

Superannuation Industry (Supervision) (Transitional Provisions) Regulations (Amendment) 1997 No. 414

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 414

Issued by the authority of the Assistant 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 and for their supervision by the Insurance and Superannuation Commissioner (the 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 the transitional superannuation fund conditions and regulatory system that applies to superannuation funds from the commencement of their 1994-95 year of income (the commencement of the Act) until the day they elect to be regulated under the Act (that is, their 'pre-lodgment period').

In order to be eligible for taxation concessions superannuation funds must elect to be regulated under the Act. The Act sets out the requirements in order for a fund to elect to be regulated under the Act, including time limits within which an election must be made. Prior to amendment of the Act, if a superannuation fund did not elect within the prescribed time limits the fund may not be eligible for taxation concessions during the 'pre-lodgment period'.

The Act was amended by the Commissioner by temporary modification declarations (TMD), pursuant to section 333 of the Act, to provide that a fund that lodges a late election may still be eligible for taxation concessions during its 'pre-lodgment period' if a number of conditions are met including that the fund complies with the Principal Regulations. However, the Commissioner's TMD power expired on 30 June 1996. The *Superannuation Industry (Supervision) Amendment Act 1997* (the SIS Amendment Act) permanently reinstated the amendments previously inserted into the Act by the TMDs with retrospective effect from 1 July 1996. The Principal Regulations were also amended by TMDs which, as stated, expired on 30 June 1996.

The purpose of the Regulations is to permanently reinstate the amendments previously inserted by TMDs into the Principal Regulations to ensure that a consistent regulatory framework applies to superannuation funds during their 'pre-lodgment period'. In particular, the Regulations:

- * allow unregulated superannuation funds during their 'pre-lodgment period' to pay members benefits to eligible rollover funds in certain circumstances (item 7 of the Schedule);
- * prevent payments to an employer-sponsor of a superannuation fund from being made out of the fund during the 'pre-lodgment period', except in limited circumstances (item 8 of the Schedule); and

* provide that certain amounts rolled over from regulated superannuation funds and approved deposit funds to an unregulated superannuation fund, where certain conditions are met, are to vest in the member and must be preserved (item 9 of the Schedule).

A number of the remaining items make amendments consequential to the above amendments or as a result of the amendments to the Act by the SIS Amendment Act. However, it should be noted that the majority of the Regulations are simply an expanded version of what is already in the Principal Regulations.

Without the Regulations, the requirement to comply with the Principal Regulations set out in the Act refers to the Principal Regulations as they were prior to the amendments inserted by the TMDs. Therefore, it is possible that for part of a fund's 'pre-lodgment period' it may have to comply with the Principal Regulations as modified by TMDs and for the rest of the period the fund may have to comply with the Principal Regulations without the TMD amendments.

The Regulations therefore amend the Principal Regulations to insert the amendments previously made by TMDs and will take effect retrospectively from 1 July 1996. Subsection 48(2) of the *Acts Interpretation Act 1901* provides that a regulation has no effect if the rights of a person would be adversely affected. It is very unlikely that the Regulations would have any adverse effect on a person because the Regulations have been clearly promulgated as the relevant standards since the amendments to the Principal Regulations made by the TMDs.

The retrospective effect of the Regulations ensures consistency in the regulatory regime for funds during their 'pre-lodgment period'. In addition, the amendments are consequential to the SIS Amendment Act which received Royal Assent on 17 November 1997 and commenced with effect from 1 July 1996.

The Regulations are described in detail in the attachment.

ATTACHMENT

Regulation 1 - Commencement

Regulation 1 provides that the Regulations will be taken to have commenced on 1 July 1996.

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 - Regulation 3 (Interpretation)

Subregulation 3.1 omits the definitions of 'lodgment day' and 'pre-lodgment period' from regulation 3 of the Principal Regulations and inserts a new definition of 'prelodgment period'. 'Pre-lodgment period' is defined by reference to section 50 of *Superannuation Industry (Supervision) Act 1993* (the Act) as amended by the *Superannuation Industry (Supervision) Amendment Act 190* (the SIS Amendment Act).

In relation to a fund that lodges a late election under subsection 50(1) of the Act (a 'late-lodging fund', see subregulation 3.2 below), the 'pre-lodgment period' is the period beginning at the beginning of the fund's 1994-95 year of income and ending at the end of the lodgment day. In relation to a fund that is terminating under subsection 50(2) (a 'terminating fund', see subregulation 3.2 below), the 'prelodgment period' is the period beginning at the beginning of the fund's 1994-95 year of income and ending at the end of the termination day.

Subregulation 3.2 inserts two new definitions for the purposes of the definition of 'pre-lodgment period' inserted by subregulation 3.1 (see above). In particular, definitions of 'late-lodging fund' and 'terminating fund' are inserted. A 'late-lodging fund' is a fund that is lodging a late election as permitted under subsection 50(1) of the Act. Section 50(1) provides that where a trustee lodges an election for a superannuation fund to be a regulated superannuation fund and the lodgment day is after 28 July 1994, subject to the conditions of the subsection, the fund may be deemed to be a regulated superannuation fund for the period before the trustee lodged an election and therefore the fund may be eligible for taxation concessions during that period.

A 'terminating fund' is a fund that is in the process of winding up or terminating under subsection 50(2) of the Act. Subsection 50(2) provides that where the trustee of a superannuation fund had previously notified the Insurance and Superannuation Commissioner that it was in the process of winding up, the fund may be eligible for concessional taxation treatment for the period since the beginning of the fund's 1994-95 year of income to the day the fund is wound up.

Subregulation 3.3 omits paragraph 3(3)(b) and inserts a new paragraph 3(3)(b) into the Principal Regulations to replace the reference to 'the date of commencement of these Regulations' with '30 November 1993'.

Regulation 4 - Regulation 3A (Notification of delay in lodging an election obligations of trustee)

Subregulation 4.1 omits the words 'paragraph 50(4)(d)' and substitutes 'paragraph 50(1)(d)' into regulation 3A of the Principal Regulations. This is a consequential amendment as a result of amendments to section 50 of the Act by the SIS Amendment Act.

Subregulation 4.2 inserts a colon after the word 'about' in the opening words of regulation 3A.

Subregulation 4.3 omits paragraph 3A(c) from the Principal Regulations to remove the requirement that when notifying members about a delay in lodging an election, as required under section 50(1)(d) of the Act the notification does not have to be in accordance with the Form set out in Schedule 3 to the Principal Regulations. As a result of amendments to section 50 of the Act by the SIS Amendment Act, the Form set out in Schedule 3 is no longer applicable. However, under paragraph 50(1)(d) trustees will still be required to notify members of the fund (if they have not already done so) about the delay in lodging the election and the reasons for the delay. In addition, the remaining requirements set out in regulation 3A of the Principal Regulations in relation to the notification must be complied with by the trustee.

Subregulation 4.4 omits the words 'paragraph 50(4)(b)' and substitutes 'paragraph 50(1)(b)' into regulation 3A of the Principal Regulations. This is a consequential amendment as a result of amendments to section 50 of the Act by the SIS Amendment Act.

Regulation 5 - Regulation 4 (Purposes)

Regulation 5 omits '50(1)(c), (2)(c), (3)(c) and (4)(e)' and substitutes '50(1)(e) and (2)(g)' into regulation 4 of the Principal Regulations. This is a consequential amendment as a result of amendments to section 50 of the Act by the SIS Amendment Act.

Regulation 6 - Schedule 1 (Applied 088 Act)

Subregulation 6.1 omits the definitions of 'lodgment day' and 'pre-lodgment period' from Part 2 of Schedule 1 of the Principal Regulations and inserts a definition of 'pre-lodgment period'. 'Pre-lodgment period' is defined by reference to subregulation 3(1) of the Principal Regulations (see regulation 3 above).

Regulation 7 - Schedule 2 (Applied OSS Regulations)

Subregulation 7.1 omits the references to '17, 18B' and substitutes '11, 17, 18B, 18E,' in Part 1 of Schedule 2. The effect of this amendment is that regulations 11 and 18E are excluded from Part 1 of Schedule 2. Part 1 of Schedule 2 specifies the regulations in the Occupational Superannuation Standards Regulations that apply to superannuation funds during their 'prelodgment period' without modification. Regulations 11 and 18E, as modified, are inserted into Part 2 of Schedule 2.

Subregulation 7.2 omits Part 2 of Schedule 2 and substitutes a new Part 2 as set out in the Schedule to the Regulations. New Part 2 sets out the regulations in the Occupational Superannuation Standards Regulations that apply to superannuation funds during their 'prelodgment period' in a modified form.

Regulation 8 - Schedule 3 (Form of notice under paragraph 50(4)(d) of the Act)

Regulation 8 omits Schedule 3 from the Principal Regulations. As a result of amendments to section 50 of the Act by the SIS Amendment Act, the Form set out in Schedule 3 is no longer applicable.

Schedule

The Schedule to the Regulations replaces existing Part 2 of Schedule 2 of the Principal Regulations with a new Part 2 (see subregulation 7.2 above). New Part 2 amends the existing Part by inserting amendments that were previously inserted by temporary modification declarations (TMD). The Insurance and Superannuation Commissioner's power to temporarily modify the superannuation legislation, under section 333 of the Act, expired on 30 June 1996.

The amendments inserted by this Schedule are intended to ensure consistency of the regulatory regime applicable to superannuation funds during their 'pre-lodgment period'. Without these amendments, it is possible that for part of a fund's 'pre-lodgment period' the fund may have to comply with the Principal Regulations as modified by TMDs and then for the rest of the period the fund may have to comply with the Principal Regulations without the TMD amendments.

The amendments inserted by the Schedule will:

- * allow unregulated superannuation funds during their 'pre-lodgment period' to pay members benefits to eligible rollover funds in certain circumstances (item 7 of the Schedule);
- * prevent payments to an employer-sponsor of a superannuation fund from being made out of the fund during the 'pre-lodgment period', except in limited circumstances (item 8 of the Schedule); and
- * provide that certain amounts rolled over from regulated superannuation funds and approved deposit funds to an unregulated superannuation fund, where certain conditions are met, are to vest in the member and must be preserved (item 9 of the Schedule).

A number of the remaining items in the Schedule make amendments consequential to the above amendments or as a result of the amendments to the Act by the SIS Amendment Act. However, it should be noted that the majority of the Regulations are simply an expanded version of what is already in the Principal Regulations.