

# **Superannuation (Continuing Contributions for Benefits) Regulations (Amendment) 1992 No. 428**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1992 No. 428**

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.

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).

Where a person becomes an unattached Secretary in practice, under the current arrangements he or she continues to receive full salary and is able to continue membership of his or her superannuation scheme until retiring age.

On 25 September 1992 the Minister Assisting the Prime Minister for Public Service Matters, Senator Cook, announced new arrangements to apply to unattached Secretaries which will enable them to take leave to take up outside employment and to receive a "mobility allowance" during that employment. However, such persons would be subject to recall to Commonwealth employment at any time during the period of entitlement to the mobility allowance.

Under the new arrangement, it is currently proposed that:

- (a) the mobility allowance would be payable at the maximum rate of pay applicable to an office of Senior Executive Band 3 (Deputy Secretary level) but the amount would be reduced for earnings from private sector employment;
- (b) the mobility allowance would be payable until the earliest of
  - (i) the date five years after commencement of payment of the allowance, provided that the officer is not recalled to Commonwealth employment during that period;
  - (ii) attaining age 60; or
  - (iii) resigning or retiring from Commonwealth employment: and
- (c) the person would be able to continue contributions to the relevant Commonwealth superannuation scheme while entitled to the mobility allowance on the basis of the updated salary of his or her former position.

It is intended that amendments to the *Public Service Act 1922* and determinations under section 82D of that Act will be made in order to reflect, and to provide, for the necessary arrangements for the payment of the mobility allowance.

Special superannuation arrangements are required in order to ensure that persons who are entitled to receive the allowance continue to have membership of the superannuation scheme provided for by the Act. The arrangements will provide that salary for superannuation purposes is maintained at the level of the office held prior to becoming unattached, or, if the person so chooses, at the maximum level of mobility allowance payable.

It is intended to amend the Regulations to specify that persons who are entitled to be paid the mobility allowance are included in a class of persons to whom section 14A of the Act applies. It is also intended to make modifications to the Act to apply to that class of persons. The modifications are intended to provide;

- (a) for the maintenance of superannuation salary at the level of the salary of the office held prior to entitlement to the allowance,
- (b) that the person continues to contribute while being entitled to the mobility allowance even though the amount paid may be zero because of other earnings, and
- (c) that the agency responsible for the payment of the allowance also has responsibility for the payment of productivity contributions on behalf of the person.

The amendments contained in the proposed regulations are explained in the Attachment.

The proposed amending Regulations have effect from the date of gazettal.

## ATTACHMENT

### THE AMENDING REGULATIONS

#### SUBREGULATION 1.1

This provides that the amending regulations amend the Regulations.

#### SUBREGULATION 2.1

This amends Regulation 2 of the Regulations to insert a definition of "mobility allowance".

#### SUBREGULATION 3.1

This inserts a new paragraph (h) in regulation 3A of the Regulations which provides for the classes of persons to whom section 14A of the Act applies. The class of persons described in the new paragraph includes persons who are eligible for payment of the mobility allowance, who were eligible employees prior to becoming eligible for the payment of the allowance and who are not members of the Superannuation (1990) Scheme.

#### SUBREGULATION 4.1

This inserts a new subregulation (7) in regulation 4 of the Regulations which provides that section 14A of the Act ceases to apply to persons in certain circumstances. The new subregulation provides that section 14A of the Act ceases to apply to a person described in paragraph 3A(h) of the Regulations when such a person ceases to be eligible for payment of the mobility allowance or becomes a member of the Superannuation (1990) Scheme.

#### SUBREGULATION 5.1

This amends regulation 5 of the Regulations to change the reference to the Schedule in the regulation to a reference to Schedule 1. This is necessary as a consequence of the amendment in regulation 6.

#### SUBREGULATION 5.2

This inserts a new subregulation 5(2) in the Regulations to provide that the Act applies to the persons referred to in the proposed paragraph 3A(h) subject to the modifications set out in Schedule 2.

#### SUBREGULATION 6.1

This renames the existing Schedule to the Regulations to Schedule 1.

#### SUBREGULATION 6.2

This amends Schedule 1 by substituting a reference to subregulation 5(1) for the reference to regulation 5. This is necessary as a consequence of the amendment in subregulation 5.2.

#### SUBREGULATION 7.1

This inserts a new Schedule 2 in the Regulations. This schedule provides for modifications to the Act to apply to the persons referred to in subregulation 5(2). The modifications to the Act included in the Schedule are as follows:

#### ITEM 1.1

This inserts a definition of "mobility allowance" for the purposes of the Act.

#### ITEM 2.1

This modifies section 5 of the Act to provide that the annual rate of salary of a person referred to in paragraph 3A(h) of the Regulations is equal to the annual salary payable in respect of the office held by the person prior to becoming entitled to the allowance, or, if the person makes an election under subsection 47A, the maximum amount of the mobility allowance payable to a person.

#### ITEM 3.1

This modifies section 47 of the Act which provides that if a person has suffered a decrease in salary, he or she will continue to contribute at the higher rate of salary unless making an election under subsection 47(2). The modification inserts an additional subsection (5) which provides that the section does not apply to a person who makes an election under subsection 47A(1).

#### ITEM 4.1

This inserts a new section 47A into the Act.

Proposed subsection 47A(1) provides that, where a person is eligible for the mobility allowance, he or she may elect, in writing to the Commissioner, to have the maximum amount of the allowance payable, taken to be the person's annual rate of salary. This rate will apply irrespective of whether the allowance payable to the person is reduced because of income earned.

Proposed subsection 47A(2) provides that a person must make an election within a period of 3 months after the day on which he or she first becomes eligible for payment of the mobility allowance.

Proposed subsection 47A(3) provides that,

- (a) if a person makes an election under subsection 47A(1), and
- (b) that person's annual rate of salary on the previous anniversary of his or her birth was higher than the maximum rate of the mobility allowance,

the person's contributions from the date of the election should be based on the annual rate of salary applicable after the date of the election, which, because of the operation of the modified section 5, is the maximum rate of the mobility allowance.

#### ITEM 5.1

This modifies section 51 of the Act to provide that the section does not apply to a person who is entitled to mobility allowance. Section 51 of the Act generally provides that a person on leave without pay for a period of more than 12 weeks is not required or permitted to contribute under the Act unless the Commonwealth Superannuation Board of Trustees No 2 directs otherwise.

#### ITEM 6.1

This modifies the definition of "designated employer" contained in section 110A of the Act to provide that the Department approved authority or person who is responsible for the payment of the mobility allowance is also responsible for the payment of productivity contributions on behalf of the person.

#### ITEM 6.2

This omits the definition of "productivity employee" in section 110A of the Act and replaces it with a definition that provides that a "productivity employee" is an eligible employee who has an entitlement to mobility allowance.