

Superannuation Contributions Tax (Member of Constitutionally Protected Superannuation Funds) Assessment and Collection Amendment Regulations 2002 (No. 1) 2002 No. 218

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 218

Issued by authority of the Minister for Revenue and Assistant Treasurer

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997

Superannuation Contributions Tax (Member of Constitutionally Protected Superannuation Funds) Assessment and Collection Amendment Regulations 2002 (No. 1)

Section 37 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act specifies how the superannuation contributions surcharge is applied to members of constitutionally protected superannuation funds. Members of constitutionally protected superannuation funds are liable to pay any surcharge liability at the time a benefit is payable to the member.

Recent amendments to the *Family Law Act 1975* and related legislation will in future allow superannuation to be split between couples on the breakdown of a marriage. Amendments made to the Act by the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* (the amending Act) ensure that the split of a benefit will not affect either the liability of the member to pay surcharge when the benefit is paid from the fund or the amount of that liability.

The purpose of the Regulations is to make minor technical corrections to the regulations to reflect the renumbering of certain provisions within the Act by the amending Act and to clarify reporting obligations of the 15% of the employer financed component of a benefit that has been split.

Details of the Regulations are set out in the Attachment.

The Regulations would commence on the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*, which received Royal Assent on 18 September 2001, and which is expected to commence in late December 2002.

ATTACHMENT

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Amendment Regulations 2002 (No. 1)

Explanation of the amendments

Regulation 1 - specifies the name of the Regulations as the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Amendment Regulations 2002 (No. 1).

Regulation 2 - provides that the Regulations would commence on the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*. That Act in turn commences at the same time as the commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001* which commences on a date to be proclaimed or 18 months after Royal Assent (which would be 28 December 2002).

Regulation 3 - provides that Schedule 1 amends the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 1997.

Schedule 1 amendments

Item 1 of Schedule 1 - makes a technical amendment to paragraph 4(2)(a) to reflect the renumbering of the provisions in the Act that are referred to in that paragraph.

Item 2 of Schedule 1 - makes a technical amendment to paragraph 4(2)(b) to reflect the renumbering of the provisions in the Act that are referred to in that paragraph.

Item 3 of Schedule 1 - makes a technical amendment to Regulation 5 to reflect the renumbering of the provisions in the Act that are referred to in that regulation.

Item 4 of Schedule 1 - clarifies the reporting obligations on funds when reporting payment of a benefit that has been subject to a split due to marriage breakdown.

Funds are currently required to report 15% of the employer financed component of that part of the benefit that accrued after 20 August 1996. This information is used to calculate the cap that applies to the surcharge for members of constitutionally protected funds.

Consistent with changes made by the amending Act, item 4 ensures that when funds report the amount that is 15% of the employer financed component of that part of the benefit that accrued after 20 August 1996, the impact of the benefit being split with the other party to the marriage breakdown is ignored. That is, the 15% is based on the benefit that would have been payable to the member but for the payment split, without any reduction for that part of the benefit that may now be payable to the other party to the marriage breakdown.