

Superannuation (Former Provident Account Contributors) Regulations (Amendment) 1995 No. 94

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 94

Issued by the Authority of the Minister for Finance

Superannuation Act 1976

Superannuation (Former Provident Account Contributors) 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 (the CSS).

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

The *Superannuation Act 1922* (the 1922 Act) provided superannuation arrangements for Commonwealth employees which comprised a Pension Scheme for those who met the required medical standard and a lump sum Provident Account for those who did not.

The CSS replaced the scheme under the 1922 Act with effect from 1 July 1976. The 1922 Act superannuation arrangements were closed from that date and persons who were contributors to the scheme under the 1922 Act on 30 June 1976 were transferred to the CSS on 1 July 1976. Special arrangements apply in relation to the transferred contributors.

Section 183 of the 1976 Act enables that Act to be modified by regulations in relation to the transferred contributors. Special arrangements applicable to the transferred contributors made in regulations under that section include arrangements for former Provident Account contributors contained in the Superannuation (Former Provident Account Contributors) Regulations (the Principal Regulations).

The *Superannuation Legislation Amendment Act 1994* (the Amending Act) amended the 1976 Act to make changes to the CSS required for compliance with the *Superannuation Industry (Supervision) Act 1993* and associated legislation and other changes of a technical nature. These regulations amend the Principal Regulations as a consequence of the amendments to the 1976 Act contained in the Amending Act. In addition, the amending Regulations make a number of minor technical drafting amendments to the Principal Regulations. The provisions of the amending Regulations are explained in the Attachment.

The amendments made by subregulations 3.4 and 3.6 of the amending Regulations commence with effect from 1 July 1993. The retrospective effect of these amendments will ensure that persons who are eligible for lump sum benefits under provisions inserted in the 1976 Act in the Principal Regulations will not be subject to more stringent compulsory preservation rules than those applying to persons entitled to lump sum benefits under other provisions of the 1976 Act.

The requirement that a portion of any employer funded lump sum benefit must be preserved is part of the Superannuation Guarantee arrangements. It was intended originally that those preservation arrangements would operate from 1 July 1993 and the 1976 Act and regulations

under that Act were amended to reflect that requirement, However, the legislation providing for the Superannuation Guarantee preservation arrangements was not in place by 1 July 1993 and did not have effect until 1 July 1994. The provisions of the 1976 Act were amended by the Amending Act to reflect that later preservation date. These regulations make similar changes to the provisions inserted in the 1976 Act by the Principal Regulations.

The retrospective provisions of the amending Regulations will not affect the rights of any person (other than the Commonwealth or a Commonwealth authority) in a manner prejudicial to that person, nor will they impose any liability on such a person in respect of anything done or not done before the date of notification of the making of the regulations in the Gazette. Therefore, they do not contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

The remaining amendments have effect from the date of gazettal.

ATTACHMENT

SUPERANNUATION (FORMER PROVIDENT ACCOUNT CONTRIBUTORS) REGULATIONS (AMENDMENT)

THE AMENDMENTS

Regulation 1

This regulation provides that subregulations 3.4 and 3.6 are taken to have commenced on 1 July 1993. The remainder of the amending Regulations commence on gazettal.

Regulation 2

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

Regulation 3

This amends the Schedule to the Principal Regulations which includes modifications to the 1976 Act in respect of transferred contributors who were contributors to the Provident Account under the 1922 Act.

Subregulation 3.1

This inserts a modification to section 136 of the 1976 Act which provides for the calculation of deferred benefits. The modification provides for the section to be subject to Division 9 of Part XII which includes preservation rules for lump sum benefits payable to former Provident Account contributors and is included to satisfy the preservation rules associated with the introduction of the Superannuation Guarantee arrangements. The modification to subsection 136(1) makes it clear that the preservation requirements of that Division apply to lump sum payments of deferred benefits as well as lump sum payments made to former Provident Account contributors in other circumstances.

Subregulation 3.2

This replaces section 211, as inserted in Part XII of the 1976 Act by the Principal Regulations, to replace the references to the Board with references to the former Board.

That section refers to amounts paid to the Superannuation Board under the 1922 Act and elections made to that Board.

Section 73 of the Amending Act omitted from section 169 of the 1976 Act the definition of "Board" or "Superannuation Board" for the purposes of Part XII of the 1976 Act and replaced it with a definition of the term "former Board". The term "Board" and "Superannuation Board" had been used in Part XII to refer to the Superannuation Board under the 1922 Act. The new term "former Board" also refers to that Board. The amendment was made to distinguish references to the Board under the 1922 Act and the CSB Board of Trustees No. 2 which since 1 July 1994 has been responsible for the administration of the CSS.

The revision to section 211 is made as a consequence of the amendment to section 169 of the Act. As the section included numerous references to the Board under the 1922 Act a new section has been substituted which includes the appropriate references. No other changes have been

made to the section other than a slight updating of the language of the section to reflect current drafting styles.

Subregulations 3.3 to 3.7

These subregulations amend various sections of Division 9 of Part XIII inserted in the 1976 Act by the Principal Regulations. The provisions in that Division (sections 222 to 224) include preservation requirements in respect of employer financed lump-sum payments available to former Provident Account contributors to satisfy the compulsory preservation requirements associated with the Superannuation Guarantee arrangements. This Division reflects the provisions of Division 2A of Part V (sections 62A to 62(C) of the 1976 Act which provides for the preservation of a portion of the optional lump sum benefit available on involuntary retirement.

Subregulation 3.3

The definition of the term "rate of fund contribution tax" in section 62A of the 1976 Act refers, amongst other things, to a rate determined under section 110SD of that Act. Before 1 July 1994 that determination was made by the Minister. The Amending Act amended sections 62A and 110SD of the 1976 Act to provide that the determination should be made by the Board rather than the Minister. Section 222, as inserted in the 1976 Act by the Principal Regulations, reflects the provisions of section 62A.

As a consequence of the amendments to sections 62A and 110SD subregulation 3.3 amends the definition of the term "rate of fund contribution tax" in subsection 222(1), as inserted in the Principal Regulations, by omitting "Minister" and substituting "Board".

Subregulation 3.4

The definition of "relevant period of employment" in subsection 62A(1) of the 1976 Act was amended by the Amending Act by omitting from paragraph (a) "1993" and substituting "1994". This change effectively changed the commencement date for the preservation rules provided for in Division 2A of Part V from 1 July 1993 to 1 July 1994. Section 222, as inserted in the 1976 Act by the Principal Regulations, reflects section 62A.

When those preservation arrangements were included in the 1976 Act, legislation providing for the Superannuation Guarantee preservation rules had not been made but it was understood that those preservation arrangements would operate from 1 July 1993. However, when the appropriate amendments to the regulations under the *Occupational Superannuation Standards Act 1987* were made those rules were applied only to amounts that accrue in respect of membership from 1 July 1994.

Subregulation 3.4 amends the definition of "relevant period of employment" in subsection 222(1) of the Principal Regulations by omitting "1993" in paragraph (a) and substituting "1994" to ensure that former contributors to the Provident Account are not disadvantaged by the earlier application of compulsory preservation rules otherwise applying to lump sum benefits payable under the 1976 Act.

Subregulation 3.5

The Amending Act provided for the omission from the definition of "relevant period of employment" in subsection 62A(1) of the 1976 Act all the words that had the effect of excluding persons engaged for employment outside Australia from the preservation arrangements provided for in Division 2A of Part V of that Act. At the time the original preservation arrangements had

been included in the 1976 Act it had been thought that overseas employees were excluded from the Superannuation_Guarantee arrangements. This was found not to be the case.

Section 222, as inserted in the 1976 Act by the Principal Regulations, reflects section 62A.

Subregulation 3.5 amends the definition of "relevant period of employment" in subsection 222(1) of the Principal Regulations to ensure that former contributors to the Provident Account who are engaged for employment outside Australia only are not excluded from the preservation rules applying to other eligible employees under the 1976 Act.

Subregulation 3.6

Section 62B of the 1976 Act was amended by section 67 of the Amending Act by omitting from the definition of "AEC" in subsection (3) "1993" and substituting "1994". "AEC" is one of the factors used in the calculation of the preserved amount.

Section 223, as inserted in the 1976 Act by the Principal Regulations, reflects section 62B.

Subregulation 3.5 amends the definition of "AEC" in subsection 223(3) in the Principal Regulations by omitting "1993" and substituting "1994" to ensure that former contributors to the Provident Account are not disadvantaged by preservation rules that are different from those that apply to other eligible employees under the 1976 Act.

Subregulation 3.7

This makes a drafting correction to section 224 as inserted in the Act by the Principal Regulations. The amendment changes the incorrect reference to section 214 to a reference to section 223.