

Statutory Rules 1993 No. *L*<sup>1</sup>*25af*

## Superannuation (Former Eligible Employees) Regulations<sup>2</sup> (Amendment)

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

Dated *L* 1993.

*30 September**L BILL HAYDEN*

Governor-General

By His Excellency's Command,

*L**RALPH WILLIS*

Minister of State for Finance

### 1. Amendment

1.1 The Superannuation (Former Eligible Employees) Regulations  
are amended as set out in these Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

**2. New regulations 15 and 16**

**2.1 Add at the end:**

**Application of Act to certain employees affected by privatisation, etc—delayed updated pension**

“15. (1) The Act is modified in accordance with Schedule 11 in its application to each person to whom this regulation applies.

“(2) Subject to subregulation (3), this regulation applies to:

- (a) a person to whom section 155B of the Act applies, who, immediately after ceasing to be an eligible employee, becomes a member of a superannuation scheme provided by, or on behalf of, the purchaser or transferee to its employees; and
- (b) a person to whom section 126A of the Act applies because the person:
  - (i) has ceased to be an eligible employee in circumstances connected with the sale or transfer of an organisation, business, service or asset; and
  - (ii) becomes a member of a superannuation scheme (other than the superannuation scheme constituted by the Act) provided by, or on behalf of, the purchaser or transferee to its employees.

“(3) This regulation does not apply to a person:

- (a) if the person:
  - (i) has made an election under section 137; or
  - (ii) is a person whose entitlement as a former eligible employee is affected by another provision of these Regulations; and
- (b) unless the person has requested, before the end of 21 days after section 126A or 155B of the Act begins to apply to the person, that this regulation be applied to him or her by the Commissioner.

“(4) If a person makes a request for the purposes of this regulation within one month before the person ceases to be an eligible employee, the regulation is taken to begin to apply to the person on the day after he or she ceases to be an eligible employee.

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**Application of Act to certain employees affected by privatisation, etc.—deferred benefit**

“16. (1) The Act is modified in accordance with Schedule 12 in its application to each person to whom this regulation applies.

“(2) This regulation applies to:

- (a) a person to whom section 155B of the Act applies and who makes an election under section 137 of the Act; and
- (b) a person to whom section 126A of the Act applies, who:
  - (i) ceases to be an eligible employee in circumstances connected with the sale or transfer of an organisation, business, service or asset; and
  - (ii) makes an election under section 137 of the Act.”.

**3. New Schedules 11 and 12**

3.1 After Schedule 10, add:

**SCHEDULE 11**

Subregulation 15 (1)

**EMPLOYEES OF SERVICES ETC. SOLD, PRIVATISED, ETC.**

**DELAYED UPDATED PENSION MODIFICATIONS**

**1. New Division 3A of Part IX**

1.1 After section 144, insert:

***Division 3A—Preservation of Rights as Delayed Updated Pension***

**Delayed updated pension**

“144A. (1) The benefits applicable under this Division in respect of a former eligible employee are such benefits payable under this Act as the Commissioner considers to be benefits:

- (a) of the same nature; and
- (b) payable:
  - (i) in the same circumstances and on the same conditions; and

- (ii) on the death of the person—to the same persons (if any);

as the benefits that would have been payable to or in respect of the former eligible employee under this Act if he or she had not ceased to be an eligible employee and had not made the request under subregulation 15 (3) of the Superannuation (Former Eligible Employees) Regulations by virtue of which this Division became applicable.

“(2) Delayed updated pension is payable:

- (a) to a former eligible employee who has reached the age of 65; or
- (b) on request—to a former eligible employee on retirement if he or she is aged 55 or more; or
- (c) on request—to a former eligible employee on retirement on the grounds of invalidity; or
- (d) on request—to a spouse or child of a deceased former eligible employee, in accordance with Part VI.

“(3) In paragraph (2) (c), ‘**grounds of invalidity**’ means total and permanent incapacity within the meaning of Part IVA that, to the satisfaction of the Commissioner, is due to invalidity or mental or physical incapacity.

#### **Benefits—age 65 retirement**

“144B. (1) A former eligible employee entitled to delayed updated pension who retires at or after the age of 65 is entitled to age retirement benefits in accordance with Division 1 of Part V:

- (a) that relate to the period of contributory service that ended on the day he or she ceased to be an eligible employee; and
- (b) subject to adjustment (if any) under section 144H—as if his or her final annual rate of salary on ceasing to be an eligible employee is the final annual rate of salary on retirement.

“(2) For the purposes of subsection (1), the reference in paragraph 57 (1) (a) to “his last day of service” is taken to be a reference to the former eligible employee’s last day of employment.

**Benefits—early retirement**

“144C. (1) A former eligible employee entitled to delayed updated pension who retires at or after the age of 55 but before the age of 65 is entitled to early retirement benefits in accordance with Division 2 of Part V (except sections 60 and 62):

- (a) that relate to the period of contributory service that ended on the day he or she ceased to be an eligible employee; and
- (b) subject to adjustment (if any) under section 144H—as if his or her final annual rate of salary on ceasing to be an eligible employee is the final annual rate of salary on retirement.

“(2) The annual rate of the early retirement pension that is payable to a former eligible employee entitled to delayed updated pension is the rate that would apply if the former eligible employee’s age on his or her last day of service had been 65 years, reduced by:

- (a) for each year and partial year included in the period commencing on his or her 60th birthday or the day of retirement (whichever is the later) and ending on the day immediately preceding his or her 65th birthday—2% of that rate; and
- (b) if the person retires before his or her 60th birthday, then for each year and partial year included in the period commencing on the day immediately following the day of retirement and ending on the day immediately preceding his or her 60th birthday—3<sup>1</sup>/<sub>3</sub>% of the rate ascertained under paragraph (a).

“(3) For the purposes of this section, the reference in subsection 61 (3) to “his last day of service” is taken to be a reference to the former eligible employee’s last day of employment.

**Benefits—invalidity retirement (no BCC in force)**

“144D. (1) A former eligible employee entitled to delayed updated pension:

- (a) who retires on the ground of invalidity; and
- (b) in respect of whom at the time of retirement, a benefit classification certificate is not in force or, under subsection 16 (5), is taken not to be in force;

is entitled to:

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- (c) invalidity benefits in accordance with Division 4 of Part V and benefits referred to in section 61 or 64, as the case may be:
  - (i) that relate to the period of contributory service that ended on the day he or she ceased to be an eligible employee; and
  - (ii) subject to adjustment (if any) under section 144H—as if his or her final annual rate of salary on ceasing to be an eligible employee is the final annual rate of salary on retirement.

“(2) For the purpose of calculating the pension entitlement, the following modifications apply:

- (a) to section 3:
  - (i) subsection 3 (1) (definition of ‘period of prospective service’—omit ‘an eligible employee’, substitute ‘employed’; and
- (b) to section 67:
  - (i) subsection 67 (2)—omit ‘70 per centum’, substitute ‘50%’;
  - (ii) paragraph 67 (3) (a)—omit ‘70’, substitute ‘50’;
  - (iii) paragraph 67 (3) (b)—omit ‘columns 1 and 2’, substitute ‘columns 1 and 3’;
  - (iv) paragraph 67 (4) (a)—omit ‘;columns 1 and 2’, substitute ‘columns 1 and 3’; and
- (c) to section 79:
  - (i) paragraph 79 (a)—omit ‘eligible employee’, substitute ‘employee’; and
- (d) to Schedule 3:
  - (i) Column 3—omit ‘section 68’, substitute ‘section 67 for the purposes of section 144E’; and
- (e) to Schedule 4:
  - (i) Column 3—omit ‘section 68’, substitute ‘section 67 for the purposes of section 144E’.

**Benefits—invalidity retirement (BCC in force but irrelevant)**

“144E. If:

- (a) a former eligible employee who is entitled to delayed updated pension retires on the ground of invalidity; and
- (b) at the time of retirement:

- (i) a benefit classification certificate is in force in relation to him or her; and
  - (ii) paragraph 66 (2) (c) does not apply to him or her;
- the former eligible employee is taken to be a former eligible employee to whom section 144D applies.

**Benefits—invalidity retirement (BCC in force)**

“144F. (1) A former eligible employee entitled to delayed updated pension who retires on the ground of invalidity is entitled to invalidity pension under this regulation if:

- (a) at the time of retirement—a benefit classification certificate is in force in respect of him or her; and
- (b) paragraph 66 (2) (c) applies to him or her.

“(2) The former eligible employee is entitled to invalidity pension in accordance with Division 4 of Part V and benefits referred to in section 61 or 64, as the case may be:

- (a) in relation to the period of contributory service that ended on the day he or she ceased to be an eligible employee; and
- (b) subject to adjustment (if any) under section 144II—as if his or her final annual rate of salary on ceasing to be an eligible employee is the final annual rate of salary on retirement.

“(3) For the purpose of calculating the pension entitlement, the following modifications apply:

- (a) to section 3:
  - (i) subsection 3 (1) (definition of ‘period of prospective service’—omit ‘an eligible employee’, substitute ‘employed’; and
- (b) to section 71:
  - (i) subsection 71 (1)—omit the subsection;
  - (ii) subsections 71 (2), (3) and (4)—omit ‘a person makes an election under subsection (1) and’;
  - (iii) subsections 71 (5) and (6)—omit the subsections; and
- (c) to subsections 72 and 73:
  - (i) omit the subsections; and
- (d) to section 79:

- (i) paragraph 79 (a)—omit ‘eligible employee’, substitute ‘employee’.

**Benefits—spouses and children**

“144G. A spouse or child of a deceased former eligible employee who was entitled to delayed updated pension is entitled to pension in accordance with Part VI:

- (a) in relation to the period of contributory service that ended on the day the former eligible employee ceased to be an eligible employee; and
- (b) in respect of the appropriate rate of pension ascertained under section 144B, 144C, 144D, 144E or 144F, as the case may be; and
- (c) subject to adjustment (if any) under section 144H—as if the former eligible employee’s final annual rate of salary on ceasing to be an eligible employee is the final annual rate of salary on death or retirement, as the case may be.

**CPI update of final salary**

“144H. (1) For the purposes of paragraphs 144B (1) (b) and 144C (1) (b), subparagraph 144D (1) (c) (ii) and paragraphs 144F (2) (b) and 144G (c), the final annual rate of salary of a former eligible employee on ceasing to be an eligible employee is taken to be the amount calculated by the formula:

$$S \times \frac{CPI^2}{CPI^1}$$

where:

‘S’ means the actual final annual rate of salary of the former eligible employee; and

‘CPI<sup>1</sup>’ is the CPI published in respect of the latest complete quarter prior to the person ceasing to be an eligible employee; and

‘CPI<sup>2</sup>’ is:

- (a) the result calculated by the formula:

$$a + b \times \frac{d^1}{d^2}$$

where:

‘a’ means the CPI published in respect of the latest complete quarter that precedes the date on which the



former eligible employee ceases employment; and  
‘b’ means the amount of the difference between the number represented by ‘a’ and the CPI published in respect of the quarter that immediately preceded the quarter referred to in the definition of ‘a’; and  
‘d<sup>1</sup>’ is the number of days in the period that begins on the first day of the quarter that immediately follows the quarter referred to in the definition of ‘a’ and ends on the day of the person’s retirement; and  
‘d<sup>2</sup>’ is the number of days in the quarter that immediately follows the quarter referred to in the definition of ‘a’; or

- (b) if, under paragraph (a), the value of ‘a’ is less than the value of ‘b’—the CPI represented by ‘a’.

“(2) Subject to subsection (3), if at any time after a benefit becomes payable under this Division, the Australian Statistician has published or publishes in respect of a particular quarter a CPI in substitution for a CPI previously published in respect of that quarter, the publication of the later CPI is to be disregarded for the purposes of this section.

“(3) If, at any time, the Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this section after the change took or takes place, regard is to be had only to index numbers published in terms of the new reference base.

“(4) In this section:  
‘CPI’ means the all groups consumer price index number for the weighted average of the 8 capital cities published by the Australian Statistician;  
‘quarter’ means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

### **Employees under superseded Act**

“144J. (1) In relation to a former eligible employee to whom modifications of the Act effected by the Superannuation (Former Contributors for Units of Pension) Regulations apply, a reference in this Division to a provision in any other part of the Act is taken to be a reference to that provision:

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- (a) as modified by those Regulations in relation to that person; and
- (b) if that provision is affected by another provision in the Schedule to those Regulations—as affected by the other provision in those Regulations in relation to that person.

“(2) In relation to a former eligible employee to whom modifications of the Act effected by the Superannuation (Former Provident Account Contributors) Regulations apply, a reference in this Division to a provision in any other part of the Act is taken to be a reference to that provision:

- (a) as modified by those Regulations in relation to that person; and
- (b) if that provision is affected by another provision in the Schedule to those Regulations—as affected by the other provision in those Regulations in relation to that person.”.

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**SCHEDULE 12**

Subregulation 16 (1)

**EMPLOYEES OF SERVICES ETC. SOLD, PRIVATISED, ETC.**

**DEFERRED BENEFITS MODIFICATIONS**

**1. Section 139 (Circumstances in which person entitled to deferred benefits)**

**1.1 Paragraph 139 (1) (b):**

Omit “5 years’ ”, substitute “1 year’s”.

**1.2 Subparagraph 139 (2) (b) (i):**

Omit “5 years’ ”, substitute “1 year’s”.

**1.3 Subparagraph 139 (2) (c) (i):**

Omit the subparagraph, substitute:

- (i) “the person’s 55th birthday; and”.

1.4 Subsections 139 (3), (4), (6) and(7):  
Omit the subsections.

**2. Section 141 (Certain former eligible employees not entitled to benefits under Division)**

2.1 Omit the section.

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**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on <sup>L</sup> 7 October 1993
2. Statutory Rules 1986 No. 266 as amended by 1987 No. 307; 1989 Nos. 16 and 306; 1990 Nos. 141, 177 and 451; 1991 Nos. 161 and 445; 1992 Nos. 94, 170, 212 and 271.