

EXPLANATORY STATEMENT

STATUTORY RULES 1990 NO . 271

ISSUED BY THE AUTHORITY OF THE MINISTER FOR FINANCE

SUPERANNUATION ACT 1976

SUPERANNUATION (TRANSFER ARRANGEMENTS) REGULATIONS
(AMENDMENT)

The Superannuation Act 1976 (the 1976 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 1976 Act are referred to as "eligible employees". The scheme under the 1976 Act has operated since 1 July 1976 and replaced an earlier scheme provided for in the Superannuation Act 1922 (the 1922 Act).

Section 168 of the 1976 Act provides that the Governor-General may make regulations under the Act.

Subsection 126(2) of the 1976 Act provides that the regulations may modify the 1976 Act in its application to a person who is, or has ceased to be, an eligible employee and who, at any time before becoming an eligible employee, was a member of a superannuation scheme (including the scheme under the 1922 or 1976 Act).

The 1976 Act provides for certain persons who cease to be eligible employees to elect to preserve their superannuation rights. An election to preserve may result in :

- (i) a transfer value becoming payable in respect of the person to an eligible superannuation scheme; or
- (ii) deferred benefits becoming applicable to the person where a transfer value is not payable and the prescribed circumstances are met.

Similar arrangements were included in the 1922 Act for persons who ceased to be contributors under that Act.

However preservation benefits will not be available to a person if, at the expiration of the prescribed period, he or she is employed in public employment and a member of a superannuation scheme applying to that employment which is not an eligible superannuation scheme but to which the person may pay an amount equal to his or her accumulated contributions in exchange for benefits. The 1922 Act included similar restrictions on the availability of preservation benefits under that Act.

A person who becomes an eligible employee and has been entitled to a transfer value on previously ceasing to be an eligible employee or a contributor under the 1922 Act will have his or her prior period of contributory service under the 1976 or 1922 Act added to his or her period of contributory service under the 1976 Act if that transfer value is repaid to the Commissioner for Superannuation. Similarly, any prior contributory service under the 1976 or 1922 Acts is added to the period of contributory service of a person who, on becoming an eligible employee, has deferred benefits applicable to him or her.

No such arrangements exist however for a person who becomes an eligible employee and who on previously ceasing to be an eligible employee or a contributor under the 1922 Act was ineligible to preserve his or her superannuation rights because he or she joined a superannuation scheme which is not an eligible superannuation scheme but which accepted the payment of a lump sum in exchange for benefits under that scheme. It is intended that the 1976 Act be modified to ensure equitable treatment between such persons and those persons who were entitled to preservation benefits on previously ceasing to be eligible employees or contributors under the 1922 Act. The modifications are to provide for the recognition of prior contributory service under the 1976 or 1922 Acts, as appropriate, subject to the payment to the Commissioner for Superannuation of an amount equivalent to the amount received by the person on ceasing to be an eligible employee or a contributor under the 1922 Act.

The proposed Regulations will give effect to this intention. Details of the modifications provided for in the proposed Regulations are set out in the Attachment.

The amending Regulations are to operate from the date of their gazettal.

The Minute recommends that the Regulations be made in the form proposed.

SR No 229/90

SUPERANNUATION (TRANSFER ARRANGEMENTS) REGULATIONS
(AMENDMENT)

Regulation 1

This provides that the Superannuation (Transfer Arrangements) Regulations are amended as set out in the amending Regulations.

Regulation 2

This provides for the insertion of regulation 14 in the Superannuation (Transfer Arrangements) Regulations.

The regulation applies to certain eligible employees and persons who have ceased to be eligible employees who, before last becoming eligible employees, had been eligible employees or contributors under the Superannuation Act 1922 (the 1922 Act).

Regulation 14 provides that the Superannuation Act 1976 (the 1976 Act) applies, as modified in Schedule 11 to the Regulations, to such persons who:

received a lump sum benefit under section 80 of the 1976 Act as a consequence of the operation of subsection 141(2) of that Act or a refund of contributions under section 51 or 85 of the 1922 Act as a consequence of the operation of subsection 119Y(2) of that Act, as appropriate, or

on ceasing to be eligible employees or contributors received a lump sum benefit under section 80 of the 1976 Act or a refund of contributions under section 51 or 85 of the 1922 Act, as appropriate, and joined, within the prescribed period, a superannuation scheme which was not an eligible superannuation scheme to which they paid that amount in exchange for benefits under that scheme.

Regulation 3

This provides for the addition of Schedule 11 to the Superannuation (Transfer Arrangements) Regulations which includes modifications to the 1976 Act in relation to persons referred to in regulation 14 of the Superannuation (Transfer Arrangements) Regulations.

Schedule 11 - Item 1

This provides for the inclusion in the 1976 Act of a new section 128A.

Subsection 128A(1) defines the terms "eligible person", "notice of election" and "refund" which are used in the section.

Subsection 128A(2) provides that an eligible person may elect that the section apply.

Subsection 128A(3) provides that, subject to subsection (6), a person who elects under subsection (2) must pay to the Commissioner for Superannuation an amount equivalent to the amount received on previously ceasing to be an eligible employee or a contributor under the 1922 Act.

That amount is to be paid by the Commissioner to the Superannuation Fund in accordance with subsection 128A(4) and subsection 128A(5) provides that it will be treated as basic contributions paid by the person.

Where an eligible person who has made an election under subsection 128A(2) has paid to the Commissioner an amount received on ceasing to be a member of a superannuation scheme which is treated as supplementary contributions, subsection 128A(6) provides that the Commissioner is to apply that amount or so much of it as is appropriate to satisfy the liability under subsection (3). The amount is then to be taken to have been paid by the person as basic contributions and never to have been supplementary contributions.

Subsection 128A(7) provides that the period of contributory service of a person who has elected under subsection 128A(2) and has paid to the Commissioner an amount previously received under section 80 of the 1976 Act or section 51 or 85 of the 1922 Act is to be extended by -

- (a) if the person was previously an eligible employee, his or her period of contributory service on previously ceasing to be an eligible employee, or
- (b) if the person was previously a contributor under the 1922 Act, any period that is a prescribed period of service in relation to him or her in accordance with Division 12 of Part XII.

Subsection 128A(7) also provides that section 130 of the 1976 Act which provides for exemptions from medical

examinations on entry to the scheme in some circumstances is to apply to the person as if he or she was a person to whom deferred benefits are applicable.

Schedule 11 - Item 2

This modifies the 1976 Act by adding Division 12 to Part XII of that Act.

Division 12 describes the periods to be added to the period of contributory service of a person who makes an election under subsection 128A(2) having been previously a contributor under the 1922 Act. The Division includes sections 236A and 236B. Section 236A is an interpretation clause for the Division. Section 236B provides that the period during which the person was a contributor under the 1922 Act and all other periods of earlier superannuation scheme membership in respect of which moneys were paid to the Superannuation Fund or the Provident Account under the 1922 Act by or in respect of the person on becoming such a contributor shall be added to the person's period of contributory service.

Schedule 11 - Item 3

This provides that subsection 157(3) will be modified by including in that subsection a reference to section 128A. The effect of this modification is to enable a person who has made an election under section 128A to apply to the Commissioner for the cancellation of the election.