

# **Superannuation (Continuing Contributions for Benefits) Regulations (Amendment) 1993 No. 348**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1993 No. 348**

Issued by the authority of the Minister for Finance

#### *Superannuation Act 1976*

Superannuation (Continuing Contributions for Benefits) 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.

Section 168 of the 1976 Act provides that the Governor-General may make regulations for the purposes of that Act.

Persons who are contributors to the scheme are referred to in the 1976 Act as eligible employees. The term 'eligible employee' is defined in subsection 3(1) of the 1976 Act. In accordance with paragraph (ea) of that definition, the term includes a person to whom section 14A applies.

Regulations under section 14A may specify classes of persons to which the section applies and may modify the Act in respect of such persons. The regulations for the purposes of section 14A are contained in the Superannuation (Continuing Contributions for Benefits) Regulations (the Principal 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 amendment contained in the Regulations is outlined 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 14A 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 are taken to have commenced on 18 December 1992, the date of commencement of that subsection. 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 (CONTINUING CONTRIBUTIONS FOR BENEFITS) REGULATIONS (AMENDMENT)**

## THE AMENDMENT

The 1976 Act provides that a number of benefits paid under the Act, including the new Superannuation Guarantee top-up benefit provided for in Part VIAA (which was inserted in the 1976 Act by the Amending Act), are required in certain circumstances to be preserved in respect of the recipient in a preservation fund outside the CSS.

Item 1 of the Schedule to the Principal Regulations contains modifications of the 1976 Act in relation to certain persons who are re-appointed or re-employed and to whom section 14A of the Act applies. It provides, in effect, that there will be no break in the continuity of service for superannuation purposes. In order to achieve this, the item inserts a new section 124D into the 1976 Act which provides that any benefits paid to such a person under the Act are taken not to have been payable and the amount of any benefit so paid shall be repaid to the Commissioner for Superannuation.

The amendment substitutes a revised section 124D which would ensure that amounts preserved in respect of the recipient (as well as amounts paid to the recipient) are taken not to be, or to have been, payable, and must be repaid in order to permit the recognition of the reinstated employee's prior service.

In accordance with subsection 168(12) of the 1976 Act, the amendment is expressed as being taken to have commenced on 18 December 1992.