

Superannuation (CSS) Eligible Employees Amendment Regulations 1999 (No. 3) 1999 No. 342

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 342

Issued by the Authority of the Minister for Finance and Administration

Superannuation Act 1976

Superannuation (CSS) Eligible Employees Amendment Regulations 1999 (No. 3)

The *Superannuation Act 1976* (the 1976 Act) makes provision for, and in relation to, the Commonwealth Superannuation Scheme (CSS) which is 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.

Subsection 3(1) of the 1976 Act contains the definition of "eligible employee" which describes persons who may contribute to the CSS (ie CSS members). Paragraph G) of that definition provides that a person who would otherwise be an eligible employee may be included in a prescribed class of persons who are not eligible employees. The Superannuation (CSS) Eligible Employees Regulations (the Principal Regulations) contain classes of persons that are prescribed classes of persons for the purposes of paragraph G) of the definition of eligible employee.

The purpose of the Regulations is to amend the Principal Regulations to provide that, if a body known as the Federal Magistrates Court is established by statute, a person who consequently becomes a Federal Magistrate may not be a member of the CSS. Federal Magistrates are justices for the purposes of the Constitution. Membership of the CSS by persons who are justices for the purposes of the Constitution may be in conflict with section 72(iii) of the Constitution. Section 72(iii) of the Constitution provides that a justice shall receive such remuneration as the Parliament may fix. The Australian Government Solicitor considers that there is a good argument that a justice's remuneration would not be fixed in the required sense if the amount of that remuneration was variable and dependent upon the exercise of an actuary's discretion. Certain benefits payable from the CSS have regard to amounts calculated on the basis of factors determined by an actuary.

The Principal Regulations already provide in paragraphs 4(1)(aa) and 4(1)(o) that a statutory office holder who is a member of an employer-sponsored superannuation scheme in relation to that statutory office is not to be a CSS member. The superannuation arrangement proposed for Federal Magistrates would in most instances mean that these provisions would not permit them to be CSS members. These Regulations put the matter beyond doubt, which is appropriate to avoid a potential constitutional conflict.

Details of the amendments are explained in the Attachment.

The Regulations commence on gazettal.

ATTACHMENT

**SUPERANNUATION (CSS) ELIGIBLE EMPLOYEES AMENDMENT REGULATIONS 1999
(NO. 3)**

Regulation 1

Regulation 1 provides that the Regulations are called the *Superannuation (CSS) Eligible Employees Amendment Regulations 1999 (No. 3)*.

Regulation 2

Regulation 2 provides that the Regulations commence on gazettal.

Regulation 3

Regulation 3 provides that the Principal Regulations are amended in accordance with Schedule 1.

Schedule 1

Item 1 amends the punctuation of sub paragraph 4(1)(zq) (iv) as a consequence of the insertion of paragraph 4(1)(zr) by item 2.

Item 2 inserts paragraph 4(1)(zr). The inserted paragraph describes a class of persons who are not CSS members. That class of persons comprises persons who, if a body known as the Federal Magistrates Court is established by statute, become Federal Magistrates as a consequence.