

# **Superannuation Industry (Supervision) (Transitional Provisions) Regulations (Amendment) 1995 No. 157**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1995 No. 157**

Issued by the authority of the Treasurer

*Superannuation Industry (Supervision) Act 1993*

Superannuation Industry (Supervision) (Transitional Provisions) Regulations (Amendment)

The *Superannuation Industry (Supervision) Act 1993* (the Act) provides for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts and for their supervision by the Insurance and Superannuation Commissioner.

Section 353 of the Act provides that the Governor-General may make Regulations for the purposes of the Act.

The Superannuation Industry (Supervision) (Transitional Provisions) Regulations (the Principal Regulations) prescribe, pursuant to the section 50 of the Act, transitional conditions that apply to superannuation funds from the commencement of their 94/95 year of income until the day they become a regulated superannuation fund under the Act. This period is known as the 'pre-lodgment period'. In certain cases, for example public sector schemes, the pre-lodgment period may extend beyond 1 July 1995. The transitional conditions are provisions of the *Occupational Superannuation Standards Act 1987* and Regulations specified in the schedules to the Principal Regulations.

These regulations amend the transitional conditions in the Principal Regulations by prescribing certain procedures which must be followed before an adverse alteration in a beneficiary's accrued benefits can occur. These procedures include, for example, the provision of information to the beneficiary, before the alteration occurs, about the effect of the alteration.

The regulations are described in detail in the attachment.

The regulations commence on 1 July 1995.

## **ATTACHMENT**

### **Superannuation Industry (Supervision) (Transitional Provision) Regulations (Amendment)**

#### **Regulation 1 - Commencement**

The regulations will commence on 1 July 1995.

#### **Regulation 2 - Amendment**

Regulation 2 provides that the Superannuation Industry (Supervision) (Transitional Provisions) Regulations (the Principal Regulations) are amended as set out in these Regulations.

#### **Regulation 3 - Schedule 2 (Applied OSS Regulations)**

Paragraph 17(1)(d) of the Occupational Superannuation Standards Regulations ('OSS Regulations') is currently listed in the schedules to the Principal Regulations as one of the 'applied OSS Regulations' and as such one of the transitional conditions funds must comply with in their pre-lodgment period. Paragraph 17(1)(d) currently places restrictions on the circumstances in which a member's accrued benefits may be adversely altered, however there are some limited exceptions to the general rule such as where the Commissioner approves the alteration.

The regulations amend the Principal Regulations by amending paragraph 17(1)(d) of the applied OSS Regulations and inserting subregulations 17(4), 17(5), 17(6), 17(7) and 17(8) into the applied OSS Regulations. This makes the applied OSS Regulations, and thus the transitional conditions, consistent with regulation 13.16 of the Superannuation Industry Supervision Regulations.

The amended paragraph 17(1)(d) now refers to beneficiary rather than member to ensure that all persons who have accrued benefits are protected by paragraph 17(1)(d). Beneficiary is defined as having the same meaning as section 10 of the Act.

The new paragraphs 17(4)(a) and (b) provide that an adverse alteration to accrued benefits cannot proceed unless the beneficiary has consented to the alteration, and has been given relevant information about the proposed alteration prior to giving their consent, or the Commissioner has consented to the alteration after either of the following having occurred:

- two-thirds of the beneficiaries of the fund whose right or claim to accrued benefits, or the amount of those benefits, will be adversely affected by the alteration have approved the alteration via voting on the issue, and certain procedures have been followed in obtaining that approval. The procedures to be followed are set down in new subregulation 17(6) and deal with ensuring the affected beneficiaries have been given information to consider the effect of the proposed alteration and at least 21 days to consider that information before voting on the matter; or
- if the fund complies with the basic equal representation rules as set down in section 89 of the *Superannuation Industry (Supervision) Act 1993*, two-thirds of the trustees (or directors if a body corporate trustee) have approved the alteration, and beneficiaries whose right or claim to accrued benefits, or the amount of those benefits, will be adversely affected by the alteration have been advised of the proposed alteration at least 21 days in advance of the trustees/directors voting on the issue. These procedures are set down in subregulation 17(7).

Other exceptions to the general rule prohibiting adverse alteration to accrued benefits will be where:

- the alteration is necessary for compliance with the applied OSS Act and Regulations the Tax Act, or the *Income Tax Act 1986*; or
- the alteration is permitted by the applied OSS Act or Regulations; or
- the alteration is for the purposes of rectifying a mistake which has advantageously altered a beneficiary's accrued benefits, and the Commissioner has approved the alteration.

In these circumstances (refer new paragraphs 17(4)(c), (d) and (e)) there is no requirement to obtain beneficiary approval (or two-thirds approval of trustees/directors where equal representation exists).