Dated *18 June* 1990.

BILL HAYDEN
Governor-General

By His Excellency's Command,

Ralph Willis

Minister of State for Finance

Commencement

1. These Regulations are taken to have commenced on 7 July 1989.

Principal Regulations

2. In these Regulations, "**Principal Regulations**" means the Superannuation (Transfer Arrangements) Regulations.

3. After regulation 12 of the Principal Regulations the following regulation is inserted:

Application of the Act to certain persons to whom deferred benefits are applicable or payable under the superseded Act

"13. (1) For the purposes of subsection 126 (2) of the Act and the provisions of the Act specified in Schedule 10, the following class of persons is a prescribed class of persons to whom section 126 of the Act applies, namely persons:

- (a) to whom deferred benefits as pension (other than in the form of a pension payable under section 46, 47 or 48 of the

superseded Act) are applicable or payable under the superseded Act; and

(b) who have, or will, become eligible employees;

other than a person:

(c) referred to in paragraph (a) of the definition of 'eligible employee' in subsection 3 (1) of the Act; or

(d) who has at any time ceased to be an eligible employee and again becomes an eligible employee, not being a person referred to in subsection 8 (1), (2) or (3) of the Act.

“(2) The Act in its application to the prescribed class of persons referred to in subregulation (1) is modified in accordance with the modifications specified in Schedule 10.”.

4. The Principal Regulations are amended by adding at the end the following Schedule:

SCHEDULE 10

Regulation 13

**MODIFICATIONS OF THE ACT IN ITS APPLICATION
IN RELATION TO THE PRESCRIBED CLASS OF PERSONS
REFERRED TO IN SUBREGULATION 13 (1)**

Item	Modification
1	<p>Insert in subsection 3 (1) the following definition:</p> <p>“non-contributory portion, in relation to a pension under the superseded Act, means the non-contributory portion of the amount of the annual pension payable to a person at a particular time within the meaning of subsection 119Z1 (1) of that Act;”.</p>
2	<p>Omit the definition of “period of contributory service” in subsection 3 (1), substitute the following definition:</p> <p>“period of contributory service, in relation to a person:</p> <p>(a) who has ceased to be an eligible employee; and</p> <p>(b) has not, at any time before ceasing to be an eligible employee, been an approved part-time employee; and</p> <p>(c) is not a person referred to in subsection 8 (1), (2) or (3);</p> <p>means the sum of the following periods:</p> <p>(d) a period equal to the period beginning on his or her first day of service and ending on his or her last day of service (less any period during that period when the person was on leave of absence without pay and in respect of which subsection 51 (1) applies or was absent from duty and in respect of which subsection 51A (1) applies); and</p> <p>(e) any period that is, in relation to the person, a prescribed period of service under section 236.”.</p>
3	<p>After section 117 insert the following section:</p> <p>Adjustment for non-contributory portion of deferred benefits as pension</p> <p>“117A. (1) Subject to subsection (4), if:</p>

SCHEDULE 10—continued

Item	Modification
	<p>(a) a person is entitled to a pension, other than a spouse's pension or deferred benefits as pension; and</p> <p>(b) deferred benefits as pension under the superseded Act are payable to that person;</p> <p>the amount of the fortnightly instalments of the first-mentioned pension must be ascertained as if the annual rate of the pension were reduced by the part of the annual rate that is attributable to the non-contributory portion of the deferred benefits.</p> <p>“(2) Subject to subsection (4), if, in respect of a person in a class of persons prescribed by regulation 13 of the Transfer Arrangements Regulations:</p> <p>(a) another person is entitled to an orphan's pension or a spouse's pension; and</p> <p>(b) deferred benefits as pension under the superseded Act are payable to the other person;</p> <p>the amount of the fortnightly instalments of a pension referred to in paragraph (a) must be ascertained as if the annual rate of the pension were reduced by the part of the annual rate that is attributable to the non-contributory portion of the deferred benefits.</p> <p>“(3) In the case of a person referred to in paragraphs (2) (a) and (b), that non-contributory portion of those deferred benefits is the sum of the non-contributory portion of:</p> <p>(a) the deferred benefits payable to the person as pension under the superseded Act; and</p> <p>(b) any additional pension payable to the person under the superseded Act in respect of an eligible child.”</p> <p>“(4) If, by the application of subsection (1) or (2) and paragraph (e) of the definition of 'period of contributory service' in subsection 3 (1), the total annual amount of benefit payable to a person as pension and as deferred benefits by way of pension under the superseded Act would be less than the total annual amount that would be payable in the absence of those provisions, those provisions must be disregarded for the purpose of calculating the annual rate of the pension payable to the person under this Act.</p> <p>“(5) In subsections (1) and (2), a reference to the annual rate of the pension is (except where the pension is a partial invalidity pension) a reference to the rate in respect of the pension, or a part of the pension, that would be subject to an increase under the provisions of Part X on the next occasion on which that Part applies to the pension.</p> <p>“(6) In subsection (2), 'Transfer Arrangements Regulations' means the Superannuation (Transfer Arrangements) Regulations, as in force from time to time.”</p>
4	<p>Add at the end of Part XII the following Division:</p> <p>“Division 11—Prescribed Periods to be included as Contributory Service Interpretation</p> <p>“235. (1) In this Division, unless the contrary intention appears:</p> <p>‘existing Fund’ means the Superannuation Fund established under the superseded Act;</p> <p>‘previous employment’, in relation to a person who has ceased to be an eligible employee, means:</p>

SCHEDULE 10—continued

Item	Modification
	<p>(a) except if paragraph (b) applies—the employment in which that person was employed immediately before he or she became an employee for the purposes of the superseded Act; or</p> <p>(b) if the person became an employee referred to in paragraph (a) on more than 1 occasion—the employment in which he or she was employed immediately before the beginning of the period in respect of which deferred benefits are applicable or payable to the person under the superseded Act;</p> <p>‘Provident Account’ means the Provident Account established under the superseded Act;</p> <p>‘relevant cessation day’, in relation to a person who has ceased to be an eligible employee, means the last day of the period during which the person was an employee for the purposes of the superseded Act and in relation to which deferred benefits are applicable or payable to the person under that Act.</p> <p>“(2) In this Division:</p> <p>(a) a reference, in relation to a person who has ceased to be an eligible employee, to the date of commencement of that person’s contributions, is a reference to:</p> <p>(i) except where subparagraph (ii) applies—the date on which he or she became liable to make contributions to the existing Fund (whether under Part III of the superseded Act or as a contributor to the Provident Account); or</p> <p>(ii) if that person became an employee for the purposes of that Act on more than 1 occasion—the date on which he or she last became liable to make any such contributions in relation to a period in respect of which deferred benefits are applicable or payable to the person under the superseded Act; and</p> <p>(b) a reference to the Board is, if the Board had ceased at the relevant time to exist, a reference to the Commissioner.</p> <p>“(3) For the purposes of this Division:</p> <p>(a) if a person would, but for subsection 100C (8) or 109 (5) or paragraph 119J (3) (c) of the superseded Act, have been liable on a particular day to contribute to the existing Fund, he or she is taken to have been liable on that day to make contributions to the existing Fund; and</p> <p>(b) if a person has paid an amount, or made a payment, on behalf of another person, the amount is to be taken to have been paid or the payment made by that other person.</p> <p>“(4) If, at any time before his or her relevant cessation day:</p> <p>(a) a person had ceased to be an employee for the purposes of the superseded Act because of retirement on the ground of invalidity or physical or mental incapacity to perform his or her duties; and</p> <p>(b) that person had, upon his or her ceasing to be an employee referred to in paragraph (a), become entitled to a pension under section 45 of the superseded Act or because of subsection 8 (1) of the <i>Superannuation Act 1948</i>; and</p> <p>(c) that person again became an employee for the purposes of the superseded Act; and</p> <p>(d) the pension referred to in paragraph (b) was cancelled under subsection 65 (3) of the superseded Act upon his or her again becoming such an employee;</p>

SCHEDULE 10—continued

Item	Modification
	<p>this Division applies to that person as if he or she had not ceased during the period of his or her retirement to be:</p> <p>(c) an employee; and</p> <p>(f) a contributor to the existing Fund.</p> <p>“236. (1) Subject to subsection (2), each of the following periods is a prescribed period of service in relation to a person who has ceased to be an eligible employee:</p> <p>(a) except if paragraph (b) applies—the period that began on the date of commencement of his or her contributions and ended on his or her relevant cessation day (which period is taken not to include those periods (if any) within that period during which he or she was not permitted or required because of subsection 100J (2), 107K (2), 110 (2) or 119K (2) of the superseded Act to contribute to the existing Fund in respect of units of pension);</p> <p>(b) if:</p> <p>(i) the person, being a person who on his or her relevant cessation day was, under a decision of the Board under section 79 of the superseded Act, liable to contribute to the existing Fund under Part III of that Act, did not make an election in relation to that decision under subsection 79 (4) of the superseded Act as in force before 25 May 1971 or under paragraph 119J (1) (b) of the superseded Act; or</p> <p>(ii) where the person made that election, the amount required to be paid to the Board under the election was not so paid;</p> <p>the period that began on the date of the decision of the Board under which he or she was so liable to contribute to the existing Fund and ended on his or her relevant cessation day (which period is taken not to include those periods (if any) within that period during which he or she was not permitted or required because of subsection 100J (2), 107K (2), 110 (2) or 119K (2) of the superseded Act to contribute to the existing Fund in respect of units of pension);</p> <p>(c) if the person was a transferred dockyard employee within the meaning of Part VI of the superseded Act and was taken because of subsection 95 (2) of that Act to be an employee for the purposes of that Act—the period ending on 27 October 1942 during which he or she was contributing under the Melbourne Harbor Trust Superannuation Regulations 1927-1940 in force under the Melbourne Harbor Trust Acts of Victoria;</p> <p>(d) if the person was a prescribed employee within the meaning of Division 2 of Part VIA of the superseded Act—the period, being the whole or a part of the period of his or her previous employment, during which he or she was a member of the superannuation scheme applying to his or her previous employment;</p> <p>(e) if the person was a prescribed employee within the meaning of Division 3 of Part VIA of the superseded Act and became, under a decision of the Board under section 79 of the superseded Act, liable to contribute to the existing Fund under Part III of that Act and made an election and payment to the Board under subsection 119J (1) of that Act—the period, being the whole or a part of the period of his or her previous employment, during which he or she was a member of the superannuation scheme applying to his or her previous employment;</p>

SCHEDULE 10—continued

Item	Modification
(f)	if the person was a State employee within the meaning of Part VII of the superseded Act and made an election and payment to the Board under subsection 102 (1) of that Act—subject to subsection (3), the period, being the whole or a part of the period of his or her previous employment, during which he or she was a contributor to the fund or account (being a State Fund within the meaning of that Part) to which he or she was contributing under the terms and conditions of his or her previous employment;
(g)	if the person was a prescribed employee within the meaning of Division 2 of Part VIIA of the superseded Act—subject to subsection (3), the period, being the whole or a part of the period of his or her previous employment, during which he or she was a contributor to the fund or account (being a State Fund within the meaning of that Part) to which he or she was contributing under the terms and conditions of his or her previous employment;
(h)	subject to subsection (3), if the person was a prescribed employee within the meaning of Division 3 of Part VIIA of the superseded Act and became, under a decision of the Board under section 79 of the superseded Act, liable to contribute to the existing Fund under Part III of that Act and made an election and payment to the Board under subsection 119J (1) of that Act—the period, being the whole or a part of the period of his or her previous employment, during which he or she was a contributor to the fund or account (being a State Fund within the meaning of that Part) to which he or she was contributing under the terms and conditions of his or her previous employment;
(j)	if, subject to subsection (3), the person: <ul style="list-style-type: none"> <li data-bbox="448 1021 1233 1070">(i) became liable to contribute to the existing Fund on or after 1 November 1951; and <li data-bbox="448 1077 1233 1182">(ii) was, immediately before he or she became an employee for the purposes of the superseded Act, a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of the superseded Act; and <li data-bbox="448 1189 1233 1243">(iii) made an election and payment to the Board under section 109 of that Act; the period, being the whole or a part of the period of his or her previous employment, during which he or she was a contributor to the Fund referred to in subparagraph (ii);
(k)	if the person is a person to whom Part IX of the superseded Act applied: <ul style="list-style-type: none"> <li data-bbox="448 1386 1233 1547">(i) except where subparagraph (ii) applies—the period during which he or she was a contributor to the Defence Forces Retirement Benefits Fund established under the <i>Defence Forces Retirement Benefits Act 1948</i>, being the period immediately before he or she became a person to whom Part IX of the superseded Act applied; or <li data-bbox="448 1554 1233 1760">(ii) where he or she was a contributor to the existing Fund immediately before the beginning of the period referred to in subparagraph (i) and the reserve value held by the existing Fund in respect of his or her contributions to the existing Fund was paid from the existing Fund to the Defence Forces Retirement Benefits Fund under section 82 of the <i>Defence Forces Retirement Benefits Act 1948</i>—the period that began on the date on which he or she commenced those contributions to

SCHEDULE 10—continued

Item	Modification
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- the existing Fund and ended on the same date as the period referred to in subparagraph (i) ended;
- (l) if the person is a person to whom Part X of the superseded Act applied—the period, being the whole or a part of the period of his or her previous employment, during which sums were deducted from his or her pay under section 17 of the *Police Superannuation Ordinance 1928* of the Australian Capital Territory or during which contributions were made by him or her under section 3 of that Ordinance;
 - (m) if the person:
 - (i) at any time on or after 1 January 1970 became an employee for the purposes of the superseded Act and became liable to contribute to the existing Fund under Part III of that Act; and
 - (ii) was, at any time before he or she became an employee referred to in subparagraph (i), employed in employment within or outside Australia on the termination of which a transfer value (within the meaning of Division 2 of Part XA of that Act) became payable to, or in respect of, him or her in accordance with paragraph 119H(1)(a) of that Act; and
 - (iii) elected to pay and paid to the Board under subsection 119J(1) of that Act an amount that was equal to, or included, the amount of that transfer value; and
 - (iv) did not, at any time after making that payment to the Board but before his or her relevant cessation day, cease to be an employee of that kind;

the period during which he or she was a member of the superannuation scheme (within the meaning of Part XA of that Act) applicable in relation to that employment;
 - (n) if the person:
 - (i) at any time on or after 1 January 1970 became an employee for the purposes of the superseded Act and became liable to contribute to the Provident Account; and
 - (ii) was, at any time before he or she became an employee referred to in subparagraph (i), employed in employment within or outside Australia on the termination of which a transfer value (within the meaning of Division 2 of Part XA of that Act) became payable to, or in respect of, him or her in accordance with paragraph 119H(1)(a) of that Act; and
 - (iii) elected to pay and paid to the Board under subsection 119J(1) of that Act an amount that was equal to, or included, the amount of that transfer value; and
 - (iv) did not, at any time after making that payment to the Board but before his or her relevant cessation day, cease to be an employee of that kind; and
 - (v) became, under a decision of the Board under section 79 of that Act, liable to contribute to the existing Fund under Part III of that Act and elected to pay and paid under subsection 119J(1) of that Act the amount that in the circumstances was required to be paid to the Board;

SCHEDULE 10—continued

Item	Modification
	<p>the period during which he or she was a member of the superannuation scheme (within the meaning of Part XA of that Act) applicable in relation to that employment;</p>
(o)	<p>if the person, being a person to whom paragraph (m) or (n) applies, had, on becoming a member of the superannuation scheme applicable in relation to the employment referred to in subparagraph (m) (ii) or (n) (ii), as the case may be, paid to the person administering the scheme a transfer value (within the meaning of Division 2 of Part IX) that had become payable to, or in respect of, him or her under a superannuation scheme (within the meaning of Part IX) applicable in relation to any employment (in this paragraph referred to as 'earlier employment') in which the person had previously been employed—the period during which he or she was a member of the superannuation scheme applicable in relation to the earlier employment;</p>
(p)	<p>if the person is a person to whom section 18 of the <i>Mint Employees Act 1964</i> applied—his or her period of service as a Royal Mint Employee that is a period of previous employment.</p>
	<p>“(2) If a person who has ceased to be an eligible employee was an employee for the purposes of the superseded Act on more than 1 occasion, a period referred to in paragraph (1) (c), (d), (e), (f), (g), (h), (j), (k) or (l) is not a prescribed period of service in relation to him or her unless the period was continuous with the period during which the person was an employee for the purposes of the superseded Act and relates to deferred benefits that are applicable or payable to the person under that Act.</p>
	<p>“(3) If a person referred to in paragraph (1) (f), (g), (h) or (j):</p>
(a)	<p>immediately before the commencement of his or her previous employment, ceased to be an employee for the purposes of the superseded Act; and</p>
(b)	<p>on becoming a contributor to the fund or account to which he or she was contributing under the terms and conditions of his or her previous employment (in this subsection referred to as the 'State Fund'), paid to the person administering the State Fund an amount equal to the refund (if any) of contributions payable to him or her under section 51 or 85 of the superseded Act, being a refund of contributions payable upon his or her so ceasing to be an employee for the purposes of that Act;</p>
	<p>then, for the purposes of this section:</p>
(c)	<p>that person's employment as an employee for the purposes of the superseded Act (in this subsection referred to as that person's 'earlier employment') that immediately preceded his or her previous employment is taken to be part of his or her previous employment; and</p>
(d)	<p>the period in respect of which he or she was, during the period of his or her earlier employment, a contributor to the existing Fund or to the Provident Account is taken into account as if it were a period during which he or she was a contributor to the State Fund.”</p>

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *h* 1990.
2. Statutory Rules 1978 No. 225 as amended by 1980 No. 257; 1981 No. 4; 1984 No. 404; 1985 No. 74; 1986 Nos. 90 and 311; 1988 No. 317; 1989 No. 303.

25 June/