

# **Superannuation (Transfer Arrangements) Regulations (Amendment) 1993 No. 346**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1993 No. 346**

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 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 126 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 (TRANSFER ARRANGEMENTS) REGULATIONS (AMENDMENT)

#### THE AMENDMENTS

##### Regulation 1

In accordance with subsection 168(12), this provides that the amending 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 amending Regulations.

##### Regulation 3

This substitutes a new interpretation provision in the Principal Regulations which incorporates a definition of the term "transfer value", being a term used in the Principal Regulations.

##### Regulations 4, 5 and 6

The Amending Act substituted a new definition of "transfer value" in subsection 127(1) of the 1976 Act. The new definition enables, in addition to amounts previously treated as transfer values, amounts paid from other superannuation schemes as a consequence of the Superannuation Guarantee legislation (the *Superannuation Guarantee (Administration) Act* 1992) to be treated as transfer values in certain circumstances. These amounts may include amounts received by CSS contributors from other superannuation schemes while on leave of absence without pay from their normal employment.

Regulations 4, 5 and 6 substitute new regulations 5, 9 and 11 in place of the existing regulations 5, 9 and 11 in the Principal Regulations. The changes incorporated in the substituted regulations make the existing provisions subject to new subregulations 5(2), 9(2) and 11 (2), each of which provides that the modifications of the 1976 Act in relation to the persons referred to in the existing provisions do not apply to a person who receives a transfer value while on leave of absence without pay on or after 18 December 1992. This makes it clear that the special arrangements provided for in the Principal Regulations only apply to the circumstances described in those Regulations under which the persons concerned became members of the CSS, and are not extended to amounts received as transfer values by those persons while on leave of absence without pay on or after 18 December 1992.

The opportunity has been taken to modify the expressions used in new subregulations 5(1), 9(1) and 11(1) to refer to events which have already occurred in the past tense, rather than the future tense. In addition, regulation 11 has been recast in a form which is easier to read by separating the definition of the term "technical and further education" from the principal provisions, and positioning that definition in new subregulation 11(3).

##### Subregulation 7.1

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(1AB). 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 omitted

subsection 127(1AB) from the 1976 Act; as a consequence, subregulation 7.1 provides that subsection (1B) follows subsection (1AA) rather than the non-existent subsection (1AB). This amendment does not affect the existing provisions of subsection 127(1B).

### Subregulation 7.2

This inserts a new modification to subsection 128(3) of the 1976 Act in respect of the persons to whom the special arrangements provided for by Regulation 5 and Schedule 2 of the Principal Regulations apply. The modification has the effect of clarifying that a lump sum benefit under that section, based on a transfer value paid to the CSS in accordance with Schedule 2, does not include a productivity component, as the productivity component of a transfer value is included in the person's productivity benefit which is payable separately from the lump sum mentioned in subsection 128(3) on the person ceasing to be a member of the CSS.

In addition, subregulation 7.2 substitutes a new version of the modified subsection 128(4) in Schedule 2. The Amending Act made a number of amendments to section 128 of the 1976 Act, which provides for the treatment of transfer values from other superannuation schemes to the CSS. Subsection 128(4) - which provides for the payment, on cessation of CSS membership and in certain circumstances, of an additional lump sum benefit based on the employer component of the transfer value - was amended to provide that the additional lump sum benefit should also include an amount equal to the interest that would have accrued on that amount if it had been paid into the CSS Fund and not the Consolidated Revenue Fund. (Amounts in the CSS Fund accrue interest in accordance with determinations made by the CSS Board of Trustees.)

In effect, the new version repeats the provisions of the existing modification, with the addition that an interest component is incorporated in the additional lump sum benefit payable under modified subsection 128(4).

### Subregulation 7.3

This modifies the 1976 Act in respect of the persons covered by Regulation 5 and Schedule 2 of the Principal Regulations by, in effect, omitting the references in paragraph 128(6)(b) and subsection 128(8) to productivity related benefit, notional productivity amount, and accumulated employer contributions. These concepts - introduced in the 1976 Act as a consequence of the SG legislation and other recent amendments - would not have applied to the transferred amount paid to the Commissioner for Superannuation from the Commonwealth Hostels Provident Fund in 1980.

### Subregulations 8.1 and 8.2

Both subregulations 8.1 and 8.2 recast existing modifications to subsection 128(1) contained in Schedule 6, which refer to the provisions of the 1976 Act as they stood in 1985 (at the time the transfer value was paid to the CSS), to take account of the new construction of that subsection following its substitution by the Amending Act.

### Subregulation 9.1

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.

This subregulation amends Schedule 8 to provide that the additional lump sum benefit provided for in modified subsection 128(4) is to include an amount of interest, in accordance with the approach now adopted in the unmodified Act. The Amending Act made a number of

amendments to section 128 of the 1976 Act, which provides for the treatment of transfer values from other superannuation schemes to the CSS. Subsection 128(4) - which provides for the payment, on cessation of CSS membership and in certain circumstances, of an additional lump sum benefit based on the employer component of the transfer value - was amended to provide that the additional lump sum benefit should also include an amount equal to the interest that would have accrued on that amount if it had been paid into the CSS Fund and not the Consolidated Revenue Fund. (Amounts in the CSS Fund accrue interest in accordance with determinations made by the CSS Board of Trustees.)