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Statutory Rules

1978 No. /

REGULATIONS UNDER THE SUPERANNUATION ACT 1976*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Superannuation Act 1976*.

Dated this *twenty-second*

day of *December* 1978.

ZELMAN COWEN

Governor-General

By His Excellency's Command,

/

J. L. CARLICK

Minister of State for Education for and on behalf of the
Minister of State for Finance

SUPERANNUATION (SALARY) REGULATIONS

PART I—PRELIMINARY

1. These Regulations may be cited as the Superannuation (Salary) Regulations. Citation
2. These Regulations shall be deemed to have taken effect from and including 1 July 1976. Commencement
3. (1) In these Regulations, "the Act" means the *Superannuation Act 1976*. Interpretation
- (2) In Parts III, IV and V, unless the contrary intention appears, "salary" has the same meaning as in section 5 of the Act.

PART II—ALLOWANCES

4. In this Part, a reference to an allowance of a prescribed kind shall be read as a reference to an allowance of one of the following kinds: Interpretation
 - (a) an allowance that is payable to an eligible employee by reason that he temporarily performs the whole or a part of the duties of an office of a higher classification than the classification of the office occupied by him;

* Notified in the *Commonwealth of Australia Gazette* on *1* 1978.
13175/77 Cat. No. --Recommended retail price 30c 10/15.12.1978

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- (b) an allowance that is payable to an eligible employee by reason that he is rostered to perform, and performs, duties or work on a shift that falls, in whole or in part, outside the hours that under the terms and conditions of his employment are the normal hours of duty;
- (c) an allowance that is payable to an eligible employee by reason that he is liable to be called upon to perform duties or work at any time during which he is off duty;
- (d) an allowance that is payable to an eligible employee by reason that he is required in the performance of his duties or work to be in charge of staff, equipment or premises;
- (e) an allowance that is payable to an eligible employee in lieu of payments for overtime or other extra duty work;
- (f) an allowance that is payable to an eligible employee as compensation for the physical hardships or discomforts associated with the duties or work that he is required to perform;
- (g) an allowance not otherwise referred to in this regulation that is payable to an eligible employee by reason that he is required to perform any special function as part of his duties or work.

5. Each of the following kinds of allowance is a kind of allowance that is to be treated as salary for the purposes of the Act:

Certain allowances to be treated as salary

- (a) an allowance that is payable to an eligible employee as compensation for any loss of salary or wages incurred by the eligible employee while he is undergoing a course of training for the purpose of promotion to another office;
- (b) an allowance that is payable to an eligible employee by reason that—
 - (i) he possesses a qualification (including the completion of a course of study or training, success at a particular level in an examination or the holding of any degree, diploma, licence or certificate); or
 - (ii) he has acquired a particular standard of proficiency in any skill related to the performance of his duties or work;
- (c) an allowance that is payable to an eligible employee by reason of the length of his period of service and the standard of efficiency attained by him in the performance of his duties or work;
- (d) an allowance that is payable to an eligible employee in respect of housing or quarters while he holds a particular office or performs particular duties or work;

- (e) the rent-free use by an eligible employee of premises or quarters made available to him by reason that he holds a particular office or performs particular duties or work;
- (f) an allowance that, pursuant to a law in force in the United Kingdom, is payable to an eligible employee, being a person who was engaged or appointed for employment in the United Kingdom and whose salary is fixed and payable in sterling, in order to compensate him for an increase in the cost of living;
- (g) an allowance that is payable to an eligible employee, being a person who has not attained the age of 21 years, by reason—
 - (i) that he is married; or
 - (ii) that he is required to perform duties or work of a kind normally performed by a person who has attained the age of 21 years;
- (h) an allowance that is payable to an eligible employee by reason that he is employed in the Public Service Board in the position of Chairman, Promotions Appeal Committee;
- (j) an allowance that is payable to an eligible employee, being an eligible employee referred to in paragraph (ca) of the definition of “eligible employee” in sub-section 3 (1) of the Act, pursuant to the provisions of paragraph 4 in the Schedule to the agreement made on 12 January 1978 between the Commonwealth and the State of Western Australia, being an agreement entered into by the Commonwealth with that State under sub-section 21 (1) of the *Commonwealth Legal Aid Commission Act 1977*;
- (k) an allowance that is payable to an eligible employee, being a person to whom sub-section 16 (3) of the *Trade Union Training Authority Amendment Act 1978* applies, under sub-section 16 (5) of that Act;
- (l) an allowance of a prescribed kind that is payable on a regular basis to an eligible employee.

6. (1) An allowance of a prescribed kind shall not, for the purposes of paragraph 5 (1), be taken to be payable to an eligible employee on a regular basis unless the allowance is payable in respect of duties or work performed by the eligible employee for a continuous period that commences—

Payment of allowance of a prescribed kind on regular basis

- (a) immediately after the eligible employee has performed for a continuous period of 12 months duties or work in respect of the performance of which an allowance of the same kind as that allowance has been paid or is payable to the eligible employee; or

- (b) where a certificate in respect of the eligible employee has been given under sub-regulation (2)—on the day specified in the certificate.

(2) If a person authorized by the Commissioner for the purposes of this regulation is of the opinion that there is a likelihood that, from and including a particular day—

- (a) an eligible employee will, for a continuous period of not less than 12 months, perform duties or work in respect of the performance of which an allowance of a prescribed kind will be payable to him; or
- (b) where the eligible employee has, for a continuous period of less than 12 months immediately preceding the particular day, performed duties or work in respect of the performance of which an allowance of a prescribed kind has been paid or is payable to him—the eligible employee will, for a continuous period of less than 12 months that together with the first-mentioned period will not be less than a period of 12 months, perform duties or work in respect of the performance of which an allowance of the same kind as that allowance will be payable to him,

the authorized person shall give to the Commissioner a certificate to that effect specifying the day (not being a day earlier than the day on which the certificate is given) on which the period referred to in paragraph (a) or (b), as the case may be, in relation to the eligible employee will commence.

(3) For the purposes of this regulation, where—

- (a) for a continuous period immediately preceding a period of leave of absence, an eligible employee performs duties or work in respect of the performance of which an allowance of a prescribed kind is payable to him;
- (b) that allowance or an allowance of the same kind as that allowance is not payable to him during the period of leave; and
- (c) immediately after the expiration of the period of leave, the eligible employee performs, for a continuous period, duties or work in respect of the performance of which an allowance of the same kind as that allowance is payable to him,

the period of leave shall be disregarded and the periods during which he performs those duties or that work, being the period immediately preceding that period of leave and the period immediately following that period of leave, shall be deemed to be a continuous period.

(4) Where an allowance of a prescribed kind is payable to an eligible employee during a period of leave of absence, the eligible employee shall, for the purposes of this regulation, be deemed to perform during the period of leave of absence the duties or work in respect of the performance of which that allowance is payable.

7. (1) Where—

- (a) an allowance of a kind referred to in paragraph 5 (j) or (k) is payable to an eligible employee; and
- (b) a part (in this sub-regulation referred to as the “relevant part”) of that allowance is payable to the eligible employee by reason of a reduction in, or the discontinuance of, the payment to the eligible employee of another allowance, not being an allowance of a kind referred to in regulation 4, that is or was payable to the eligible employee,

Part of salary or wages not to be treated as salary in certain circumstances

so much of the salary or wages of the eligible employee as is equal to the amount of the relevant part of that allowance shall not be treated as salary for the purposes of the Act.

(2) Where—

- (a) an eligible employee performs on a particular day duties or work in respect of the performance of which an allowance of a prescribed kind is payable to the eligible employee and that allowance is payable on a regular basis to the eligible employee; and
- (b) at any time during the relevant period an allowance of the same kind as the allowance referred to in paragraph (a) was payable to the eligible employee at a rate that is lower than the rate at which the allowance referred to in paragraph (a) is payable,

so much of the salary or wages payable to the eligible employee on the particular day as is equal to—

- (c) if paragraph (b) does not apply to the eligible employee— the amount by which the amount of the allowance referred to in paragraph (a) exceeds the amount of the allowance that would be payable to him on the particular day if he had continued to perform those duties, or that work, performed by him during the relevant period in respect of which an allowance of the same kind as the allowance referred to in paragraph (a) was payable to him at the lower or lowest rate, as the case may be; or
- (d) if the amount of the salary or wages payable to the eligible employee on the particular day is not less than the amount

in the aggregate of the allowance and the salary or wages that would have been payable to him on that day if he had continued to receive—

- (i) the allowance of the same kind as the allowance referred to in paragraph (a) that was payable to him at the lower or lowest rate, as the case may be, during the relevant period; and
- (ii) the salary or wages payable to him at the commencement of the relevant period,

—the amount of allowance referred to in paragraph (a), shall not be treated as salary for the purposes of the Act.

(3) In sub-regulation (2), “relevant period”, in relation to an eligible employee who performs on a particular day duties or work in respect of the performance of which an allowance of a prescribed kind is payable, means—

- (a) where a certificate in respect of the eligible employee has been given to the Commissioner under sub-regulation 6 (2) and the period specified in the certificate is not less than 12 months—the period that commenced on the day specified in that certificate and ended on the expiration of the day immediately preceding the particular day; and
- (b) in any other case—
 - (i) the period of 12 months immediately preceding the particular day; or
 - (ii) if immediately before the particular day the eligible employee has, for a continuous period of less than 12 months, performed the duties or work performed by him on the particular day or duties or work in respect of the performance of which an allowance of the same kind as the allowance payable to him on the relevant day has been paid or is payable to him—that lesser period.

8. (1) Where---

- (a) a person has ceased to be an eligible employee—
 - (i) by reason of early retirement; or
 - (ii) in circumstances that entitle him to age retirement pension; and
- (b) on the relevant day the person performed duties or work in respect of the performance of which an allowance of a prescribed kind has been paid or is payable to him and that allowance was taken to be payable to the person on a regular basis by reason only that a certificate in respect of the person had been given to the Commissioner under sub-regulation 6 (2),

Salary for purposes of determination of certain benefits

then, for the purposes of the definition of “final annual rate of salary” in sub-section 3 (1) of the Act, the annual rate of salary of that person on the relevant day shall be an amount equal to the amount per annum that would, for the purposes of the Act, have been the annual rate of salary of the person on that day if the certificate referred to in paragraph (b) had not been given.

(2) In this regulation, “relevant day”, in relation to a person who has ceased to be an eligible employee, means—

- (a) except where paragraph (b) applies—his last day of service; or
- (b) if his final annual rate of salary is ascertained by reference to the annual rate of salary payable to him on a day other than his last day of service—that other day.

PART III—TEMPORARY EMPLOYEES

9. In this Part—

- (a) a reference to the basic salary of an eligible employee, being a temporary employee, in respect of a particular day shall be read as a reference to the salary that would be payable to the eligible employee on that day if he had continued to perform—
 - (i) where sub-paragraph (ii) or (iii) does not apply in relation to the eligible employee—the work in respect of which he was paid the salary by reference to which the fortnightly basic contribution payable by the eligible employee on the contribution day last preceding the particular day was calculated;
 - (ii) if the eligible employee was not required to make contributions on the contribution day last preceding the particular day—the work in respect of which he was paid the salary by reference to which the fortnightly basic contribution that would have been payable by the eligible employee on that contribution day would have been calculated if the eligible employee had been required to make contributions on that contribution day; or
 - (iii) if the contribution day last preceding the particular day occurred before the first day of service of the eligible employee—the work that the eligible employee performed on his first day of service; and
- (b) a reference, in relation to an eligible employee who is a temporary employee, to prescribed work shall be read as a reference to work in respect of which the salary payable to the employee on any day is higher than the basic salary of the eligible employee in respect of that day.

Interpretation

10. (1) Where—

- (a) an eligible employee, being a temporary employee, performs prescribed work on a particular day;
- (b) the eligible employee has not continuously performed prescribed work during the immediately preceding period of 12 months; and
- (c) a certificate specifying a day not later than the particular day has not been given under sub-regulation (3) in respect of the eligible employee,

Annual rate of salary of certain temporary employees

the annual rate of salary of the eligible employee on that day shall, for the purposes of the Act, be an amount equal to the amount per annum of the basic salary of the eligible employee in respect of that day.

(2) Where—

- (a) an eligible employee, being a temporary employee, performs prescribed work on a particular day;
- (b) the eligible employee has—
 - (i) during a period of not less than 12 months immediately preceding the particular day; or
 - (ii) if a certificate specifying a day not later than the particular day has been given in respect of the eligible employee under sub-regulation (3)—from and including the day specified in the certificate, continuously performed prescribed work; and
- (c) at any time during the relevant period, the eligible employee performed prescribed work in respect of which salary has been paid or is payable at an annual rate that is lower than the annual rate of the salary payable to him on the particular day,

then, subject to regulation 11, the annual rate of salary of the eligible employee on the particular day shall, for the purposes of the Act, be an amount equal to the amount per annum that would be payable to him on that day if he had continued to perform the work in respect of which salary was payable to him at the lower or lowest rate, as the case may be, during the relevant period.

(3) If a person authorized by the Commissioner for the purposes of this regulation is of the opinion that there is a likelihood that, from and including a particular day—

- (a) an eligible employee, being a temporary employee, will perform prescribed work for a continuous period of not less than 12 months; or

- (b) where the eligible employee, being a temporary employee, has performed prescribed work for a continuous period of less than 12 months immediately preceding the particular day—the eligible employee will perform prescribed work for a continuous period of less than 12 months that together with the first-mentioned period will not be less than a period of 12 months,

the authorized person shall give to the Commissioner a certificate to that effect specifying the day (not being a day earlier than the day on which the certificate is given) on which the period referred to in paragraph (a) or (b), as the case may be, in relation to the eligible employee will commence.

(4) For the purposes of this regulation, where—

- (a) an eligible employee, being a temporary employee, performs prescribed work for a continuous period immediately preceding a period of leave of absence;
- (b) sub-regulation (5) does not apply in relation to the period of leave; and
- (c) immediately after the expiration of that period of leave, the eligible employee again performs prescribed work,

the period of leave shall be disregarded and the periods during which he performs prescribed work, being the period immediately preceding that period of leave and the period immediately following that period of leave, shall be treated as a continuous period.

(5) Where—

- (a) an eligible employee, being a temporary employee, performs prescribed work immediately before a period of leave of absence; and
- (b) the salary payable to the eligible employee on each day during the period of leave of absence is higher than the basic salary of the eligible employee in respect of that day,

the eligible employee shall, for the purposes of this regulation, be deemed to perform during that period the prescribed work referred to in paragraph (a).

(6) In sub-regulation (2), “relevant period”, in relation to an eligible employee who, being a temporary employee, performs prescribed work on a particular day, means—

- (a) where a certificate in respect of the eligible employee has been given to the Commissioner under sub-regulation (3) and the period specified in the certificate is not less

than 12 months—the period that commenced on the day specified in that certificate and ended on the expiration of the day immediately preceding the particular day; and

- (b) in any other case—
 - (i) the period of 12 months immediately preceding the particular day; or
 - (ii) if immediately before the particular day the eligible employee has performed prescribed work for a continuous period of less than 12 months—that lesser period.

11. (1) Where—

- (a) a person who has ceased to be an eligible employee—
 - (i) by reason of early retirement; or
 - (ii) in circumstances that entitle him to age retirement pension,

was on his last day of service a temporary employee;
- (b) before the relevant day a certificate specifying a day not later than the relevant day had been given in respect of the person under sub-regulation 10 (3);
- (c) during the period that commenced on the day specified in the certificate and ended on the expiration of his last day of service, the person continuously performed prescribed work; and
- (d) the person did not continuously perform prescribed work during the period of 12 months immediately preceding his last day of service,

Salary for purposes of determination of certain benefits

then, for the purposes of the definition of “final annual rate of salary” in sub-section 3 (1) of the Act, the annual rate of salary of that person on the relevant day shall be an amount equal to the amount per annum of the basic salary of the eligible employee on the relevant day.

(2) In this regulation, “relevant day”, in relation to a person who has ceased to be an eligible employee, means—

- (a) except where paragraph (b) applies—his last day of service; or
- (b) if his annual rate of salary is ascertained by reference to the annual rate of salary payable to him on a day other than his last day of service—that other day.

PART IV—EMPLOYEES ON LEAVE OF ABSENCE

12. In this Part—

- (a) a reference, in relation to an eligible employee who undertakes prescribed employment during a period of leave of

Interpretation

absence without pay, to an approved organization shall be read as a reference to—

- (i) an organization registered pursuant to the *Conciliation and Arbitration Act 1904* of which eligible employees are members; or
- (ii) an association to which such an organization is affiliated,

being an organization or association that, in accordance with the conditions set out in a direction given by the Minister under sub-section 51 (1) of the Act in respect of the period of leave of the eligible employee; has agreed to make payments to the Commonwealth in respect of the higher amount that, in pursuance of a provision of the Act, is likely to become payable out of the Consolidated Revenue Fund in respect of the eligible employee by reason that salary is payable to the eligible employee during the period of leave of absence at an annual rate that is higher than the annual rate of his notional salary;

- (b) a reference, in relation to an eligible employee who is on leave of absence without pay, to the notional salary of the eligible employee on a particular day during the period of leave of absence shall be read as a reference to the salary that would be payable to the eligible employee on that day if—

- (i) on the day (in this paragraph referred to as the “relevant day”) immediately preceding the day on which the leave of absence commenced, the eligible employee had commenced to perform duties or work in respect of which salary was payable at an annual rate equal to the actual annual rate of salary of the eligible employee on the relevant day; and
- (ii) the eligible employee continued to perform during the period of leave of absence those duties or that work,

but does not include a reference to any allowance (not being an allowance that was included in the actual salary of the eligible employee on the relevant day), or the value of any such allowance, that would be included in the salary of the eligible employee on the particular day in respect of the performance of those duties or that work;

- (c) a reference, in relation to an eligible employee who is on leave of absence without pay, to prescribed employment shall be read as a reference to—

- (i) employment with the Commonwealth or with an authority of the Commonwealth;

- (ii) employment with Commonwealth Hostels Limited, Commonwealth Brickworks (Canberra) Limited or any other company that is, for the purposes of section 71 of the *Public Service Act 1922*, declared by regulations made under that Act to be a company in which Australia has an interest;
 - (iii) work or employment that is in the interests of the defence or public safety of Australia or the Territories;
 - (iv) service as a representative in another country of the Government of Australia;
 - (v) employment with the Northern Territory of Australia; or
 - (vi) employment on a full-time basis in an office within an approved organization; and
- (d) a reference, in relation to an eligible employee who undertakes prescribed employment during a period of leave of absence without pay, to prescribed leave shall be read as a reference to leave of absence granted to the eligible employee in accordance with the terms and conditions of the prescribed employment undertaken by the eligible employee.

13. (1) This regulation does not apply to—

- (a) an eligible employee who is on leave of absence without pay and to whom section 51 of the Act applies in respect of the period of leave of absence; or
- (b) an eligible employee who is on leave of absence without pay and in respect of whom prescribed circumstances apply.

Salary of certain eligible employees on leave of absence without pay

(2) For the purposes of sub-regulation (1), prescribed circumstances apply in respect of an eligible employee—

(a) where—

- (i) the eligible employee is on leave of absence without pay and section 51 of the Act does not apply to the eligible employee;
- (ii) the leave of absence has been granted for the purpose of enabling the eligible employee to undertake, and the eligible employee undertakes, employment in a teaching capacity with the University of New South Wales in the Faculty of Military Studies at the Royal Military College; and

- (iii) during the period of leave of absence salary is payable to the eligible employee in respect of the employment referred to in sub-paragraph (ii) at an annual rate that is higher than the annual rate of the notional salary of the eligible employee;

(b) where—

- (i) at any time on or after 3 February 1977 the eligible employee is on leave of absence without pay, being leave of absence granted for a period of not less than 12 months in respect of which the Minister has directed that sub-section 51 (1) of the Act does not apply;
- (ii) the leave of absence has been granted for the purpose of enabling the eligible employee to undertake, and the eligible employee undertakes, employment on a full-time basis in an office within an approved organization; and
- (iii) during the period of leave of absence salary is payable to the eligible employee in respect of the employment referred to in sub-paragraph (ii) at an annual rate that is higher than the annual rate of the notional salary of the eligible employee; or

(c) where—

- (i) the eligible employee is on leave of absence without pay for a period of not less than 12 months in respect of which the Minister has directed that sub-section 51 (1) of the Act does not apply;
- (ii) the leave of absence has been granted for the purpose of enabling the eligible employee to undertake, and the eligible employee undertakes, prescribed employment other than employment of the kind referred to in paragraph 12 (c) (vi); and
- (iii) during the period of leave of absence salary is payable to the eligible employee in respect of the prescribed employment that he has undertaken at an annual rate that is higher than the annual rate of the notional salary of the eligible employee.

(3) Where an eligible employee to whom this regulation applies is on leave of absence without pay, the annual rate of salary of the eligible employee on a particular day during the period of leave of absence shall, for the purposes of the Act, be an amount equal to the amount per annum of the notional salary of the eligible employee on that day.

14. Where—

- (a) the circumstances referred to in paragraph 13 (2) (b) apply in respect of an eligible employee who is undertaking employment on a full-time basis in an office within an approved organization; and
- (b) salary in respect of the employment referred to in paragraph (a) is payable to the eligible employee at an annual rate that is higher than—
 - (i) in the case of an eligible employee who holds within the approved organization an office, not being an office within a branch of the organization—the annual rate of salary payable to an officer of the Australian Public Service occupying an office classified as Level 3 in the Second Division; and
 - (ii) in any other case—the annual rate of salary payable to an officer of the Australian Public Service occupying an office classified as Class 11 in the Third Division and in receipt of salary at the maximum rate applicable to that office,

Maximum rate of salary payable to eligible employees undertaking employment with approved organizations

the annual rate of salary of the eligible employee on a particular day, not being a day before 3 February 1977, during the period of leave of absence shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary payable on that day to the officer of the Australian Public Service referred to in sub-paragraph (b) (i) or (ii), as the case may be.

15. (1) This regulation applies to an eligible employee in respect of whom the circumstances referred to in paragraph 13 (2) (b) or (c) apply where the eligible employee undertakes prescribed employment (being employment of the same kind as the eligible employee's initial employment) in respect of which salary is payable to the eligible employee at an annual rate that is higher than the annual rate of salary that would be payable to the eligible employee if the eligible employee had continued to undertake his initial employment.

Salary of certain eligible employees undertaking employment during the period of leave of absence without pay

(2) Where—

- (a) this regulation applies to an eligible employee who is on leave of absence;
- (b) the eligible employee has not, during the period of 12 months immediately preceding a particular day in the period of leave of absence, continuously undertaken prescribed employment, being prescribed employment by virtue of which this regulation applies to the eligible employee; and

- (c) a certificate specifying a date not later than the particular day has not been given under sub-regulation (4) in respect of the eligible employee,

the annual rate of salary of the eligible employee on the particular day shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on the particular day if the eligible employee had continued to undertake his initial employment.

(3) Where—

- (a) this regulation applies to an eligible employee who is on leave of absence;
- (b) the eligible employee has—
 - (i) during a period of not less than 12 months immediately preceding a particular day in the period of leave of absence; or
 - (ii) if a certificate specifying a date not later than the particular day has been given in respect of the eligible employee under sub-regulation (4)—from and including the day specified in the certificate, continuously undertaken prescribed employment, being prescribed employment by virtue of which this regulation applies to the eligible employee; and
- (c) at any time during the relevant period the eligible employee has been paid in respect of prescribed employment that he has undertaken salary at an annual rate that is lower than the annual rate of salary of the eligible employee on that particular day,

then, subject to regulation 16, the annual rate of salary of the eligible employee on the particular day in the period of leave of absence shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary that would be payable to him on the particular day if he had continued to undertake the employment in respect of which salary was payable to him at the lower or lowest rate, as the case may be, during the relevant period.

(4) If a person authorized by the Commissioner for the purposes of this regulation is of the opinion that there is a likelihood that, from and including a particular day during the period of leave of absence—

- (a) an eligible employee to whom this regulation applies will, for a continuous period of not less than 12 months, undertake the prescribed employment by virtue of which this regulation applies to the eligible employee; or

- (b) where the eligible employee has undertaken the prescribed employment referred to in paragraph (a) for a continuous period of less than 12 months immediately preceding the particular day—the eligible employee will undertake that employment for a continuous period of less than 12 months that together with the first-mentioned period will not be less than a period of 12 months,

the authorized person shall give to the Commissioner a certificate to that effect specifying the day (not being a day earlier than the day on which the certificate was given) on which the period referred to in paragraph (a) or (b), as the case may be, in relation to the eligible employee will commence.

(5) For the purposes of this regulation, where—

- (a) immediately before a period of prescribed leave this regulation applies to an eligible employee;
- (b) sub-regulation (6) does not apply in relation to the period of prescribed leave; and
- (c) this regulation again applies to the eligible employee on the expiration of the period of prescribed leave,

the period of prescribed leave shall be disregarded and the periods in respect of which this regulation applies to the eligible employee, being the period immediately preceding the period of prescribed leave and the period immediately following the period of prescribed leave, shall be treated as a continuous period.

(6) Where—

- (a) immediately before a period of prescribed leave this regulation applies to an eligible employee; and
- (b) during the period of prescribed leave salary is payable to the eligible employee at a rate that is higher than the rate of salary that would be payable to the eligible employee if during that period the eligible employee were undertaking the eligible employee's initial employment,

the eligible employee shall, for the purposes of this regulation, be deemed to undertake prescribed employment during the period of prescribed leave.

(7) In this regulation—

- “initial employment”, in relation to an eligible employee who undertakes prescribed employment during a period of leave of absence without pay, means the prescribed employment first undertaken by the eligible employee after the commencement of the period of leave of absence;

“relevant period”, in relation to an eligible employee who undertakes prescribed employment on a particular day during a period of leave of absence without pay, means---

- (a) where a certificate in respect of the eligible employee has been given to the Commissioner under sub-regulation (4) and the period specified in the certificate is not less than 12 months—the period that commenced on the day specified in the certificate and ended on the expiration of the day immediately preceding the particular day; and
- (b) in any other case---
 - (i) the period of 12 months immediately preceding the particular day; or
 - (ii) if immediately before the particular day the eligible employee has, for a continuous period of less than 12 months, performed prescribed employment, being prescribed employment by virtue of which this regulation applies to the eligible employee—that lesser period.

16. (1) Where---

- (a) a person has ceased to be an eligible employee---
 - (i) by reason of early retirement; or
 - (ii) in circumstances that entitle him to age retirement pension;
- (b) on the relevant day the person was an eligible employee to whom regulation 15 applied;
- (c) before the relevant day, a certificate specifying a day not later than the relevant day had been given in respect of the person under sub-regulation 15 (4); and
- (d) the person had not, during the period of 12 months immediately preceding the relevant day, continuously undertaken prescribed employment, being prescribed employment by virtue of which regulation 15 applied to the person,

Salary for purposes of determination of certain benefits

then, for the purposes of the definition of “final annual rate of salary” in sub-section 3 (1) of the Act, the annual rate of salary of that person on the relevant day shall be an amount equal to the amount per annum that would, for the purposes of the Act, have been the annual rate of salary of the person on that day if the certificate referred to in paragraph (c) had not been given.

(2) In this regulation, “relevant day”, in relation to a person who has ceased to be an eligible employee, means---

- (a) except where paragraph (b) applies—his last day of service; or
- (b) if his annual rate of salary is ascertained by reference to the annual rate of salary payable to him on a day other than his last day of service—that other day.

17. (1) Where---

- (a) a certificate in respect of an eligible employee has been given to the Commissioner under sub-regulation 6 (2);
- (b) during any part of the period specified in the certificate—
 - (i) the eligible employee, not being an eligible employee referred to in sub-paragraph (ii), was on leave of absence; or
 - (ii) the eligible employee, being an eligible employee in respect of whom the circumstances referred to in paragraph 13 (2) (b) or (c) apply, was on prescribed leave;
- (c) an anniversary of the birth of the eligible employee occurred during that period of leave of absence or prescribed leave; and
- (d) sub-regulation 6 (3) applies in relation to the eligible employee,

Annual rate of salary of certain employees where anniversary of birth occurs during period of leave of absence, &c.

the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on that anniversary if he had continued to perform during the period of leave of absence or prescribed leave the duties or work last performed by him before the commencement of that period.

(2) Where---

- (a) a certificate in respect of an eligible employee has been given to the Commissioner under sub-regulation 10 (3);
- (b) during any part of the period specified in the certificate the eligible employee was on leave of absence;
- (c) an anniversary of the birth of the eligible employee occurred during that period of leave of absence; and
- (d) sub-regulation 10 (4) applies in relation to the eligible employee,

the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would be

payable to the eligible employee on that anniversary if he had continued to perform during the period of leave of absence the work last performed by him before the commencement of the period of leave of absence.

(3) Where---

- (a) a certificate in respect of an eligible employee to whom regulation 15 applies has been given to the Commissioner under sub-regulation 15 (4);
- (b) during any part of the period specified in the certificate the eligible employee was on prescribed leave;
- (c) an anniversary of the birth of the eligible employee occurred during that period of prescribed leave; and
- (d) sub-regulation 15 (5) applies in relation to the eligible employee,

the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would be payable to the eligible employee on that anniversary if he had continued to perform during the period of prescribed leave the prescribed employment last undertaken by him before the commencement of the period of prescribed leave.

PART V--MISCELLANEOUS

18. (1) Where, in pursuance of arrangements made under section 47DA of the *Public Service Act* 1922 as modified and adapted by the Papua New Guinea Independence (Public Service) Regulations, an eligible employee has, whether before or after the commencing day, been transferred for a specified period to an office in the Public Service of the Independent State of Papua New Guinea, the annual rate of salary of that eligible employee on a particular day (not being a day before the commencing day) during the specified period shall, for the purposes of the Act, be an amount equal to the amount per annum of the salary (in this regulation referred to as the eligible employee's "notional salary") that would be payable to the eligible employee on that day in respect of the duties that the eligible employee would be likely to perform as an officer of the Australian Public Service on that day if the eligible employee had not been transferred to that office.

Eligible employees transferred outside the Australian Public Service

(2) Where the duties that an eligible employee would, but for the transfer referred to in sub-regulation (1), be likely to perform as an officer of the Australian Public Service on a particular day are not the duties last so performed by the eligible employee before that transfer,

the notional salary of the eligible employee on the particular day shall not, for the purposes of sub-regulation (1), include any allowance, or the value of any allowance, that, but for this sub-regulation, would be included in his notional salary.

19. Where the salary that was payable to an eligible employee on an anniversary of his birth is varied by reason that an award, order or determination made after that anniversary by the Public Service Board, the Public Service Arbitrator, the Australian Conciliation and Arbitration Commission or the Remuneration Tribunal in relation to the work performed, or the office the duties of which were in whole or in part performed, by the eligible employee applies with retrospective effect to a day before that anniversary, the annual rate of salary of the eligible employee on that anniversary of his birth shall, for the purposes of section 46 of the Act, be an amount equal to the amount per annum of the salary that would have been payable to him on that anniversary if that award, order or determination (as the case may be) had not been made.

Variation of
salary with
retrospective
effect