

# **Superannuation (CSS) Continuing Contributions for Benefits Regulations (Amendment) 1997 No. 215**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1997 No. 215

Issued by the authority of the Minister for Finance

#### *Superannuation Act 1976*

#### Superannuation (CSS) 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. That scheme is known as the Commonwealth Superannuation Scheme (CSS).

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

Section 3(1) of the 1976 Act contains the definition of "eligible employee". Paragraph (ea) of that definition includes persons to whom section 14A of the 1976 Act applies. Section 14A applies to certain persons described in that section, including persons specified in regulations pursuant to section 14A, eg employees of Australian Postal Corporation and the Dairy Research and Development Corporation. Regulations pursuant to section 14A are contained in the **Superannuation (CSS) Continuing Contributions for Benefits Regulations** (the Principal Regulations).

The purpose of the Regulations is to amend the Principal Regulations to legitimise the CSS membership of the Nuclear Safety Bureau (NSB) employees (including former ANSTO staff) who were treated as if they were CSS members when in fact no membership arrangements had been made on their behalf by their employer,

The NSB was established as a separate entity, by the *Australian Nuclear Science and Technology Organisation Amendment Act 1992*, on 30 June 1992. Formerly, its functions were performed by the Australian Nuclear Science and Technology Organisation (ANSTO). ANSTO is an approved authority for the purposes of the 1976 Act and accordingly some employees were members of the CSS while in that employment.

When ANSTO staff, who were CSS members, became employed by NSB they were, by mistake, treated as if their membership continued. The 1976 Act provides for continuity of CSS membership when an employee changes employment, provided that in respect of the new employment the person is employed under the *Public Service Act 1922*, by an approved authority or is included in a class of persons specified in regulations pursuant to section 14A. Although NSB intended that the CSS membership of its employees continue, it was not aware of the need to make special arrangements and consequently the employees were assumed to be CSS members when in fact there was no legal basis for that assumption.

The Regulations retrospectively make good the assumed membership of NSB employees and will apply from the commencement of the person's employment with NSB during the period commencing 30 June 1992 until 31 December 1996. Other instruments made by the Minister for Finance declare NSB to be an approved authority for the purposes of the 1976 Act from 1 January 1997. Approved authority status will from 1 January 1997 provide for the employees

included in the Regulations as well as new employees who are entitled to rejoin the CSS on commencing employment with NSB. The Regulations and Declarations together provide continuing CSS membership for the employees who commenced employment with NSB before 1 January 1997 as well as those who commenced after that time. Details of the proposed amendments are explained in the Attachment.

The Regulations are taken to have commenced retrospectively on 30 June 1992, the day on which NSB was established and transferees who were CSS members commenced their new employment. Contributions in respect of the assumed CSS memberships were first accepted from that day.

Subsection 168(15) of the 1976 Act provides that Regulations for the purposes of section 14A may commence on a day not earlier than 12 months before their making. However, subsection 168(16) provides that if the contributions commenced earlier than 12 months before the making of the Regulations, the Regulations may commence from the earliest day that contributions have been accepted.

This provision was inserted into the 1976 Act in 1994 to ensure continuity of CSS membership for persons such as these NSB employees, who would otherwise cease to be members because the appropriate arrangements had not been made by their employer. The retrospective nature of the proposed Regulations ensures that the CSS members concerned suffer no disadvantage as a result of their employer's oversight.

Subsection 168(16) of the 1976 Act provides that where contributions have been accepted from a person to whom regulations for the purpose of section 14A apply, the regulations may commence on a day not earlier than the earliest day on which the contributions were so accepted. This provision was inserted into the 1976 Act in 1994 to ensure continuity of CSS membership for persons such as these NSB employees, who would otherwise cease to be members because the appropriate arrangements had not been made by the employer.

The Regulations are taken to have commenced retrospectively on 30 June 1992, the day on which NSB was established and transferees who were CSS members commenced their new employment. Contributions in respect of the assumed CSS memberships were first accepted from that day. The retrospective nature of the Regulations ensures that the CSS members concerned suffer no disadvantage as a result of their employer's oversight.

## ATTACHMENT

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

#### **Regulation 1**

The amending Regulations commence with effect from 30 June 1992. This legitimises the CSS membership of those employees of the Nuclear Safety Bureau (NSB) who paid contributions to the CSS prior to 1 January 1997.

#### **Regulation 2**

This provides that the Superannuation (CSS) Continuing Contributions for Benefits Regulations are amended as set out in the amending Regulations.

#### **Regulation 3**

Regulation 3A of the Principal Regulations prescribes classes of persons to which section 14A of the *Superannuation Act 1976* (1976 Act) applies. Such persons are eligible employees by virtue of paragraph (ea) of the definition of "eligible employee" in subsection 3(1) of the 1976 Act.

**Subregulation 3.1** of the amending Regulations inserts new paragraph 3A(1)(p) which provides for a new class of persons to which section 14A applies. The new class includes a person who is employed by NSB and:

- \* **was a member of the CSS immediately before their employment by NSB; or,**
- \* is a person to whom an invalidity pension was, or would, but for the suspension of payment have been payable to him or her under the 1976 Act; or
- \* is a person to whom deferred benefits were applicable under the 1976 Act; or
- \* is a person who would be a re-employed former contributor with preserved rights under the 1976 Act by virtue of their employment by, or appointment to, NSB if NSB were an approved authority; and
- \* after commencing the employment with NSB made contributions to the CSS as if the person were a bona fide member.

A person to whom Division 2 or 3 of Part IV of the Public Service Act (the mobility provisions) applies is not included in the new class of persons. Membership for such persons is provided by section 14A of the 1976 Act.

A person who is a member of another employer related superannuation scheme may not generally be included in the new class of persons, unless that arrangement is purely in respect of contributions relating to performance pay. Also, certain persons employed on flexible remuneration arrangements, which allow them to salary sacrifice a portion of their salary in favour of employer superannuation contributions to an alternative superannuation scheme, may still be included in the new class of persons - if the person is a member of the scheme under a "top-up arrangement". Subregulation 3(3) of the Principal Regulations provides the meaning of the term "top-up arrangement".

**Subregulation 3.2** of the amending Regulations amends subregulation 3A(1A) as a consequence of the new paragraph 3A(1)(p), to ensure that certain persons described in the new class are not prohibited from having section 14A apply to them because they are a member of a superannuation scheme for top-up purposes.

## **Regulation 4**

Regulation 4 of the Principal Regulations provides that section 14A ceases to apply to certain persons in certain circumstances.

**Subregulation 4.1** of the amending Regulations amends subregulation 4(1A) to ensure that section 14A continues to apply to a person described in the new class where the person becomes a member of another superannuation scheme for top-up purposes.

**Subregulation 4.2** provides that section 14A of the 1976 Act ceases to apply to a person in the new class of persons in the following circumstances:

- \* Those persons who were employed by NSB on 31 December 1996 cease to be covered by section 14A at the end of that day.
- \* Persons who ceased employment with NSB prior to 31 December 1996 cease to be covered by section 14A from:
  - the end of the day when the person ceased employment with NSB; or
  - immediately before the day the person became a member of a superannuation scheme other than the CSS unless that other scheme relates to performance pay superannuation or is a scheme for top-up purposes as provided for by subregulation

4(1A).

The amending Regulations ceased to operate on 31 December 1996 because, with effect from 1 January 1997, NSB will be taken to be an approved authority for the purposes of the 1976 Act by virtue of the Superannuation (CSS) Approved Authority Declaration (Amendment). The amending Regulations are necessary because approved authority declarations may not be made retrospectively for a period greater than 12 months and the amending Regulations cover the period from the establishment of NSB from 30 June 1992 until 31 December 1996. Together with the approved authority declarations, these instruments provide continuous and ongoing membership for CSS employees from the commencement of their employment with NSB.

## **Regulation 5**

Section 159 of the 1976 Act provides for payment to the Commonwealth by approved authorities in respect of the costs associated with employee membership of the scheme, for which the employing agency is responsible. Regulation 5 of the Principal Regulations provides a Schedule which modifies the 1976 Act in respect of certain persons to whom section 14A applies.

**Subregulation 5.1** adds an additional paragraph (paragraph (m)) to subsection 159(1A) of the 1976 Act for the inclusion of NSB in the subsection, ensuring that section 159 of the 1976 Act applies to NSB.