

Statutory Rules 1990
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Statutory Rules 1990 No. 1

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Superannuation (Transfer Arrangements) Regulations² (Amendment)

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

Dated 14 August 1990.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Ralph Willis
Minister of State for Finance

1. Amendments

1.1 The Superannuation (Transfer Arrangements) Regulations are
amended as set out in these Regulations.

2. New regulation 14:

Insert after regulation 13:

**Application of the Act to certain persons who have received payments
under section 80 of the Act or section 51 or 85 of the superseded Act**

"14. (1) This regulation applies to a person to whom section 126
of the Act applies if, before becoming, or last becoming, an eligible
employee:

- (a) the person received an amount under section 51 or 85 of the superseded Act by reason of the operation of subsection 119Y (2) of that Act; or
- (b) the person received an amount under section 80 of the Act by reason of the operation of subsection 141 (2) of the Act; or
- (c) the person:
 - (i) received an amount under section 51 or 85 of the superseded Act; and
 - (ii) at the end of the period that, under subsection 119N (1) of that Act, was the prescribed period in relation to the person, was employed in employment that, under subsection 119Q (1) of that Act, was declared to be public employment in relation to the person or to the class of persons of which the person was a member; and
 - (iii) at the end of that period, was a member of a superannuation scheme (other than an eligible superannuation scheme) applicable to that employment; and
 - (iv) paid an amount equivalent to that amount to the person administering that scheme in exchange for benefits under that scheme; or
- (d) the person:
 - (i) received an amount under section 80 of the Act; and
 - (ii) at the end of the period that, under subsection 131 (1) of the Act, was the prescribed period in relation to the person, was employed in employment that, under subsection 133 (1) of the Act, was declared to be public employment in relation to the person or to the class of persons of which the person was a member; and
 - (iii) at the end of that period, was a member of a superannuation scheme (other than an eligible superannuation scheme) applicable to that employment; and
 - (iv) paid an amount equivalent to that amount to the person administering that scheme in exchange for benefits under that scheme.

“(2) In its application to and in relation to a person to whom this regulation applies, the Act is modified as specified in Schedule 11.”.

3. New Schedule 11

Add at the end the following Schedule:

SCHEDULE 11

Regulation 14

MODIFICATIONS OF THE ACT IN ITS APPLICATION TO CERTAIN PERSONS WHO HAVE RECEIVED PAYMENT UNDER SECTION 80 OF THE ACT OR SECTION 51 OR 85 OF THE SUPERSEDED ACT

1. After section 128 insert the following section:

Certain persons who have received payment under section 80, or under section 51 or 85 of the superseded Act, may elect to repay the payment

“128A. (1) In this section:

‘**eligible person**’ means a person to whom regulation 14 of the Superannuation (Transfer Arrangements) Regulations applies;

‘**notice of election**’ means a notice under subsection (2);

‘**refund**’, in relation to an eligible person, means the sum that is equal to the amount referred to in paragraph 14 (1) (a) or (b), or subparagraph 14 (1) (c) (i) or (d) (i), of the Superannuation (Transfer Arrangements) Regulations that was received, or last received, by the eligible person.

“(2) An eligible person may, not later than:

- (a) 3 months after the day on which the person became, or last became, an eligible employee; or
- (b) if that day was earlier than 1 September 1990–30 November 1990; or
- (c) a later date allowed by the Commissioner;

give the Commissioner a notice (in this section called a ‘**notice of election**’), which may be in a form provided by the Commissioner, that this section is to apply to the person.

“(3) Subject to subsection (6), a person who gives a notice of election must pay to the Commissioner, not later than the last day for giving the notice, or within any longer period that the Commissioner allows, an amount equal to the refund.

“(4) The Commissioner is to pay into the Fund an amount paid under subsection (3).

“(5) An amount referred to in subsection (3) is taken, on being paid into the Fund, to be basic contributions paid by the person in respect of whom the amount is so paid.

“(6) Upon receipt of a notice of election, the Commissioner is:

- (a) to ascertain the amount of any supplementary contributions paid under subsection 129 (1) that stands to the credit in the Fund of the person giving the notice; and
- (b) to apply that amount, or so much of that amount as is sufficient to satisfy the person’s liability under subsection (3), in satisfaction or part satisfaction of that liability;

and upon the application of an amount (in this subsection called ‘**the applied amount**’) under paragraph (b):

- (c) the applied amount is taken:
 - (i) to have been paid to the Commissioner under subsection (3); and
 - (ii) to have been paid by the person as basic contributions; and
 - (iii) despite subsection 129 (1), not to be, or to have been, supplementary contributions under this Act; and
- (d) an amount determined by the Commissioner to be equivalent to the interest that accrued on the applied amount while the applied amount

SCHEDULE 11—continued

stood to the credit of the person in the Fund as supplementary contributions is to be taken:

- (i) to have accrued on basic contributions paid by the person; and
- (ii) not to have accrued on supplementary contributions.

“(7) Where:

- (a) an eligible person has given a notice of election; and
- (b) an amount equal to the refund has been credited to the person in the Fund as basic contributions in accordance with subsections (3) to (6):

the person’s period of contributory service is extended:

- (c) if the refund consists of an amount paid under section 80—by the period that was the person’s period of contributory service when the person became entitled to that amount; and
- (d) if the refund consists of an amount paid under section 51 or 85 of the superseded Act—by each period that is, under Division 12 of Part XII, a prescribed period of service in respect of the person;

and, for the purposes of section 130, the person is to be taken to be an eligible employee to whom subparagraph 130 (1) (a) (iii) applies.”.

2. Add the following Division to Part XII:

“Division 12—Prescribed Periods of Service

Interpretation

“236A. (1) In this Division, unless the contrary intention appears:

‘previous employment’, in relation to a relevant person, means the employment in which that person was last employed before the date on which he or she became, or last became, an employee for the purposes of the superseded Act;

‘Provident Account’ means the Provident Account established under the superseded Act;

‘relevant cessation day’, in relation to a relevant person means the last day of the period during which the person was last an employee for the purposes of the superseded Act;

‘relevant person’ means a person referred to in paragraph 128A (7) (d).

“(2) In this Division:

- (a) a reference, in relation to a relevant person, to the date of commencement of that person’s contributions is to be read as a reference to:
 - (i) except where subparagraph (ii) applies—to the date on which he or she became liable to make contributions to the existing Fund (whether under Part III of the superseded Act or as a contributor to the Provident Account); or
 - (ii) where that person became an employee for the purposes of that Act on more than one occasion—to the date on which he or she last became liable to make any such contributions in relation to a period in respect of which deferred benefits are applicable or payable to the person under the superseded Act; and
- (b) a reference to the Board is, in any case where the Board had ceased at the relevant time to exist, a reference to the Commissioner.

“(3) For the purposes of this Division:

- (a) where, but for subsection 100C (8) or 109 (5), or paragraph 119J (3) (c), of the superseded Act, a person would have been liable on a particular day to contribute to the existing Fund, he or she is taken to have been liable on that day to make contributions to the existing Fund; and

SCHEDULE 11—continued

- (b) where an amount has been paid, or a payment has been made, by one person on behalf of another person, the amount is taken to have been paid, or the payment made, by that other person.

“(4) Where, at any time before the relevant cessation day:

- (a) a relevant person had ceased to be an employee for the purposes of the superseded Act by reason of retirement on the ground of invalidity or physical or mental incapacity to perform his or her duties; and
- (b) that person had, upon ceasing to be such an employee, become entitled to a pension under section 45 of the superseded Act or by virtue of subsection 8 (1) of the *Superannuation Act 1948*; and
- (c) that person again became an employee for the purposes of the superseded Act; and
- (d) the pension referred to in paragraph (b) was cancelled under subsection 65 (3) of the superseded Act upon the person again becoming such an employee;

this Division applies to and in relation to that person as if he or she had not ceased during the period of his or her retirement to be:

- (e) an employee; and
- (f) a contributor to the existing Fund.

Prescribed periods of service

“236B. (1) Subject to subsection (2), each of the following periods is a prescribed period of service in relation to a relevant person:

- (a) except where paragraph (b) applies—the period that commenced on the date of commencement of his or her contributions and ended on the relevant cessation day, but excluding:
 - (i) any period during which he or she was not required or permitted by virtue of subsection 100J (2), 107K (2), 110 (2) or 119K (2) of the superseded Act to contribute to the existing Fund in respect of units of pension; and
 - (ii) if the person was a contributor to the Provident Account immediately before the commencing day, any period during which he or she was on leave of absence without pay (otherwise than on the ground of illness) and in respect of which paragraph 80 (5) (b) of the superseded Act applied to the person; and

(b) where:

- (i) the person, being a person who on the relevant cessation day was, by reason of a decision of the Board under section 79 of the superseded Act, liable to contribute to the existing Fund under Part III of that Act, did not make an election in relation to that decision under subsection 79 (4) of the superseded Act as in force before 25 May 1971 or under paragraph 119J (1) (b) of the Act; or
- (ii) if the person made such an election, the amount required to be paid to the Board under that election was not so paid;

the period that commenced on the date of the decision of the Board by reason of which the person was so liable to contribute to the existing Fund and ended on the relevant cessation day, but excluding any periods during which he or she was not required or permitted by virtue of subsection 100J (2), 107K (2), 110 (2) or 119K (2) of the superseded Act to contribute to the existing Fund in respect of units of pension);

- (c) where the person was a transferred dockyard employee within the meaning of Part VI of the superseded Act and under subsection 95 (2) of that Act was taken to be an employee for the purposes of that Act—the period

SCHEDULE 11—continued

ending on 27 October 1942 during which he or she was contributing under the Melbourne Harbor Trust Superannuation Regulations 1927-1940 in force under the Melbourne Harbor Trust Acts of the State of Victoria;

- (d) where the person was a prescribed employee within the meaning of Division 2 of Part VIA of the superseded Act—the period, being the whole or a part of the period of the person's previous employment, during which the person was a member of the superannuation scheme applying to his or her previous employment;
- (e) where the person was a prescribed employee within the meaning of Division 3 of Part VIA of the superseded Act and:
 - (i) was a contributor to the Provident Account on the relevant cessation day; or
 - (ii) became, by reason of a decision of the Board under section 79 of that Act, liable to contribute to the existing Fund under Part III of that Act, and made an election and payment to the Board under subsection 119J (1) of that Act;

the period, being the whole or a part of the period of his or her previous employment, during which the person was a member of the superannuation scheme applying to that previous employment;
- (f) where the person was a State employee within the meaning of Part VII of the superseded Act and made an election and payment to the Board under subsection 102 (1) of that Act—subject to subsection (3), the period, being the whole or a part of the period of the person's previous employment, during which he or she was a contributor to the fund or account (being a State Fund within the meaning of that Part) to which he or she was contributing under the terms and conditions of his or her previous employment;
- (g) where the person was a prescribed employee within the meaning of Division 2 of Part VIIA of the superseded Act—subject to subsection (3), the period, being the whole or a part of the period of the person's previous employment, during which he or she was a contributor to the fund or account (being a State Fund within the meaning of that Part) to which he or she was contributing under the terms and conditions of that previous employment;
- (h) where the person was a prescribed employee within the meaning of Division 3 of Part VIIA of the superseded Act and:
 - (i) was a contributor to the Provident Account on the relevant cessation day; or
 - (ii) became, by reason of a decision of the Board under section 79 of the superseded Act, liable to contribute to the existing Fund under Part III of that Act and made an election and payment to the Board under subsection 119J (1) of that Act;

then, subject to subsection (3), the period, being the whole or a part of the period of his or her previous employment, during which the person was a contributor to the fund or account (being a State Fund within the meaning of that Part) to which the person was contributing under the terms and conditions of that previous employment;
- (j) where the person:
 - (i) became liable to contribute to the existing Fund on or after 1 November 1951; and
 - (ii) was, immediately before becoming an employee for the purposes of the superseded Act, a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of the superseded Act; and
 - (iii) made an election and payment to the Board under section 109 of that Act;

SCHEDULE 11—continued

subject to subsection (3), the period, being the whole or a part of the period of the person's previous employment, during which he or she was a contributor to the Fund referred to in subparagraph (ii);

- (k) where the person is a person to whom Part IX of the superseded Act applied:
 - (i) except where subparagraph (ii) applies—the period during which the person was a contributor to the Defence Forces Retirement Benefits Fund established under the *Defence Forces Retirement Benefits Act 1948*, being the period immediately before he or she became a person to whom Part IX of the superseded Act applied; or
 - (ii) if he or she was a contributor to the existing Fund immediately before the commencement of the period referred to in subparagraph (i) and the reserve value held by the existing Fund in respect of his or her contributions to the existing Fund was paid from the existing Fund to the Defence Forces Retirement Benefits Fund under section 82 of the *Defence Forces Retirement Benefits Act 1948*—the period that commenced on the day on which the person began those contributions to the existing Fund and ended on the same date as the period referred to in subparagraph (i) ended;
- (l) where the person is a person to whom Part X of the superseded Act applied—the period, being the whole or a part of the period of the person's previous employment, during which sums were deducted from his or her pay under section 17 of the *Police Superannuation Ordinance 1928* of the Australian Capital Territory or during which contributions were made by the person under section 3 of that Ordinance;
- (m) where the person:
 - (i) on or after 1 January 1970, became an employee for the purposes of the superseded Act and became liable to contribute to the existing Fund under Part III of that Act; and
 - (ii) was, at any time before becoming such an employee, employed in employment within or outside Australia upon the termination of which a transfer value (within the meaning of Division 2 of Part XA of that Act) became payable to or in respect of the person in accordance with paragraph 119H (1) (a) of that Act; and
 - (iii) elected to pay and paid to the Board under subsection 119J (1) of that Act an amount that was equal to, or included, the amount of that transfer value; and
 - (iv) did not, at any time after making that payment to the Board but before the relevant cessation day, cease to be such an employee;

the period during which the person was a member of the superannuation scheme (within the meaning of Part XA of that Act) applicable in relation to that employment;
- (n) where the person:
 - (i) on or after 1 January 1970, became an employee for the purposes of the superseded Act and became liable to contribute to the Provident Account; and
 - (ii) was, at any time before becoming such an employee, employed in employment within or outside Australia upon the termination of which a transfer value (within the meaning of Division 2 of Part XA of that Act) became payable to or in respect of the person in accordance with paragraph 119H (1) (a) of that Act; and
 - (iii) elected to pay and paid to the Board under subsection 119J (1) of that Act an amount that was equal to, or included, the amount of that transfer value; and

SCHEDULE 11—continued

- (iv) did not, at any time after making that payment to the Board but before the relevant cessation day, cease to be such an employee; and
- (v) either:

- (A) was a contributor to the Provident Account on the relevant cessation day; or
- (B) became, by reason of a decision of the Board under section 79 of that Act, liable to contribute to the existing Fund under Part III of that Act, and made an election and payment to the Board under subsection 119J (1) of that Act;

the period during which the person was a member of the superannuation scheme (within the meaning of Part XA of that Act) applicable in relation to that employment:

- (o) where the person, being a person to whom paragraph (m) or (n) applies, had, on becoming a member of the superannuation scheme applicable to the employment referred to in subparagraph (m) (ii) or (n) (ii), as the case may be, paid to the person administering the scheme a transfer value (within the meaning of Division 2 of Part IX) that had become payable to or in respect of the person under a superannuation scheme (within the meaning of Part IX) applicable to any employment (in this paragraph called the ‘earlier employment’) in which the person had previously been employed—the period during which the person was a member of the superannuation scheme applicable in relation to the earlier employment;
- (p) where the person is a person to whom section 18 of the *Mint Employees Act 1964* applies—the person’s period of service as a Royal Mint employee (within the meaning of that Act) that is a period of previous employment.

“(2) Where a relevant person was an employee for the purposes of the superseded Act on more than one occasion, a period referred to in paragraph 1 (c), (d), (e), (f), (g), (h), (j), (k) or (l) is not a prescribed period of service in relation to the person unless the period was continuous with the period during which the person was an employee for the purposes of the superseded Act or, where there were 2 or more such periods, the last of those periods.

“(3) Where a person referred to in paragraph 1 (f), (g), (h) or (j):

- (a) immediately before the commencement of the person’s previous employment, ceased to be an employee for the purposes of the superseded Act; and
- (b) on becoming a contributor to the fund or account to which the person was contributing under the terms and conditions of his or her previous employment (in this subsection called the ‘State Fund’), paid to the person administering the State Fund an amount equal to the refund (if any) of contributions payable under section 51 or 85 of the superseded Act on so ceasing to be an employee for the purposes of that Act;

then, for the purposes of this section:

- (c) that person’s employment as an employee for the purposes of the superseded Act (in paragraph (d) referred to as that person’s ‘earlier employment’) that immediately preceded his or her previous employment is taken to be part of his or her previous employment; and
- (d) the period in respect of which that person was, during the period of that person’s earlier employment, a contributor to the existing Fund or to the Provident Account is to be taken into account as if it were a period during which the person was a contributor to the State Fund.”.

3. In paragraph 157 (3) (a), insert “128A,” after “128.”.

Superannuation (Transfer Arrangements) 1990 No. 9 271

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 1990. August 21
2. Statutory Rules 178 No. 255 as amended to date. For previous amendments see Note 2 to Statutory Rules 1990 No. 140 and see also Statutory Rules 1990 No. 140.