

# **Superannuation (Leave of Absence Without Pay) Regulations (Amendment) 1993 No. 345**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1993 No. 345**

Issued by the authority of the Minister for Finance

*Superannuation Act 1976*

Superannuation (Leave of Absence Without Pay) Regulations (Amendment)

The *Superannuation Act 1976* (the 1976 Act) makes provision for and in relation to an occupational superannuation scheme (the CSS) for Commonwealth employees and for certain other persons. Members of the scheme are referred to in that Act as eligible employees.

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

Section 51 of the 1976 Act enables that Act to be modified in certain circumstances by regulations in relation to contributors to the CSS who are, or have been, on leave of absence without pay for a period exceeding 12 weeks.

Regulations for the purposes of section 51 are contained in the Superannuation (Leave of Absence Without Pay) Regulations (the Principal Regulations). The Schedule to the Principal Regulations contains modifications of the 1976 Act in relation to certain persons to whom section 51 applies.

The *Superannuation Legislation Amendment Act 1992* (the Amending Act) amended the 1976 Act to provide for additional benefits in certain limited circumstances that are required as a result of the *Superannuation Guarantee (Administration) Act 1992* and to provide for certain other changes to Commonwealth superannuation schemes.

The amending Regulations amend the Principal Regulations as a consequence of amendments to the 1976 Act by the Amending Act. The amendments contained in the Regulations are explained in the Attachment.

The Amending Act amended the 1976 Act by inserting a new subsection 168(12) which provides that regulations for the purposes of section 51 made within a period of 12 months after that amendment may be expressed to have taken effect from and including the day on which that amendment was made.

In accordance with subsection 168(12) of the 1976 Act, the amending Regulations operate with effect from and including 18 December 1992. The retrospectivity will not affect the rights of any person (other than the Commonwealth) in a manner prejudicial to that person, nor will it impose any liability on such a person. The amending Regulations are, therefore, in accord with the *Acts Interpretation Act 1901* and do not contravene subsection 48(2) of that Act.

## ATTACHMENT

### SUPERANNUATION (LEAVE OF ABSENCE WITHOUT PAY) REGULATIONS (AMENDMENT)

#### THE AMENDMENTS

##### Regulation 1

In accordance with subsection 168(12), this provides that the regulations are taken to have commenced on 18 December 1992.

##### Regulation 2

This provides that the Principal Regulations are amended as set out in the regulations.

##### Subregulation 3.1

This provides a simplified heading to the Schedule to the Principal Regulations in accordance with modern drafting practice.

##### Subregulation 3.2

The Schedule modifies the 1976 Act by inserting a new Division 2A (sections 130AA to 130AD) in Part IX of the Act. That Division applies in relation to persons to whom section 51 applies and who, during the period of leave without pay, are employed and members of another superannuation scheme applicable to that employment. The modifications enable such a person, who again becomes a CSS contributor, to pay a transfer value from the other superannuation scheme to the CSS.

The amendments to section 127 of the 1976 Act made by the Amending Act encompass the situation described above. As a consequence, section 130AB (which had been inserted to modify section 127 for this purpose) is no longer relevant. Subregulation 3.3 removes section 130AB from the Principal Regulations.

##### Subregulation 3.3

Subsection 130AC(1) modifies section 128 of the 1976 Act to provide that a person who receives a lump sum in respect of employment undertaken while on leave without pay has 3 months from the date on which he or she recommences contributions to the CSS in which to pay a transfer value to the Commissioner for Superannuation.

The Amending Act amended section 128 to permit a transfer value from another superannuation scheme to be paid to the Commissioner within 3 months of the person becoming an eligible employee or within 3 months of the transfer value becoming payable. This amendment now covers persons who receive a transfer value in respect of a period of employment undertaken while on leave without pay. Consequently, subsection 130AC(1) has become redundant.

Certain provisions of the Superannuation (Transfer Arrangements) Regulations, however, modify section 128 in respect of persons covered by those Regulations, and it is necessary to continue to provide the arrangements in subsection 130AC(1) in respect of those persons. Accordingly, subregulation 3.3 restricts the continued application of subsection 130AC(1), limiting it to persons to whom schedules 2, 6 or 8 of the Superannuation (Transfer Arrangements) Regulations apply.

#### Subregulation 3.4

The modification of subsection 128(4) by subsection 130AC(2) is also redundant following the amendment of section 128 by the Amending Act, and this subregulation omits subsection 130AC(2).

Subsection 130AC(3) modifies subsection 128(5). The Amending Act did not amend the latter provision, and the provision contained in subsection 130AC(3) is still required for the operation of the 1976 Act. Subregulation 3.4 provides for that provision to be recast in a modern drafting style and renumbered as subsection 130AC(2).

#### Subregulation 3.5

This is a technical amendment to provide for the proper sequential insertion of a reference to section 130AC in section 157 of the 1976 Act.