

# **Superannuation (Continuing Contributions for Benefits) Regulations (Amendment) 1991 No. 465**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1991 No. 465**

ISSUED BY THE AUTHORITY OF THE MINISTER FOR FINANCE

#### Superannuation Act 1976

#### SUPERANNUATION (CONTINUING CONTRIBUTIONS FOR BENEFITS) REGULATIONS (AMENDMENT)

The Superannuation Act 1976 (the Act) makes provision for and in relation to an occupational superannuation scheme for certain Commonwealth employees and other persons.

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

A person eligible to contribute under the Act is referred to as an "eligible employee". The term "eligible employee" is defined in subsection 3(1) of the Act. In accordance with paragraph (ea) of the definition, the term includes a person to whom section 14A of the Act applies. Regulations under section 14A may specify persons to whom the section applies and may modify the Act in respect of such persons. These provisions are contained in the Superannuation (Continuing Contributions for Benefits) Regulations (the Regulations).

The Northern Land Council (the Council) is an Aboriginal Land Council established under the Aboriginal Land Rights (Northern Territory) Act 1976. Persons who are eligible employees and who become employed by the Council, with the exception of those who are seconded or who are on leave without pay, are generally unable to remain eligible employees.

It is intended that persons who are eligible employees immediately prior to becoming employees of the Council should be permitted to remain eligible employees. To achieve this it is intended that those persons who are to be entitled to remain eligible employees be specified in the Regulations as a class of persons to which section 14A of the Act applies.

Regulation 3A lists the classes of persons to which section 14A applies. The Schedule to the Regulations includes various modifications to provisions of the Act in relation to such persons. These modifications include the insertion of subsection 159(1A) of the Act listing various authorities or bodies which under section 159 must make employer contributions to the Commonwealth in respect of eligible employees employed by those authorities or bodies, including those persons to whom section 14A applies.

The proposed amending Regulations amend regulation 3A by adding a further class of persons, namely certain employees of the Council. The proposed amending Regulations also amend the modifications to section 159 by providing that the Council must make payments to the Commonwealth in respect of those employees.

It is intended that the amendment to regulation 3A, at proposed subregulation 3.6, have effect from 7 March 1988. This retrospectivity will enable two employees of the Council, who were eligible employees immediately prior to commencing employment with the Council, to have continuity as eligible employees. Both have made an election to remain as eligible employees and have continued to make contributions to the Commonwealth Superannuation Scheme (the CSS)

since they joined the Council. The Council has also continued to make employer contributions on behalf of these employees.

The retrospectivity of the amending Regulations is required in order that these employees are not disadvantaged in their superannuation benefits. This would occur if the continuity of their membership of the CSS was broken.

Furthermore, the retrospectivity of subregulation 3.6 complies with subsection 48(2) of the Acts Interpretation Act 1901 in that the rights of the two employees are not affected in a manner prejudicial to those persons nor are liabilities imposed on them other than the responsibility for contributions which they have accepted by making an election to continue as contributors to the CSS and by continuing to make contributions.

It is intended that the amendment to the modification of subsection 159(1A) at proposed regulation 4 have effect from 1 July 1990 as this is the commencement date for subsection 159(1A). This retrospectivity also causes no disadvantage as the council has indicated, in writing, its willingness to meet the employer contribution obligations the retrospectivity imposes and has, in any case, continued to meet these obligations for the two employees concerned from the date of their employment by the Council.

The proposed amending Regulations include, at subregulations 3.1 to 3.5, amendments to the Regulations which are of a drafting nature. They are to commence from the date of gazettal.

## ATTACHMENT

### SUPERANNUATION (CONTINUING CONTRIBUTIONS FOR BENEFITS) REGULATIONS (AMENDMENT)

#### Subregulation 3.1

This amendment provides that employees of AIDC Ltd who are employed on a casual or temporary part-time basis are not to be included in the classes of persons to which section 14A of the Act applies. The Act precludes such employees from being included in these classes of persons. No current employee of AIDC Ltd will be excluded by this provision.

#### Subregulation 3.2

This amendment clarifies the intention that those employees of AIDC Ltd who are covered by the mobility provisions included in Divisions 2 and 3 of Part IV of the Public Service Act 1922 be excluded from the classes of persons specified in the Regulations as persons to whom section 14A of the Act applies. Such employees remain eligible employees by virtue of being specified in the Act as persons to whom section 14A applies. The amendment also clarifies the intention that persons covered by provisions in Part IV of the Public Service Act 1922, other than those in Divisions 2 or 3, were not automatically excluded from the class of persons to whom section 14A applies.

#### Subregulation 3.3

This amendment removes the unintended automatic exclusion of certain employees of the Dairy Research and Development Corporation, who were covered by the mobility provisions of Part IV of the Public Service Act 1922 immediately prior to their employment by the Corporation, from the class of persons to whom section 14A applies.

#### Subregulation 3.4

This amendment consists of technical changes made by the draftsman which do not change the meaning of the provision.

#### Subregulation 3.5

This amendment clarifies the intention that those employees of the Dairy Research and Development Corporation who are covered by the mobility provisions included in Divisions 2 and 3 of Part IV of the Public Service Act 1922 be excluded from the classes of persons specified in the Regulations as persons to whom section 14A of the Act applies. Such employees remain eligible employees by virtue of being specified in the Act as persons to whom section 14A applies. The amendment also removes the unintended automatic exclusion of persons covered by provisions in Part IV of the Public Service Act 1922, other than those in Divisions 2 or 3, from the class of persons to whom section 14A applies.

#### Subregulation 3.6

This amendment inserts another paragraph in Regulation 3A of the Principal Regulations. This Regulation specifies certain classes of persons who are eligible employees for the purposes of the Act. The amendment, therefore, has the effect of providing that employees of the Northern Land Council shall be eligible employees if, immediately prior to becoming such employees, they were eligible employees and do not become members of another superannuation scheme applying to employment with the Council.

In accordance with the provisions of the Act, the proposed subregulation excludes persons who become casual or temporary part-time employees from remaining eligible employees.

Persons who are eligible employees to whom the mobility provisions of Part IV of the Public Service Act 1922 apply are covered under the existing provisions of the Act and are also excluded from the scope of the proposed subregulation.

Eligible employees who became employed by the Northern Land Council between 7 March 1988 and 31 December 1991 are required to elect to continue to be eligible employees. Eligible employees who become employed by the Council on or after 1 January 1992 may be covered by section 14A without the need for an election.

#### Regulation 4

The proposed Regulation 4 provides, by modification to section 159(1A) of the Act, that the Northern Land Council shall make payments to the Commonwealth in respect of eligible employees who are employees of the Council. Section 159(1A) provides that specified authorities shall make payments to the Commonwealth in respect of eligible employees who are employed by those authorities at such rates as the Minister for Finance determines, having regard to the amounts that have become, or are likely to become, payable out of the Consolidated Revenue Fund to or in respect of those persons.