Superannuation (Former Eligible Employees) Regulations (Amendment) 1993 No. 262

EXPLANATORY STATEMENT

STATUTORY RULES 1993 No. 262

Issued by authority of the Minister for Finance

Superannuation Act 1976

Superannuation (Former Eligible Employees) 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.

Persons eligible to contribute under the Act are referred to as "eligible employees". The term "eligible employee" is defined in subsection 3(1) of the Act.

Section 126A of the Act provides that regulations may modify the Act in its application to or in respect of a person who ceases to be an eligible employee and who immediately after ceasing, becomes a member of another superannuation scheme.

Section 155B of the Act provides that regulations may modify the Act in its application to or in respect of a person who ceases to be an eligible employee on taking up employment with the purchaser or transferee of an organisation, business, service, asset or function.

Regulations for the purposes of section 126A and 155B of the Act are contained in the Superannuation (Former Eligible Employees) Regulations.

The regulations

- provide an additional option under which eligible employees who must cease to be eligible employees on the sale or transfer of a Commonwealth asset or function may preserve their accrued benefits in the form of a delayed updated pension, and

- modify the existing conditions under which deferred benefits are payable to eligible employees who ceased to be eligible employees on the sale or transfer of a Commonwealth asset or function.

Details of the amendments are attached.

The amendments will come into effect on Gazettal.

ATTACHMENT

SUPERANNUATION (FORMER ELIGIBLE EMPLOYEES) REGULATIONS (AMENDMENT)

The details of the Regulations are as follows -

Regulation 15

The regulation modifies the Act in accordance with the amendments set out in Schedule 11. The amended provisions will apply in respect of:

- persons to whom section 155B of the Act applies who become members of a superannuation scheme provided by the purchaser or transferee, of an asset or function, to its employees, and

- persons to whom section 126A of the Act applies who cease to be eligible employees on the sale or transfer of a Commonwealth asset or function and who become members of a superannuation scheme provided by the purchaser or transferee.

The regulation does not apply

- to a person who makes an election under section 137 of the Act, ie, elects to preserve their superannuation benefits,

- to a person whose entitlement as a former eligible employee is affected by another provision of the Superannuation (Former Eligible Employees) Regulations; and

- unless the person requests that the regulation be applied by the Commissioner for Superannuation.

A request to have the regulation applied may be made within one month before ceasing to be an eligible employee, or within 21 days after ceasing.

Regulation 16

The regulation provides that amendments set out in Schedule 12 will apply in respect of:

- persons to whom section 155B of the Act applies, and

- persons to whom section 126A of the Act applies who cease to be eligible employees on the sale or transfer of a Commonwealth asset or function;

who make elections under section 137 of the Act, ie, elect to preserve their superannuation benefits other than in the form of a delayed updated pension.

Schedule 11

Paragraph 1 modifies the Act by inserting a new Division 3A of Part IX, which incorporates new sections 144A to 144J, to provide that eligible persons may elect to preserve their superannuation rights as a delayed updated pension (DUP). Persons who cease to be eligible employees as a result of sale or transfer of Commonwealth assets or functions are able to make the necessary election.

The DUP option provides an indexed pension that is calculated on the basis of the contributory service of the eligible employee up to the date of sale or transfer of the function and the final salary for superannuation purposes on that day, as updated by movements in the Consumer Price Index to the eventual date of retirement from the workforce. Benefits are also provided for spouses and children in the event of death and in respect of retirement on invalidity grounds.

Section 144A provides that benefits applicable under the new Division are payable in the same circumstances and on the same conditions as benefits would otherwise have been payable under the Act, had the person not elected for the DUP option. The section also sets out the times at which a DUP may become payable.

Section 144B establishes the method for determining the DUP payable to persons retiring from the workforce at or after age 65. Persons entitled to a DUP may elect to receive either additional unindexed pension or a lump sum equal to their own accumulated contributions.

Section 144C provides the method for determining the DUP pension payable to persons retiring from the workforce at or after attaining the age of 55 but prior to age 65. The rate of pension is based on that which would have been payable at age 65 but reduced in accordance with the actual age of the person at retirement. The reduction factors are identical to those that apply under the Act to eligible employees who retire before age 65.

Section 144D provides the method for determining the DUP payable to persons who retire on the grounds of invalidity who did not have a Benefit Classification Certificate (BCC) in force in respect of them while an eligible employee. Subsection 144D(2) sets the rate of employer financed pension to that which would have been payable to the DUP beneficiary had that person retired at age 65, ie, to the same effect as is provided under the Act in respect of other eligible employees. A lump sum equal to accumulated contributions or additional unindexed pension is payable in addition to the employer financed pension. Additional unindexed pension will be calculated on the basis of the person's actual age at retirement.

Sections 144E and 144F set out the method to determine the DUP payable to persons who had a BCC in force in respect of them while eligible employees.

Section 144E provides that DUP benefits will be calculated under section 144D if the BCC is not relevant, ie, the cause of the invalidity retirement is not related to the conditions specified in the BCC.

Section 144F provides that DUP benefits for persons retiring on invalidity grounds related to the conditions specified in a BCC applicable to them while eligible employees are to be calculated on a similar basis as pensions under the Act are calculated in these circumstances. Additional unindexed pension or lump sum benefits will also be payable.

Section 144G provides a reversionary benefit to spouses and children on death of a person who is entitled to or in receipt of a DUP under the conditions specified in the Act applying to reversionary benefits.

Section 144H provides the method for updating the final salary for superannuation purposes from the date of sale or transfer of a function to retirement by the change in the Consumer Price Index over that period.

Section 144J provides that the effect of the Superannuation (Former Contributors for Units of Pension) Regulations and the Superannuation (Former Provident Account Contributors) Regulations will continue to apply where applicable, ie, to those persons who were eligible employees prior to 1 July 1976.

Schedule 12

Subparagraphs 1.1 and 1.2 modify the Act by amending section 139 so that persons become entitled to deferred benefits after completing one year of eligible employment.

Subparagraph 1.3 modifies the Act by amending subparagraph 139(2)(c)(i) so that deferred benefits can become payable on request after attaining the age of 55.

Subparagraph 1.4 and paragraph 2 modify the Act by omitting those provisions that would otherwise conflict with the availability of deferred benefits to a relevant person who has completed one year of eligible employment.