

Superannuation (Continuing Contributions for Benefits) Regulations (Amendment) 1994 No. 271

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 271

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 (known as the CSS) 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.

Members of the CSS are referred to in the Act as eligible employees. Subsection 3(1) of the Act defines the term "eligible employee". In accordance with paragraph (ea) of the definition, the term includes a person to whom section 14A of the Act applies.

Section 14A of the Act provides that the regulations made under that section may specify classes of persons to which the section applies or does not apply and may modify the Act in respect of persons to whom the section applies. Regulations for the purposes of section 14A are contained in the Superannuation (Continuing Contributions for Benefits) Regulations (the Principal Regulations).

The membership arrangements provided for in the Principal Regulations generally exclude a person from membership of the CSS if the person is a member of another superannuation scheme to which the person's employer has agreed to make employer contributions.

Some CSS members are employed on flexible remuneration arrangements which enable them to receive part of their remuneration as non-cash benefits. Under such arrangements some members may sacrifice a portion of their cash salary in favour of employer superannuation contributions to an alternative superannuation scheme in addition to contributions already being made to the CSS. It is intended that, where a CSS member is entitled to such arrangements as part of his or her remuneration package, selection of this option should not exclude the person from membership of the CSS.

The Regulations amend the Principal Regulations to give effect to this intention. The Regulations also amend the Principal Regulations to clarify that a reference to membership of a superannuation scheme does not include a reference to the scheme under the *Superannuation Act 1990* (known as the PSS) where the person's membership of that scheme relates to employment other than that in respect of which the person is a member of the CSS. The details of the Regulations are explained in the attachment.

Clause 8 of the Regulations operates with effect from 24 December 1992. This makes a technical drafting amendment and the retrospective application of the amendment does not conflict with section 48 of the *Acts Interpretation Act 1901*. The remainder of the Regulations commence on gazettal.

SUPERANNUATION (CONTINUING CONTRIBUTIONS FOR BENEFITS) REGULATIONS (AMENDMENT)

The details of the amending Regulations are as follows:

Clause 1

This provides that the amendment made by regulation 8 commences with retrospective effect from 24 December 1992. The remainder of the amendments commence from gazettal.

Clause 2

This provides that the Superannuation (Continuing Contributions for Benefits) Regulations (the Principal Regulations) are amended by these Regulations.

Clause 3

This amends regulation 2 of the Principal Regulations which is the interpretation provision.

Subclause 3.1 amends the definition of "superannuation scheme" to clarify that the definition does not apply to the scheme under the *Superannuation Act 1990* (known as the PSS) of which a person may be a member in respect of employment other than the employment in respect of which the person is a member of the CSS. This change is made as a consequence of amendments made to the *Superannuation Act 1990* in 1992 to clarify that a person may have membership of both the CSS and the PSS but not in respect of the same employment. This recognises the changing nature of Commonwealth employment where a person may hold a number of jobs, usually on a part-time basis, at the same time.

Subclauses 3.2 and 3.3 make technical drafting changes to the definition of the terms "the Act" and "the 50% sale day".

Subclause 3.4 inserts a definition of "top-up arrangement" which provides that the term has the meaning given by subregulation 2(3) of the Principal Regulations (as inserted by subclause 3.5)

Subclause 3.5 amends regulation 2 of the Principal Regulations by inserting subregulations 2(2), 2(3), 2(4) and 2(5).

Subregulation 2(2) provides that, for the purposes of the Principal Regulations, a person is a member of a superannuation scheme for top-up purposes if the person's membership of the scheme is limited to membership for the following purposes:

- (a) for a top-up arrangement only (this is explained in subregulation 2(3));
- (b) for a top-up arrangement and one or more of the following:
 - (i) because contributions are made to the scheme in respect of performance pay received by the person;
 - (ii) the person is a member of the scheme for the purposes of receiving the minimum superannuation benefit envisaged in the Superannuation Guarantee arrangements.

Subregulation 2(3) defines a "top-up arrangement" as referred to in subregulation 2(2). It is an arrangement between the person and the person who pays his or her remuneration for employer superannuation contributions to be paid in respect of the person to a superannuation scheme other than the CSS.

Subregulation 2(4) provides that an arrangement is not a top-up arrangement unless the employer superannuation contributions referred to in subregulation 2(3) are part of the person's overall remuneration and would not increase that remuneration. Also, the person must be a member of the CSS in respect of the employment to which the arrangement relates.

Subregulation 2(5) makes it clear that a superannuation scheme can be a scheme for top-up purposes even though it is not generally a superannuation scheme as defined for the purposes of the Regulations because it is a scheme providing the minimum superannuation envisaged in the Superannuation Guarantee arrangements.

Regulation 4

This amends regulation 3 of the Principal Regulations which lists the classes of persons to whom section 14A does not apply.

Subclause 4.1 amends subparagraph 3(1)(d)(iii) to ensure that certain persons referred to in paragraph 3(1)(d) are not persons to whom section 14A does not apply because they are, or become, members of a superannuation scheme for top-up purposes.

Subclause 4.2 inserts new subregulation 3(1A) which makes it clear that the persons referred to in the amendments made by subclause 4.1 are persons whose remuneration arrangements allow them to choose to take some of their remuneration in a non-cash form, including the choice to salary sacrifice some of their remuneration towards additional superannuation in a superannuation scheme other than the CSS. In most cases this will apply to persons employed on contracts with total employment cost flexible remuneration packages. However, these arrangements are to apply also to employees with other flexible remuneration arrangements.

Regulation 5

This amends regulation 3A of the Principal Regulations which lists the classes of persons to whom section 14A does apply and who are therefore eligible employees.

Subclause 5.1 amends subparagraphs 3A(1)(a)(v) and 3A(1)(d)(iii), subclause 5.2 amends subparagraphs 3A(1)(c)(iii) and 3A(1)(ca)(iii), **subclause 5.3** amends subparagraph 3A(1)(e)(iv), **subclause 5.4** amends subparagraph 3A(1)(f)(iii) and subclause 5.5 amends subparagraph 3A(1)(j)(iv) to ensure that certain persons referred to in those provisions do not cease to be persons to whom section 14A applies, or are not prohibited from having section 14A apply to them, because they are, or become, members of a superannuation scheme for top-up purposes.

Subclause 5.6 inserts new subregulation 3A(1A) which makes it clear that the persons referred to in the amendments made by subclauses 5.1 to 5.5 inclusive are persons whose remuneration arrangements allow them to choose to take some of their remuneration in a non-cash form, including the choice to salary sacrifice some of their remuneration towards additional superannuation in a superannuation scheme other than the CSS. In most cases this will apply to persons employed on contracts with total employment cost flexible remuneration packages. However, these arrangements are to apply also to employees with other flexible remuneration arrangements.

Regulation 6

This amends regulation 3B of the Principal Regulations which provides that section 14A applies to certain staff of Repatriation institutions who are transferred to State employment as a consequence of the transfer of those institutions to State control and who do not join a State superannuation scheme.

Subclause 6.1 amends paragraph 3B(1)(e) to ensure that certain persons referred to in subregulation 3B(1) do not cease to be persons to whom section 14A applies, or are not prohibited from having section 14A apply to them, because they are, or become, members of a State superannuation scheme for top-up purposes.

Subclause 6.2 inserts new subregulation 3B(1A) which makes it clear that the persons referred to in the amendment made by subclause 6.1 are persons whose remuneration arrangements allow them to choose to take some of their remuneration in a non-cash form, including the choice to salary sacrifice some of their remuneration towards additional superannuation in a superannuation scheme other than CSS. In most cases this will apply to persons employed on contracts with total employment cost flexible remuneration packages. However, these arrangements are to apply also to employees with other flexible remuneration arrangements.

Regulation 7

This amends regulation 4 of the Principal Regulations which sets a time when section 14A ceases to apply to a person. One of the reasons why section 14A may cease to apply to a person is that the person has become a member of another superannuation scheme (with certain exceptions).

Subclause 7.1 amends subparagraph 4(1)(c)(ii) to ensure that, for certain persons referred to in subregulation 4(1), the commencement of membership of a superannuation scheme for top-up purposes is not a time when section 14A ceases to apply to them.

Subclause 7.2 inserts new subregulation 4(1A) which explains that persons referred to in the amendments made by subclauses 7.1 and 7.3 to 7.8 inclusive are persons whose remuneration arrangements allow them to choose to take some of their remuneration in a non-cash form, including the choice to salary sacrifice some of their remuneration towards additional superannuation in a superannuation scheme other than the CSS. In most cases this will apply to persons employed on contracts which include total employment cost flexible remuneration packages. However, these arrangements are to apply also to employees with other, flexible remuneration arrangements.

Subclause 7.3 amends paragraph 4(2)(b) to ensure that, for certain persons referred to in subregulation 4(2), the commencement of membership of a superannuation scheme for top-up purposes is not a time when section 14A ceases to apply to them.

Subclause 7.4 makes a technical drafting correction to paragraph 4(3)(a).

Subclause 7.5 substitutes a new subregulation 4(4), **subclause 7.6** amends paragraphs 4(5)(c) and 4(6)(b), **subclause 7.7** amends subparagraph 4(9)(c)(ii) and **subclause 7.8** amends paragraph 4(10)(c) to ensure that, for certain persons referred to in those provisions, the commencement of membership of a superannuation scheme for top-up purposes is not a time when section 14A ceases to apply to them.

Regulation 8

This makes a technical drafting correction to regulation 2 of Statutory Rules 1992, No 460 by providing for the definition of "performance pay" to be inserted in regulation 2 of the Principal Regulations, which is the interpretation provision, rather than regulation 3.