

Superannuation (CSS) Former Eligible Employees Regulations (Amendment) 1996 No. 99

EXPLANATORY STATEMENT

STATUTORY RULES 1996 No. 99

Issued by the Authority of the Minister for Finance

Superannuation Act 1976

Superannuation (CSS) Former Eligible Employees Regulations (Amendment)

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

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

Section 126A of the 1976 Act provides that regulations may modify the provisions of the 1976 Act in relation to persons who cease to be CSS members and immediately become members of another superannuation scheme.

Section 155B of the 1976 Act provides that regulations may modify the 1976 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.

The regulations for the purposes of sections 126A and 155B of the 1976 Act are contained in the **Superannuation (CSS) Former Eligible Employees Regulations** (the Principal Regulations). The Principal Regulations modify the 1976 Act in various ways in relation to specified persons and the modifications are contained in a series of Schedules.

The *Superannuation Legislation Amendment Act (No. 1) 1995* (the amending Act) amended the 1976 Act in certain ways that necessitated amendments to the regulations that modify that Act. Subsection 168(12A) was inserted to provide that regulations arising from the amendments to the Act may be made with retrospective effect within one year after the amending Act received Royal Assent. The Regulations amend the Principal Regulations as a consequence of the amendments to the 1976 Act contained in the amending Act.

Section 58 of the 1976 Act sets out the circumstances under which a person is deemed to have retired early, voluntarily or involuntarily. Item 73 of Schedule 2 to the amending Act replaces paragraph 58(2)(b) of the 1976 Act to ensure that voluntary retirement benefits become payable on cessation of membership for any reason other than death or involuntary retirement, on, or after, attaining minimum retiring age, but before age 60 when age retirement benefits apply.

The amending Act made considerable changes to the preservation arrangements included in Division 3 of Part IX of the 1976 Act. The changes were made to simplify, and in some cases eliminate, administrative procedures that were no longer required because the CSS has been closed to new members since 1990.

Item 119 of Schedule 2 to the amending Act repealed section 132 of the 1976 Act which provided a now unnecessary definition of "eligible employment". Item 123 of the Schedule made consequential amendments to section 137.

Item 124 of Schedule 2 to the amending Act, among other things, reversed the effect of sections 138 and 139.

The new preservation arrangements apply only to persons who cease to be CSS members on or after 1 July 1995. The prior arrangements will continue to cover persons who ceased to be CSS members prior to that date but to whom deferred benefits have not yet become payable.

THE AMENDMENTS

Regulation 1

This regulation provides that subregulations 3, 4, 5, 8, 12, 13, 14, 15, 18, and 19 commence on 23 June 1995.

Regulation 2

This regulation provides that the Principal Regulations are amended by the amending Regulations.

Regulation 3

This regulation provides that a reference to the FEE Regulations in the Schedules is a reference to the Principal Regulations.

Regulation 4

This regulation omits and replaces regulation 13, which applies to certain persons who transfer to employment with a State or an authority of a State as a result of the transfer of the repatriation function and who subsequently become members of a State superannuation scheme.

The modified subregulation 13(1) provides that the modifications contained in Schedule 9 apply to certain former employees of repatriation institutions only in respect of persons who ceased to be eligible employees before 1 July 1995 and who had been a member of the CSS for at least one year before the date of transfer of the function.

The modified subregulation 13(2) provides that the modifications contained in a Schedule 9A will apply to former employees of repatriation institutions as described in subregulation 13(1) who cease or have ceased to be eligible employees after 1 July 1995.

Regulation 5

This regulation omits and replaces regulation 14, which provides for the modification of the 1976 Act in accordance with Schedule 10 of the Principal Regulations to require certain employees of the Northern Territory to preserve their CSS benefits upon ceasing to be eligible employees. These persons cease to be eligible employees when they join another superannuation scheme in connection with their employment with the Northern Territory.

Subregulation 14(1) provides that the modifications specified in Schedule 10 to the Principal Regulations applies to those Northern Territory executives who ceased to be eligible employees before 1 July 1995.

Subregulation 14(2) provides that the modifications specified in Schedule 10A to the Principal Regulations apply to those Northern Territory Employees as described in subregulation 14(1) who cease or have ceased to be eligible employees after 1 July 1995.

Regulation 6

This regulation amends regulation 1 SA of the Principal Regulations which applies to eligible employees affected by the transfer of certain Commonwealth facilities. The amendment deletes references to the Commissioner for Superannuation and substitutes references to the Board in subparagraphs 15A(3)(d)(ii), 15A(5)(c)(i) and 15A(5)(c)(ii) to ensure compliance with the *Superannuation Industry (Supervision) Act 1993* and regulations made under that Act (SIS). These amendments are not a consequence of the amending Act but are a correction of previous drafting.

Regulation 7

This regulation amends regulation 15B of the Principal Regulations which applies to eligible employees affected by the sale of Qantas. The amendment deletes a reference to the Commissioner for Superannuation and substitutes references to the Board in subparagraph 15B(4)(b). This amendment is not a consequence of the amending Act but is a correction of previous drafting.

Regulation 8

This regulation omits and replaces regulation 16.

The substituted regulation 16(1) provides for the modification of that Act in accordance with Schedule 12 in relation to former eligible employees affected by sale or transfer and who ceased to be CSS members before 1 July 1995.

The modified subregulation 16(2) provides that the modifications contained in Schedule 12A apply in relation to certain former employees affected by sale or transfer and who ceased to be CSS members after 1 July 1995.

Regulation 9

This regulation amends Schedule 5 which modifies the 1976 Act in its application to employees of and holders of statutory offices in the Australian Postal Corporation, the Australian Telecommunications Corporation and the Australian and Overseas Telecommunications Corporation.

Subregulation 9.1

This subregulation changes a reference to the Superannuation (Former Eligible Employees) Regulations to the FEE Regulations as a consequence of the subregulation 3.1.

Regulation 10

This regulation amends Schedule 7 which modifies the 1976 Act in its application to employees of Australian Defence Industries.

Subregulation 10.1

This subregulation changes a reference to the Superannuation (Former Eligible Employees Regulations) to the FEE Regulations as a consequence of subregulation 3.1.

Regulation 11

This regulation amends Schedule 8 which modifies the 1976 Act in its application to employees of Coselco Mimotopes Pty Ltd.

Subregulation 11.1

This subregulation changes a reference to the Superannuation (Former Eligible Employees) Regulations to the FEE Regulations as a consequence of the subregulation 3.1.

Regulation 12

This regulation amends Schedule 9 which modifies the 1976 Act in its application to former employees of repatriation institutions who become members of state superannuation schemes. The amendments are required as a consequence of the change to the preservation arrangements under the 1976 Act made by the amending Act which have effect on persons who cease to be members of the CSS on or after 1 July 1995.

Subregulation 12.1

This subregulation changes the heading of Schedule 9 to indicate that the modifications in Schedule 9 referred to in subregulation 13(1) apply in relation to former employees of repatriation institutions who cease to be CSS members before 1 July 1995.

Subregulation 12.2

This subregulation substitutes a reference to "subregulation 13(1) of the FEE Regulations" in place of a reference to "regulation 13 of the Superannuation (Former Eligible Employees) Regulations" in inserted section 80AA

Subregulation 12.3

This subregulation substitutes a reference to "subregulation 13(1) of the FEE Regulations" in place of a reference to "regulation 13 of the Superannuation (Former Eligible Employees) Regulations" in inserted subsection 137(1A),

Subregulation 12.4

This subregulation substitutes a reference to "subregulation 13(1) of the FEE Regulations" in place of a reference to "regulation 13 of the Superannuation (Former Eligible Employees) Regulations" in inserted subsection 139(1).

Subregulation 12.5

This subregulation substitutes a reference to "subregulation 13(1) of the FEE Regulations" in place of a reference to "regulation 13 of the Superannuation (Former Eligible Employees) Regulations" in inserted subparagraph 139(2A)(b).

Regulation 13

This regulation inserts a new Schedule 9A which applies to former employees of repatriation institutions who cease to be CSS members on or after 1 July 1995. The amendments are required as a consequence of the change to the preservation arrangements under the 1976 Act made by the amending Act which have effect on persons who cease to be members of the CSS on or after 1 July 1995.

The first item in Schedule 9A inserts a new section 80AA in Division 5 of Part V. The new section provides that the Part V of the 1976 Act does not apply to persons specified in subregulation 13(2) of the Principal Regulations.

The second item in Schedule 9A provides that a modified subsection 137(2) applies in relation to former employees of repatriation institutions. The modified subsection provides that these employees are taken to have given notice to take a deferred benefit on the relevant day.

The third item of the Schedule modifies subsection 138(2) to ensure that deferred benefits are payable subject to subsection 138(2A).

The fourth item of the Schedule inserts a new subsections 138(2A) and 138(2B) in the modified section 138. Subsection 138(2A) provides that deferred benefits do not become payable to employees of repatriation institutions until those persons cease to be in employment of a kind specified in subsection 138(2B). Subsection 138(2B) specifies continuing employment with the repatriation institution at which the person was employed on the date of transfer, or if on that day the repatriation institution was operated by a State or an authority of a State, other employment by that State or authority of the State.

Regulation 14

This regulation amends Schedule 10 which modifies the 1976 Act in its application to certain employees of the Northern Territory who ceased employment before 1 July 1995 in accordance with subregulation 14(1) of the Principal Regulations. The amendments are required as a consequence of the change to the preservation arrangements under the 1976 Act made by the amending Act which have effect on persons who cease to be members of the CSS on or after 1 July 1995.

Subregulation 14.1

This subregulation changes the heading of Schedule 10 to indicate that the modifications in Schedule 10 referred to in subregulation 14(1) apply in relation to former employees of the Northern Territory who ceased to be CSS members before 1 July 1995.

Subregulation 14.2

This subregulation omits and replaces the existing modification of paragraph 58(2)(b). The amendment is required as a consequence of the amendments made to section 58 of the 1976 Act by item 73 of Schedule 2 to the amending Act.

Subregulation 14.3

This subregulation omits from substituted paragraph 110TB(a) a reference to "regulation 14 of the Superannuation (Former Eligible Employees) Regulations" and replaces it with a reference to "subregulation 14(1) of the FEE Regulations".

Subregulation 14.4

This subregulation omits from substituted subsection 139(3) a reference to "regulation 14 of the Superannuation (Former Eligible Employees) Regulations" and replaces it with a reference to "subregulation 14(1) of the FEE Regulations".

Regulation 15

Subregulation 15.1

This regulation inserts a new Schedule 10A which modifies the 1976 Act in accordance with subregulation 14(2) of the Principal Regulations in its application to certain employees of the Northern Territory who cease employment on or after 1 July 1995. The amendments are required as a consequence of the change to the preservation arrangements under the 1976 Act made by the amending Act which have effect on persons who cease to be members of the CSS on or after 1 July 1995.

The first modification amends paragraph 58(2)(b) in order to ensure that a person to whom the Schedule applies becomes entitled to a benefit under section 59 if he or she has reached minimum retiring age at that time.

The second modification omits section 110T and inserts a modified section which provides that a person who becomes entitled to benefits under sections 55 or 59 is taken to have given the Board a notice of election to have Part VIB of the 1976 Act, which relates to postponement of benefits, apply to the person. This modification is necessary because SIS does not permit the payment of a benefit in these circumstances.

The third modification inserts paragraph 110TA(1)(c) which provides that payment of any additional age retirement pension or additional early retirement pension is postponed until the date worked out under section 110TB.

The fourth modification omits subsection 110TA(2).

The fifth modification omits and replaces paragraph 110TB(a). The replacement paragraph provides that postponed benefits become payable on the date a person turns 65 or, if subregulation 14(2) of the Principal Regulations applies, on the date on which the person ceases to be employed by the Northern Territory or an authority or body established under a law of the Northern Territory or ceases to hold a statutory office established by the law of the Northern Territory.

The sixth modification omits and replaces subsection 137(2). The replacement subsection provides that a person who is not entitled to benefits under section 55 or 59 of the 1976 Act is taken to have elected to take a deferred benefit.

The seventh modification omits and replaces subsection 138(1). The modified subsection provides that deferred benefits are applicable to a person who, under subsection 137(2) is taken to have given the Board a notice mentioned in subsection 137(1).

The eighth modification omits and replaces subsections 138(3) and 138(4). The replacement modifications provide that deferred benefits do not become payable to a person to whom subregulation 14(2) of the FEE Regulations applies until that person ceases to be an employee of the Northern Territory or an authority or body established under a law of the Northern Territory or hold a statutory office established under a law of the Northern Territory.

Regulation 16

This regulation amends Schedule 11 which contains modifications of the 1976 Act in relation to delayed updated pension for employees affected by privatisation.

Subregulation 16.1

This subregulation amends item 1 of the Schedule by omitting a reference in inserted subsection 144A(1) to "Superannuation (Former Eligible Employees) Regulations" and substituting a reference to "FEE Regulations".

Regulation 17

This regulation amends Schedule 11A which contains modifications of the 1976 Act in relation to former employees of nominated facilities retrenched within 3 years of the transfer day.

Subregulation 17.1

This subregulation amends item 1 of the Schedule by omitting a reference in inserted subsection 58(3) to "Superannuation (Former Eligible Employees) Regulations" and substituting a reference to "FEE Regulations".

Subregulation 17.2

This subregulation amends item 5 of the Schedule by omitting a reference from inserted subsection 62(1A) to "Commissioner" and replacing it with a reference to "Board".

Regulation 18

This regulation amends Schedule 12 to the Principal Regulations.

Subregulation 18.1

This subsection omits and replaces the heading to the Schedule as a consequence of the amendment made to regulation 16(1) of the Principal Regulations.

Regulation 19

This regulation inserts a new Schedule 12A which applies in relation to subregulation 16(2) to employees of services sold or privatised who cease to be CSS members on or after 1 July 1995. The amendments are required as a consequence of the change to the preservation arrangements under the 1976 Act made by the amending Act which have effect on persons who cease to be members of the CSS on or after 1 July 1995. Item 1 of the Schedule omits and replaces subsection 138(3). The inserted subsection 138(3), provides that a person cannot select a date for the payment of deferred benefits earlier than the date on which he or she turns 55.

Regulation 20

This regulation amends schedule 13 which provides arrangements for Qantas employees.

Subregulation 20.1

This subregulation corrects an error in the heading to the Schedule by omitting a reference to "Subregulation 15B(2)" and replacing it with a reference to "Subregulation 15B(6)".