

EXPLANATORY STATEMENT

STATUTORY RULES 1987 NO 70

ISSUED BY THE AUTHORITY OF THE MINISTER FOR FINANCE

SUPERANNUATION ACT 1976 - SUPERANNUATION (SALARY) REGULATIONS (AMENDMENT)

Section 168 of the Superannuation Act 1976 (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters which the Act requires or permits to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Act makes provision for and in relation to an occupational superannuation scheme for persons employed by the Commonwealth, and for certain other persons.

Under the Act, the rate of fortnightly contributions payable by a contributor is expressed as a percentage of the fortnightly rate of his or her salary. In accordance with sub-section 3(1) of the Act, "fortnightly rate of salary" in relation to a contributor means an amount equal to one-twenty-sixth of the amount of his or her annual rate of salary.

The rates of employer-financed invalidity, age and early retirement pensions payable under the Act are expressed as percentages of the former contributor's final annual rate of salary. In accordance with sub-section 3(1) of the Act, "final annual rate of salary" means, in the generality of cases, the person's annual rate of salary on his or her last day of service.

Sub-section 5(1) of the Act provides that "salary" means salary or wages and:

- (a) includes any allowance, or the value of any allowance, or any fee, that is an allowance or fee of a kind that, under the regulations, is to be treated as salary for the purposes of the Act; but
- (b) does not include any part of any salary or wages that, under the regulations, is not to be treated as salary for the purposes of the Act.

Sub-section 5(2) provides that, subject to sub-section 5(3), the "annual rate of salary" of a contributor on a particular day is an amount equal to the amount per annum of the salary for the purposes of the Act payable to the contributor on that day. Sub-section 5(3) provides that the regulations may provide that, in a case specified in the regulations, the annual rate of salary of a contributor on a particular day shall, for the purposes of the Act or a provision of the Act specified in the regulations, be an amount equal to such amount per annum as is ascertained under the regulations.

Regulations for the purposes of section 5 are contained in the Superannuation (Salary) Regulations (the Principal Regulations).

Sub-regulations 7(2), 10(2) and 15(3) of the Principal Regulations refer to the relevant period. The meaning of the term "relevant period" for the purposes of each of those sub-regulations is defined in sub-regulations 7(3), 10(6) and 15(7) respectively.

Regulations 2, 3 and 4 of the amending Regulations make minor amendments of a drafting nature to the definitions of "relevant period" in sub-regulations 7(3), 10(6) and 15(7) respectively of the Principal Regulations. The amendments clarify the meaning of the term by correcting a double reference to the same period of time. The meaning of the term is not changed.

Sub-regulations 6(2), 8E(4), 10(3) and 15(4) of the Principal Regulations provide for a certificate to be given in relation to a contributor in certain circumstances by a person authorised by the Commissioner (Commissioner for Superannuation). Paragraph 8(1)(b) of the Principal Regulations refers to a certificate given by a person authorised by the Commissioner under regulation 6(2) and paragraphs 17(1)(a), 17(2)(a) and 17(3)(a) refer to such certificates given under sub-sections 6(2), 10(3) and 15(4) respectively.

The "person authorised by the Commissioner" approach was adopted when the Principal Regulations were made because section 25 of the Act did not at that time enable the Commissioner for Superannuation to delegate his powers under regulations under the Act. However, section 25 was amended by section 14 of the Superannuation Legislation Amendment Act (No 2) 1986 (Act No 151 of 1986) to enable the Commissioner to delegate his powers under regulations. Those amendments came into operation on 18 December 1986, the date of Royal Assent.

Regulation 5 of the amending Regulation amends, by way of a Schedule, sub-regulations 6(2), 8E(4), 10(3) and 15(4) of the Principal Regulations to remove the references to a person authorised by the Commissioner and to provide instead for certificates under those sub-regulations to be given by the Commissioner (and thus his delegates). The Schedule also makes consequential amendments to paragraphs 8(1)(b), 17(1)(a), 17(2)(a) and 17(3)(a).

The definitions of "relevant period" in sub-regulations 7(3), 10(6) and 15(7) of the Principal Regulations also refer to certificates given under sub-regulations 6(2), 10(3) and 15(4) respectively by a person authorised by the Commissioner. The amendments to those definitions proposed to be made by regulations 2, 3 and 4 of the amending Regulations omit those references as they are no longer necessary in the terms of the amended definitions.

The amending Regulations operate from the date of their gazettal.

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