

# **Superannuation Industry (Supervision) (Transitional Provisions) Amendment Regulations 2000 (No. 1) 2000 No. 35**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2000 No. 35**

Issued by the Authority of the Minister for Financial Services and Regulation

*Superannuation Industry (Supervision) Act 1993*

Superannuation Industry (Supervision) (Transitional Provisions) Amendment Regulations 2000 (No. 1)

Section 353 of the *Superannuation Industry (Supervision) Act 1993* (the Act) provides that the Governor General may make Regulations for the purposes of the Act.

Section 50 of the Act provides inter alia that regulations may be made for the following purposes:

- \* conferring functions and powers on the Australian Prudential Regulation Authority (APRA);  
and
- \* making provision for applying, adopting or incorporating with modifications as prescribed, provisions of the *Occupational Superannuation Standards Act 1987*, and the Occupational Superannuation Standards Regulations.

These Regulations amend the Superannuation Industry (Supervision) (Transitional Provisions) Regulations 1993 (the principal regulations) to:

- \* omit references to the Insurance and Superannuation Commissioner (the Commissioner) whose position was abolished on 1 July 1998, and has been succeeded by the Australian Prudential Regulation Authority (APRA);
- \* substitute references to the *Occupational Superannuation Standards Act 1987* with the *Superannuation (Self-Managed Superannuation Funds) Taxation Act 1987*, reflecting the changed name of that legislation; and
- \* insert new Parts into Schedules 1 and 2 of the principal regulations listing the 'applied provisions' of the *Superannuation (Self-Managed Superannuation Funds) Taxation Act 1987* (Part 3, Schedule 1) and Occupational Superannuation Standards Regulations (Part 3, Schedule 2) which have become 'modified provisions' as a result of the amendments outlined above.

Details of the regulations are in the Attachment.

The regulations commence on gazettal.

## ATTACHMENT

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

#### **Regulation 1 - Name**

Regulation 1 states that these regulations are the *Superannuation Industry (Supervision) (Transitional Provisions) Amendment Regulations 2000 (No. 1)*.

#### **Regulation 2 - Commencement**

Regulation 2 provides that these regulations commence on gazettal.

#### **Regulation 3 - Amendment**

Regulation 3 provides that the Superannuation Industry (Supervision) (Transitional Provisions) Regulations (the principal regulations) are amended as set out in Schedule 1.

#### **Schedule 1**

##### **Item [1] - Name of Regulations**

Item 1 highlights the original commencement date of the principal regulations, by adding '1993' to the title.

##### **Item [2] - References to the applied *Occupational Superannuation Standards Act* and applied *Occupational Superannuation Standards Regulations***

Item 2 amends the meaning of *applied OSS Act* in subregulation 3 (2) of the principal regulations to replace references to the *Occupational Superannuation Standards Act 1987* with references to the new title of that legislation, the *Superannuation (Self Managed Superannuation Funds) Act 1987*.

The item also amends the meaning of *applied OSS Act* to specify that, in relation to matters occurring on a day before 1 July 1994, the provisions of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* that are specified in Part 1 of Schedule 1 of the principal regulations, are applied as in force on that day, rather than as in force from time to time. This corrects an anomaly in the principal regulations.

The item further amends the meaning of *applied OSS Act* to include a reference to new Part 3 of Schedule 1 to the principal regulations (see item 10):

\* in relation to matters occurring on or before 30 June 1994, a reference to the *applied OSS Act*

will include a reference to the provisions of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*, as in force on that day, that are specified in, and modified by, Part 3 of Schedule 1; and

\* in relation to matters occurring on or after 1 July 1994, a reference to the *applied OSS Act*

will include a reference to the provisions of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* as in force on 30 June 1994, that are specified in, and modified by, Part 3 of Schedule 1.

Item 2 also amends the meaning of ***applied OSS Regulations*** in subregulation 3 (3) of the principal regulations to specify that, in relation to matters occurring on a day before 1 July 1994, the provisions of the Occupational Superannuation Standards Regulations that are specified in Part 1 of Schedule 2 of the principal regulations, are applied as in force on that day, rather than as in force from time to time. This corrects an anomaly in the principal regulations.

Item 2 also further amends the meaning of ***applied OSS Regulations*** to include a reference to the new Part 3 of Schedule 2 to the principal regulations (see item 2 I):

\* in relation to matters occurring on or before 30 June 1994, a reference to the ***applied OSS Regulations*** will include a reference to the provisions of the Occupational Superannuation Standards Regulations, as in force on that day, that are specified in, and modified by, Part 3 of Schedule 2; and

\* in relation to matters occurring on or after 1 July 1994, a reference to the ***applied OSS Regulations*** will include a reference to the provisions of the Occupational Superannuation Standards Regulations, as in force on 30 June 1994, that are specified in, and modified by, Part 3 of Schedule 2.

### **Items [3], [5], [7] - [9], [14] - [18], [20] - Omitting references to the Insurance and Superannuation Commissioner (the Commissioner) and inserting references to the Australian Prudential Regulation Authority (APRA)**

These items replace references to 'the Commissioner' or 'The Commissioner' with references to 'APRA' in the following provisions of the principal regulations:

- \* Paragraph 5 (b);
- \* Schedule 1, Part 2, modified subsection 3 (1), definition of *reviewable decision*;
- \* Schedule 1, Part 2, modified subsection 10 (2);
- \* Schedule 1, Part 2, modified subsection 12 (3);
- \* Schedule 1, Part 2, modified subsection 12 (4);
- \* Schedule 2, Part 2, item 3, modified subsubparagraph 11 (1)(a)(iii)(D);
- \* Schedule 2, Part 2, item 4, modified paragraphs 17 (1)(b) and (c);
- \* Schedule 2, Part 2, item 4, modified paragraph 17 (4)(b);
- \* Schedule 2, Part 2, item 4, modified subparagraph 17 (4)(e)(ii);
- \* Schedule 2, Part 2, item 4, modified sub-subparagraph 17 (6)(a)(iii)(B); and
- \* Schedule 2, Part 2, item 8, modified subregulation 25 (7).

### **Items [4] and [11] - List of unmodified applied provisions**

Items 4 and 11 respectively set out the amended list of applied provisions of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* and the Occupational Superannuation Standards Regulations which remain unmodified.

### **Items [6] and [12] - Amended definitions**

Items 6 and 12 replace references in the principal regulations to the *Occupational Superannuation Standards Act 1987* with the new title, the *Superannuation (Self Managed superannuation Funds) Taxation Act 1987* in Schedule 1, Part 2, modified subsection 3 (1) (the definition of '*this Act*'), and Schedule 2, Part 2, item 1, modified subregulation 3 (1) (the definition of '*the Act*').

### **Items [10] and [21] - Additional modifications**

Item 10 inserts a new Part 3 into Schedule 1 of the principal regulations, listing the following applied provisions of the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* that are modified by omitting references to 'the Commissioner' or 'The Commissioner', and replacing them with references to 'APRA':

- \* subsection 3 (1), definition of *superannuation fund*;
- \* subsection 3 (3);
- \* section 11;
- \* subsection 12 (3A);
- \* section 12A;
- \* subsections 16 (3), (4), (5) and (6); and
- \* section 17.

Item 21 inserts a new Part 3 into Schedule 2 of the principal regulations listing the following provisions of the Occupational Superannuation Standards Regulations that are modified by omitting references to 'the Commissioner' or 'The Commissioner', and replacing them with references to 'APRA':

- \* regulations 5AAA, 5AAB and 5AAD;
- \* paragraph 13 (1)(e);
- \* subregulations 16A (4), (7), (9), (12) and (13);
- \* regulation 17A;
- \* regulation 18A;
- \* subregulation 18H (3);
- \* regulation 18Q, heading;

- \* subregulations I8Q (3) and (5);
- \* subregulations I8Q (2) and (4); and
- \* item 1 of Schedule 3.

### **Item [13] - Preservation Standards**

Item 13 modifies applied subregulation 9 (3) of the Occupational Superannuation Standards Regulations by replacing a reference to 'the Commissioner' with a reference to 'APRA'. All words after paragraph 9 (3)(b) are omitted and the following is substituted:

*"...the governing rules of which have been approved by APRA or the Commissioner of Taxation must be preserved. "*

The amendment is in this form to avoid confusion as the subregulation also contains a reference to the Commissioner of Taxation.

### **Item [19] - Prescribed Fees**

Item 19 amends the heading of Schedule 2, Part 2, item 8, modified subregulation 25 (7), to replace a reference to 'the Commissioner' with a reference to 'APRA'.