

Superannuation (continuing Contributions for Benefits) Regulations (Amendment) 1992 No. 323

EXPLANATORY STATEMENT

STATUTORY RULES 1992 No. 323

Issued by the authority of the Minister for Finance

Superannuation Act 1976

Superannuation (continuing Contributions for Benefits) Regulations (Amendment)

The Superannuation Act 1976 (the Act) makes provision for and in relation to an occupational superannuation scheme for certain Commonwealth employees and other persons. That scheme is referred to as the Commonwealth Superannuation Scheme (CSS).

Section 168 of the Act provides that the Governor-General may make regulations for the purposes of the Act.

A person eligible to contribute under the Act is referred to as an "eligible employee". The term "eligible employee" is defined in subsection 3(1) of the Act; in accordance with paragraph (ea) of the definition, the term includes a person to whom section 14A of the Act applies. Regulations under section 14A may specify persons to whom the section applies and may modify the Act in respect of such persons. These provisions are contained in the Superannuation (Continuing Contributions for Benefits) Regulations (the Regulations).

The Dairy Research and Development Corporation was established on 1 April 1990 under the Primary Industries and Energy Research and Development Act 1989. The Regulations were amended in May 1991 to provide that persons who are eligible employees immediately before becoming employees of the Corporation shall continue to be eligible employees on becoming employed by the Corporation. In accordance with the provisions of the Act, the amendment excludes persons who become casual employees or temporary part-time employees from remaining eligible employees. The provisions contained in the amendment were not given retrospective effect.

In April 1992 the Corporation was declared by the Minister for Finance to be an approved authority for the purposes of the Act, permitting persons who have had a prior connection with the CSS to become eligible employees on becoming employed by the Corporation. Such persons could include persons who are CSS invalidity pensioners or persons to whom CSS deferred benefits apply, as well as persons who are existing eligible employees immediately before becoming employed by the Corporation. The provisions contained in the declaration were not given retrospective effect.

It is intended that special arrangements be put in place for one person who became a temporary full-time employee of the Corporation on 2 January 1991 and to whom CSS deferred benefits applied on that day. That employee has requested in writing that he be permitted to rejoin the CSS with effect from 2 January 1991. To achieve this intention, the person has been specified in the Regulations as a member of a class of persons to which section 14A of the Act applies.

Regulation 3A lists the classes of persons to which section 14A applies and regulation 4 provides for the cessation of the application of section 14A to those persons. The amending regulations amend regulations 3A and 4 to permit the employee to rejoin the CSS with effect from 2 January 1991. In addition, the amending regulations contain certain technical amendments to the Regulations. The amendments are explained in Attachment A.

The amendments to regulations 3A and 4, at subregulations 3.2, 3.3 and 4.1, have effect from 2 January 1991. This retrospectivity enables the employee concerned to rejoin the CSS with effect from 2 January 1991. The retrospectivity of the amending regulations is necessary in order to ensure that the employee is not disadvantaged in his superannuation benefits; he would be disadvantaged if he were not permitted to rejoin the CSS on commencing employment with the Corporation. Both the Corporation and the employee have indicated that they are prepared to make contributions to the CSS with effect from that date.

Furthermore, the retrospectivity of subregulations 3.2, 3.3 and 4.1 complies with subsection 48(2) of the Acts Interpretation Act 1901 in that the rights of the employee concerned are not affected in a manner prejudicial to him nor are liabilities imposed on him other than the responsibility for superannuation contributions which he has accepted by making the election to rejoin the CSS.

The Regulations give effect to these modifications.

ATTACHMENT A

THE AMENDING REGULATIONS

SUBREGULATION 1.1

This provides that subregulations 3.2, 3.3 and 4.1 are taken to have commenced on 2 January 1991; the remainder of the amendments come into operation on the date of gazettal.

SUBREGULATION 2.1

This provides that the amending regulations amend the Regulations.

SUBREGULATION 3.1

This amends paragraph 3A(f) of the Regulations to bring it into line with section 14A of the Act which refers to a person included in a class of persons specified in the regulations to which section 14A applies.

SUBREGULATION 3.2

This has the effect of amending the punctuation at the end of paragraph 3A(f) of the Regulations to permit proposed paragraph 3A(g) to follow.

SUBREGULATION 3.3

This adds a new paragraph 3A(g) to the Regulations which has the effect of providing that persons who are included in the class of persons specified in that paragraph shall be eligible employees. The class of persons specified in the new paragraph includes a person who became a temporary full-time employee of the Dairy Research and Development Corporation on 2 January 1991 and to whom deferred benefits under the Superannuation Act 1976 applied on that day and who continues to be a permanent employee or a temporary full-time employee of the Corporation.

SUBREGULATION 4.1

This adds a new subregulation 4(6) to the Regulations which provides for the conditions under which a person included in the class of persons referred to in paragraph 3A(g) would cease to be an eligible employee by virtue of section 14A of the Act. A person included in a class of persons specified in paragraph 3A(g) would cease to be covered by section 14A of the Act at the end of the day he or she ceases to be a permanent employee or a temporary full-time employee of the Corporation or at the end of the day that immediately precedes the day on which he or she becomes a member of another superannuation scheme applying to employment with the Corporation, whichever occurs first.