



TRIPPLICATE COPY

Administering Department: please include this copy in documents sent to Federal Executive Council Secretariat in connection with making of this legislation. Ex. Co. Secretariat: please complete this copy by insertion of signatures and date of making, and send to: Legislative Services Section, Office of Legislative Drafting, Attorney-General's Department.

Statutory Rules 1995 No. 157

**Superannuation Industry (Supervision)
(Transitional Provisions) Regulations²
(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 Industry (Supervision) Act 1993*.

Dated

L

1995.

27 June

L

BILL HAYDEN

Governor-General

By His Excellency's Command,

L

PAUL ELLIOTT

Parliamentary Secretary to the Treasurer
for the
Treasurer

1. Commencement

1.1 These Regulations commence on 1 July 1995.

2. Amendment

2.1 The Superannuation Industry (Supervision) (Transitional Provisions) Regulations are amended as set out in these Regulations.

3. Schedule 2 (Applied OSS Regulations)

3.1 Part 1 (Unmodified provisions):

Item relating to Part II:

Before “18B”, insert “17,”.

3.2 Part 2 (Modified provisions):

Before the item relating to regulation 18B, insert:

“Paragraph
17 (1) (d)

Omit the paragraph, substitute:

‘(d) subject to subregulation (4), a beneficiary’s right or claim to accrued benefits, and the amount of those accrued benefits, must not be altered adversely to the beneficiary by amendment of the governing rules or by any other act carried out, or consented to, by the trustee of the fund;’.

“Regulation 17

Add at the end:

‘(4) The standard stated in paragraph (1) (d) does not apply to an alteration if:

(a) subject to subregulation (5), the beneficiary has consented in writing to the alteration; or

(b) the Commissioner has consented in writing to the alteration after either:

- (i) the alteration has been approved by at least two-thirds of all of the beneficiaries of the fund who are affected by it, in accordance with the procedures specified in subregulation (6); or
- (ii) subject to subregulation (7), if the fund complies with the basic equal representation rules provided for by section 89 of the *Superannuation Industry (Supervision) Act 1993*, the alteration has been approved by at least two-thirds of the total number of trustees or, if the fund has a single corporate trustee, by two-thirds of the directors of the corporate trustee; or
- (c) the alteration is necessary for compliance with the Act, the Tax Act, the *Income Tax Act 1986* or these Regulations; or
- (d) the alteration is expressly permitted by the Act or these Regulations; or

(e) the alteration:

- (i) is solely for the purpose of rectifying a mistake which has resulted in a beneficiary's right or claim to accrued benefits, or the amount of the beneficiary's accrued benefits, being advantageously altered; and
- (ii) the Commissioner has approved the alteration.

'(5) A consent referred to in paragraph (4) (a) is not effective for the purposes of this regulation unless, before the consent is given:

- (a) the trustee of the fund has given o the beneficiary a notice that:
 - (i) informs the beneficiary that it is proposed that the beneficiary's right or claim to accrued benefits, or the amount of those benefits, be affected adversely; and
 - (ii) explains the effect of the alteration on the beneficiary's rights or claims to accrued benefits and the amount of those benefits; and
 - (iii) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration; and

- (b) the beneficiary has been allowed adequate time to consider the proposed alteration and its effect on the beneficiary's rights or claims to accrued benefits and the amount of those benefits.

'(6) For the purposes of subparagraph (4) (b) (i), the procedures to be followed in obtaining the approval of beneficiaries are as follows:

- (a) the trustee of the fund must send to each beneficiary of the fund who would be adversely affected by the alteration a notice that:
 - (i) informs the beneficiary that it is proposed that the beneficiary's right or claim to accrued benefits, or the amount of those benefits, be affected adversely; and
 - (ii) explains the effect of the alteration on the beneficiary's rights or claims to accrued benefits and the amount of those benefits; and

- (iii) explains that the alteration requires:
 - (A) the approval of at least two-thirds of all of the beneficiaries of the fund who are affected by it, obtained by ballot in accordance with this subregulation; and
 - (B) the consent of the Commissioner; and
 - (iv) explains the manner in which the beneficiary can cast his or her vote in relation to the ballot; and
 - (v) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration;
- (b) the ballot must be conducted in a manner that ensures that each beneficiary is given not less than 21 days to consider the notice and the proposed alteration before voting.

‘(7) An approval referred to in subparagraph (4) (b) (ii) is not effective for the purposes of this regulation unless, at least 21 days before the giving of that approval, the trustee of the fund has given to each beneficiary of the fund who would be adversely affected by the alteration a notice that:

- (a) informs the beneficiary that it is proposed that the beneficiary’s right or claim to accrued benefits, or the amount of those benefits, be affected adversely; and
- (b) explains the effect of the alteration on the beneficiary’s rights or claims to accrued benefits and the amount of those benefits; and
- (c) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration.

‘(8) In this regulation:

“**beneficiary**” has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*’.”.

NOTES

- 1. Notified in the *Commonwealth of Australia Gazette* on *L* 1995.
- 2. Statutory Rules 1993 No. 352 as amended by 1994 No. 190.

29 June