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Office of Legislative Drafting, Attorney-General's Department.

Statutory Rules 1996 No. L¹

101/

Superannuation (Existing Invalidity Pensioners) Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Act 1976*.

Dated L 1996.

13 June/

L WILLIAM DEANE/
Governor-General

By His Excellency's Command,

L
Minister for Finance

JOHN FAHEY/

1. Commencement

1.1 Subregulations 4.1, 4.2, 4.3 and 4.5 are taken to have commenced on 23 June 1995.

1.2 Subregulation 4.4 is taken to have commenced on 1 July 1995.

[NOTE: The remainder of these regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

2. Amendment

2.1 The Superannuation (Existing Invalidity Pensioners) Regulations are amended as set out in these Regulations.

3. Regulation 1 (Citation)

3.1 Omit “(Existing Invalidity Pensioners)”, substitute “(CSS) Existing Invalidity Pensioners”.

4. Schedule 1 (Modification of the Act in its application in relation to certain persons referred to in section 180 of the Act)

4.1 Modifications of section 3 (sixth modification):

Add at the end of the substituted definition of “period of contributory service”:

“or (h) a period in respect of which the person was not required or permitted to pay contributions because of subsection 3 (3); or

(i) a period in respect of which benefits did not accrue to the person because of section 55A;”.

4.2 Modifications of section 62:
Omit the modifications, substitute:

“62 Insert in subsection (2) ‘and to subsection (2AA)’ after ‘section 62B’.

“Insert after subsection (2) the following subsection:

‘(2AA) Subject to section 62B, if a person referred to in subsection (2) is a person in relation to whom sections 119H and 119J of the superseded Act applied, paragraphs (2) (a) and (b) do not apply to that person and the person is entitled to a lump sum benefit of an amount equal to the sum of:

(a) the amount (in this subsection referred to as the “relevant amount”) paid in respect of the person to the Superannuation Board or Commissioner under section 119J of the superseded Act together with the amount of interest that would be payable in respect of the relevant amount if it were to be deemed to be an amount of basic contributions paid by the person under this Act on the person’s first day of service; and

(b) either:

(i) if subparagraph (ii) does not apply, an amount equal to the sum of:

(A) 3.5 times the amount that would be the amount of the person’s accumulated basic contributions if the amount paid into the Fund in respect of the person in accordance with subsection 180 (4) of this Act had been reduced by an amount equal to so much of the relevant amount as was paid by the Superannuation Board to the existing Fund, or by the Commissioner to the Fund, in accordance with section 119J of the superseded Act; and

- (B) the amount of the person's accumulated supplementary contributions (if any); or
- (ii) if the person had, at any time before ceasing to be an eligible employee, received a partial invalidity pension, an amount equal to the sum of:
 - (A) the amount that would be the amount worked out using the formula:

**Actual contributions +
(Notional contributions x 2.5);**
if the amount paid into the Fund in respect of the person in accordance with subsection 180 (4) of this Act had been reduced by an amount equal to so much of the relevant amount as was paid by the Superannuation Board to the existing Fund, or by the Commissioner to the Fund, in accordance with section 119J of the superseded Act; and
 - (B) the amount of the person's accumulated supplementary contributions (if any).'

"Omit from subsection (2A) '(2B) or', substitute '(2B), (2BA) or'.

"Omit from subsection (2B) 'If', substitute 'Subject to subsection (2BA), if'.

“Insert after subsection (2B) the following subsection:

‘(2BA) If a person referred to in subsection (2B) is a person in relation to whom sections 119H and 119J of the superseded Act applied, paragraphs (2B) (a) and (b) do not apply to that person and the person is entitled to a lump sum benefit of an amount equal to the sum of:

(a) the amount (in this subsection referred to as the “relevant amount”) paid in respect of the person to the Superannuation Board or Commissioner under section 119J of the superseded Act together with the amount of interest that would be payable in respect of the relevant amount if it were to be deemed to be an amount of basic contributions paid by the person under this Act on the person’s first day of service; and

(b) either:

(i) if subparagraph (ii) does not apply, an amount equal to the sum of:

(A) 3.5 times the amount that would be the amount of the person’s accumulated basic contributions if the amount paid into the Fund in respect of the person in accordance with subsection 180 (4) of this Act had been reduced by an amount equal to so much of the relevant amount as was paid by the Superannuation Board to the existing Fund, or by the Commissioner to the Fund, in accordance with section 119J of the superseded Act; and

(B) the amount of the person’s accumulated supplementary contributions (if any); or

- (ii) if the person had, at any time before ceasing to be an eligible employee, received a partial invalidity pension, an amount equal to the sum of:

- (A) the amount that would be the amount worked out using the formula:

**Actual contributions +
(Notional contributions x 2.5);**

if the amount paid into the Fund in respect of the person in accordance with subsection 180 (4) of this Act had been reduced by an amount equal to so much of the relevant amount as was paid by the Superannuation Board to the existing Fund, or by the Commissioner to the Fund, in accordance with section 119J of the superseded Act; and

- (B) the amount of the person's accumulated supplementary contributions (if any).'

“Insert in paragraph (2C) (a) ‘or (2BA), as the case requires,’ after ‘subsection (2B)’.

“Insert in paragraph (2C) (b) ‘or (2BA), as the case requires,’ after ‘subsection (2B)’.

“Insert after subsection (2C) the following subsection:

‘(2CA) If a person makes an election under subsection (1) and a non-contributory unit of pension was applicable in relation to the person under the superseded Act immediately before his or her previous entitlement day, the person is entitled, in addition to any payment to which he or she is entitled under subsection (2), (2AA), (2B), (2BA) or (2C), to payment of a lump sum benefit of an amount equal to 2.5 times the amount of the contributions that, under the superseded Act, would have been paid to the Fund by the person in respect of that unit of pension if the person had contributed for that unit of pension from the date on which the unit became applicable in relation to the person as a non-contributory unit at the fortnightly rate (being a rate based on a retiring age of 65 years) specified:

- (a) in the case of a male person who elected under subsection 26 (3) of the superseded Act that section 26 of that Act should not apply to him—in column 2 of Schedule 2A;
- (b) in the case of any other male person—in column 3 of that Schedule;
- (c) in the case of a female person—in column 4 of that Schedule;

opposite to the age specified in column 1 of that Schedule that was the age of the person at the last-mentioned date.’”.

4.3 Modification of section 76:

Add at the end of substituted section 76:

“(3) If:

- (a) a person’s entitlement to a relevant pension has, whether before or after the commencement of this subsection, been cancelled under subsection (1) upon the person’s becoming an eligible employee; and
- (b) the person so became an eligible employee as a result of having been appointed to an office or position on probation; and

- (c) after that commencement the person ceases to be an eligible employee before attaining the person's maximum retiring age; and
- (d) the person so ceased to be an eligible employee as a result of the appointment not being confirmed because the person had a physical or mental condition;

the person is entitled to a pension, and subsection (2) applies, for the purpose of calculating the annual rate of that pension, as if the person had so ceased to be an eligible employee by reason of retirement on the ground of invalidity.'."

4.4 Modifications of section 111:

Omit the modifications, substitute:

"111 Insert in subsection (1) 'or Division 9 of Part XII' after 'Part VI'.

"Omit subsection (2), substitute the following subsection:

'(2) If the total amount of the benefit or benefits (whether paid by way of instalments of a pension or as a lump sum or lump sums, or both) paid to or in respect of a person who has been an eligible employee (being a person who was, immediately before becoming an eligible employee, an existing invalidity pensioner) is, at a time when no further benefit is payable under this Act to or in respect of the person, less than the relevant amount in relation to the person, an amount equal to the difference is to be paid to:

- (a) the person; or
- (b) if the person has died:
 - (i) the person's legal personal representative; or
 - (ii) if no legal personal representative can be found—any individual or individuals that the Board determines.'

“Omit subsections (4), (5), (6) and (7), substitute the following subsection:

‘(4) In subsection (2), a reference to the relevant amount in relation to a person is a reference to the amount by which the sum of:

(a) the total of the person’s accumulated contributions, and the accumulated employer contributions (if any) in respect of the person, as at the time when the person ceased to be an eligible employee; and

(b) if a top-up benefit is or was calculated in respect of the person under Part VIAA but the amount of the top-up benefit is nil—the amount that would have been the top-up benefit if the person had been entitled to benefits under section 80;

exceeds the amount paid to the fund in respect of the person under subsection 180 (4).’.”.

4.5 Modification of Part XII:

Add at the end of added section 228A:

“; (d) a period in respect of which the person was not required or permitted to pay contributions because of subsection 3 (3);

(e) a period in respect of which benefits did not accrue to the person because of section 55A.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *L* 1996. *20 June*
2. Statutory Rules 1988 No. 275 as amended by 1991 No. 192.; 1992 No. 267; 1993 No. 347.