

Superannuation (Transfer Arrangements) Regulations (Amendment) 1992 No. 270

EXPLANATORY STATEMENT

STATUTORY RULES 1992 No. 270

Issued by the authority of the Minister for Finance

Superannuation Act 1976

Superannuation (Transfer Arrangements) 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. 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 126 of the 1976 Act provides that the regulations may modify the provisions of that Act in relation to a person who, before becoming an eligible employee, was a member of a superannuation scheme. Regulations for the purposes of section 126 are contained in the Superannuation (Transfer Arrangements) Regulations.

The Superannuation Legislation Amendment Act 1991 (the Amending Act) amended the 1976 Act to bring the superannuation scheme established under the 1976 Act into line with the spirit of the Occupational Superannuation Standards as well as to streamline administration, correct anomalies and provide greater equity between members of that scheme.

The amending Regulations amend the Superannuation (Transfer Arrangements) Regulations as a consequence of amendments to the 1976 Act by the Amending Act. In addition, the amending Regulations make a number of minor drafting amendments to the Regulations. All the amendments are technical in nature and most follow directly from the amendment of the 1976 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(10) which provides that regulations for the purposes of section 180 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(10) of the 1976 Act, the proposed amending Regulations will operate with effect from and including 2 September 1991, the date of commencement of that subsection.

The proposed amending Regulations will not affect the rights of any person (other than the Commonwealth) in a manner prejudicial to that person, nor will they impose any liability on such a person. They are, therefore, in accord with the Acts Interpretation Act 1901.

ATTACHMENT

SUPERANNUATION (TRANSFER ARRANGEMENTS) REGULATIONS (AMENDMENT)

THE AMENDING REGULATIONS

REGULATION 1

This provides that the Superannuation (Transfer Arrangements) Regulations (Amendment) (the Amending Regulations) are taken to have commenced on 2 September 1991.

REGULATION 2

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

REGULATION 3

This amends Regulation 14 of the Principal Regulations to provide that that Regulation will cover a person who has paid an amount less than the full lump sum benefit received from the scheme provided for by the 1976 Act to another superannuation scheme in exchange for benefits under the latter scheme.

REGULATION 4

Schedule 2 of the Principal Regulations modifies the 1976 Act by providing that a new subsection 127(1B) is to be inserted after existing subsection 127(1). The inserted subsection provides special arrangements for certain persons who were employees of Commonwealth Accommodation and Catering Services Limited and became eligible employees, having transferred from the Commonwealth Hostels Provident Fund.

The Amending Act inserted new subsections 127(1AA) and 127(1AB) into the 1976 Act which deal with transfer values for the purposes of the 1976 Act scheme. As a consequence of this amendment, this regulation amends Schedule 2 to provide that subsection 127(1B), as provided for in the Principal Regulations, is to be inserted after subsection 127(1AB). This amendment does not affect the existing provisions of subsection 127(1B).

SUBREGULATIONS 5.1 TO 5.3

Schedule 8 of the Principal Regulations modifies the 1976 Act by providing special arrangements for certain persons who were New South Wales state employees and who transferred to Commonwealth employment as technical and further education teachers in the Australian Capital Territory. These subregulations amend Schedule 8 of the Principal Regulations to reflect changes made to the 1976 Act by the Amending Act.

Subregulation 5.1 substitutes a reference to "paragraph (1)(a)" of section 59 of the 1976 Act in lieu of "paragraph (a)" to take account of the amendment by the Amending Act which inserted a new subsection 59(2) into the 1976 Act.

The Amending Act amended section 111 of the 1976 Act by omitting subsection (1) and substituting a new subsection (1) which provides that, where benefits are not payable to dependants on the death of a contributor, a payment of the person's accumulated contributions is made to his or her personal representatives. Subregulation 5.2 amends the modification to section 111 in the Principal Regulations to take account of the construction of the new subsection 111(1) by providing that the modification is to affect "subsection (1)" rather than "paragraph (b) of sub-section (1)".

The Amending Act inserted a new subsection 62(2A) into the 1976 Act to provide for benefits in respect of a person who is deemed to have retired involuntarily on or after 1 July 2000. Subregulation 5.3 amends substituted subsection 128(3) of the 1976 Act, which provides for the calculation of the accumulated basic contributions of transferred staff on cessation, by providing that the subsection also applies to a person to whom or in respect of whom a lump sum benefit under or in accordance with subsection 62(2A) becomes payable.

SUBREGULATION 6.1

Schedule 11 of the Principal Regulations modifies the 1976 Act by insertion of a new section 128A which provides for the recognition, in certain circumstances, of prior contributory service under the 1976 or 1922 Acts, subject to an election by the person concerned and the payment to the Commissioner for Superannuation of an amount equivalent to the amount received by that person on ceasing to be an eligible employee or a contributor under the 1922 Act.

This subregulation amends inserted section 128A to provide a mechanism for repayment of such an amount to the person where the person applies to cancel his or her election and the Commissioner for Superannuation directs that the election is cancelled.

SUBREGULATION 6.2

The existing definition of "relevant person" in inserted subsection 236A(1) of the 1976 Act refers to "a person referred to in paragraph 128A(7)(d)". This definition is unhelpful since paragraph 128A(7)(d) refers to a refund consisting of an amount paid under section 51 or 85 of the Superannuation Act 1922. This subregulation clarifies the meaning of the definition of "relevant person" in the Principal Regulations.