

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue
and Assistant Treasurer

Select Legislative Instrument 2005 No. 25

Superannuation Guarantee (Administration) Act 1992
Superannuation Industry (Supervision) Act 1993

Superannuation Guarantee (Administration) Amendment Regulation 2005 (No. 1)
Superannuation Industry (Supervision) Amendment Regulation 2005 (No. 1)

The purpose of the Regulations is to amend the *Superannuation Guarantee (Administration) Regulations 1993* (SG Regulations) to support the Government's policy to allow employees to choose the superannuation fund or Retirement Savings Account their employer makes superannuation guarantee contributions into. The Regulations also amend the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to provide exemptions to the conduct of a trustee relating to fund membership.

The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (Choice Act) amended the *Superannuation Guarantee (Administration) Act 1992* (SG Act) so that from 1 July 2005 many employees will be able to choose the complying superannuation fund or Retirement Savings Account their employer makes compulsory superannuation contributions into.

The Choice Act also amended the *Superannuation Industry (Supervision) Act 1993* (SIS Act) to prohibit a trustee or associate of a trustee from offering to supply a good or service, or refusing to supply a good or service to an employer on the condition that their employees become members of the fund.

Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 1)

Section 80 of the SG Act provides that the Governor-General may make regulations prescribing all 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 Regulations prescribe:

- where an employee does not choose a superannuation fund or retirement savings account (RSA) - the level of insurance in respect of death which must be offered by the superannuation fund the employer contributes to;
- where an employee does not choose a superannuation fund or RSA – the circumstances where the employer is able to make contributions into a superannuation fund which does not meet the requirement to offer insurance in respect of death;
- the mechanism for prescribing the content of the standard choice form which employers must give to their employees; and

- the information an employee must give to their employer if they want to choose a fund.

The Regulations also insert new definitions into the SG Regulations which are required as a result of the choice of fund measure.

Details of the Regulations are set out in Attachment A.

The Regulations commence on 1 July 2005.

Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 1)

Subsection 353(1) of the SIS 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.

Section 68A of the SIS Act prohibits the trustee of a superannuation fund, or an associate of the trustee, from providing or withholding a good or a service to a person on the condition that one or more of their employees becomes a member of the superannuation fund.

The Regulations prescribe exemptions from this prohibition to ensure that common practices which are not detrimental to an employee but do not satisfy the conditions in the SIS Act, are allowed.

Details of the Regulations are set out in Attachment B.

The Regulations commence on 1 July 2005.

The SG Act and SIS Act specify no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

In developing the measure, consultation was undertaken with a wide range of interested parties including the superannuation industry (in particular the Association of Superannuation Funds of Australia and the Investment and Financial Services Association), employer groups (in particular the Australian Chamber of Commerce and Industry), small business groups (in particular the Council of Small Business of Australia) and those representing employee interests.

To assist in the development of these Regulations, a consultation paper was released on the Department of the Treasury web-site in November 2004 for public comment. A draft of the Regulations was subsequently made available on the Department of the Treasury web-site for further consideration in January 2005.

The Office of Regulation Review has advised that a Regulatory Impact Statement (RIS) is not required to be included with the regulations. The RIS requirements were met by the RIS included with the Explanatory Memorandum for the *Superannuation*

Legislation Amendment (Choice of Superannuation Funds) Act 2004. This should be referred to as necessary for the purposes of these regulations.

ATTACHMENT A

Details of the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 1)*

Regulation 1 specifies the name of the regulations as the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 1)*.

Regulation 2 provides that the regulations commence on 1 July 2005.

Regulation 3 provides that Schedule 1 amends the *Superannuation Guarantee (Administration) Regulations 1993* (the SG Regulations).

Schedule 1 - Amendments

Item 1

The Regulations insert a definition of 'capital guaranteed fund' into the SG Regulations. A capital guaranteed fund has the same meaning as that given in the *Corporations Regulations 2001*.

Item 2

The Regulations insert a definition of 'successor fund' into the SG Regulations. A successor fund has the same meaning as that given in the *Superannuation Industry (Supervision) Regulations 1994*.

Item 3

New regulation 9A

The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (Choice Act) amended the *Superannuation Guarantee (Administration) Act 1992* (SG Act), to require an employer to make contributions to a fund which meets the minimum requirements to offer insurance in respect of death where an employee does not choose a fund.

The Regulations insert a new regulation into the SG Regulations to prescribe the requirements in relation to offering insurance in respect of death.

A fund meets the requirement to offer insurance where the decision to accept the insurance is the member's. The offer is only able to be made conditional on the basis of the prescribed exclusions in new **paragraph 9A(2)(e)**.

The Regulations insert **subregulation 9A(1)** into the SG Regulations to set out the minimum level of cover which must be offered by the fund. The fund must either provide insurance in respect of death as set out in **Schedule 1** (Item 5) or at a premium of a least \$0.50 per week (for employees aged less than 56) or the equivalent monthly or annual premium rate.

In addition, subregulation 9A(1) provides that an employer who makes contributions (including notional contributions) to a defined benefit superannuation scheme on

behalf of a defined benefit member is making the contributions in compliance with the SG Act if the scheme provides a future service component that is at least equivalent to the level of insurance in respect of death set out in **Schedule 1** (Item 5).

For example, should an individual die at the age of 35, the defined benefit fund will pay death benefits calculated as if the employee had still been a member of the fund at age 65.

These are only minimum levels of cover. Superannuation funds may, but are not required to, offer insurance above these levels. For example, for a 36 year old employee, an employer can pay to a superannuation fund that offers a benefit of \$45,000 on the employee's death (whereas the prescribed minimum in Schedule 1 is \$35,000). An employee can also purchase additional cover if the superannuation fund offers it.

Superannuation funds which offer insurance at the prescribed levels through a self-insured arrangement are taken to meet the requirements in respect of death cover.

The Regulations also insert new **subregulation 9A(2)** into the SG Regulations. **Subregulation 9A(2)** prescribes the circumstances where the requirements of subregulation 9A(1) need not be met.

Paragraph 9A(2)(a) – Where the superannuation fund an employer is contributing to prior to 1 July 2005 does not meet the insurance requirement, an employer is able to continue contributing to this superannuation fund for existing employees and new employees taken on after 1 July 2005.

However, by 1 July 2008 the fund will either have to meet the insurance requirement or the employer will need to contribute to a fund that meets the insurance requirements.

This exemption also applies where the original fund has been replaced by a successor fund. However, the exemption only applies to the original employer and not the fund.

Paragraph 9A(2)(b) – Where an employer is making contributions to a superannuation fund specified under a Federal Award, and this superannuation fund does not meet the insurance requirement, the employer is able to continue contributing to this fund or any other superannuation fund listed under the Federal Award.

Paragraph 9A(2)(c) and 9A(2)(d) – Where an employer is making contributions to a retirement savings account (RSA) or a capital guaranteed fund, the RSA or capital guaranteed fund does not have to meet the insurance requirement.

Paragraph 9A(2)(e) – The minimum insurance requirement does not apply if an employer has in place arrangements which have resulted in the employer's employees being covered by insurance in the event of death. However, the death cover must be at least consistent with the minimum insurance requirements set out in **subregulation 9A(1)**. The employer must also not receive a benefit from the death cover if the employee dies, for example, key-man insurance.

Paragraph 9A(2)(f) – In some instances insurance may not be available at the prescribed minimum requirements for a particular employee due to the employee's occupation, health, hours worked or another circumstance determined by an insurer. An employer is not required to make contributions to a fund which meets the minimum insurance requirements in this instance. The employer is also not expected to enquire with a fund other than the fund they otherwise contribute to where an employee does not choose a fund.

A superannuation fund may not offer an employee insurance cover for reasons including where:

- an employee is absent from work due to illness when they first joined the fund;
- the employee maybe located outside Australia;
- the employee maybe in a high-risk occupation, such as a sky diving instructor;
- the employee did not join when first eligible; or
- the employee may already be covered for insurance in respect of death as a result of membership with a number of other superannuation funds.

Paragraph 9A(2)(g) – The governing rules of some superannuation funds pay a benefit upon the member's death that is the greater of either the member's superannuation account balance or a multiple of their salary.

Where the account balance is greater than the multiple of the member's salary, no additional payment is provided.

An employer is not required to make a contribution to a fund which meets the minimum insurance requirement where the fund's governing rules provide a similar benefit design, the governing rules were in place prior to 11 March 2005 and the member's account balance exceeds \$50,000.

New regulation 9B

The Regulations have reserved new **regulation 9B**.

New regulation 9C

The Regulations insert a new **regulation 9C** into the SG Regulations to prescribe the information an employee who wishes to choose a fund must provide their employer.

An employee needs to provide their employer with written documentation setting out:

- their account name with their chosen fund;
- the number or identifier used by the chosen fund to refer to the employee's account if this is available. A superannuation fund may not be able to issue an account number in relation to an employee's account until an initial

contribution is received. However, the fund may issue another number or identifier which specifically relates to the employee's interest in the fund;

- the full name of the chosen fund;
- the Australian Business Number of the chosen fund where it is available;
- a written statement which satisfies subsection 25(1) of the *Superannuation Guarantee (Administration) Act 1992* from the trustee of the chosen fund. This statement indicates that the fund is a resident regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and is not subject to a direction under section 63 of the SIS Act. Contributions made to a superannuation fund where an employer is in receipt of this written statement are taken to be made to a complying superannuation fund;
- if it is a self managed superannuation fund, evidence from the Australian Taxation Office that the fund is a regulated superannuation fund;
- the information which outlines the methods by which an employer can contribute to the chosen fund, either electronically or by post and the details necessary to make the contribution. For example the postal address and the details to be included with the cheque, or the account details for electronic transfers;
- the number or identifier that relates to the superannuation product if the chosen fund uses such a number or identifier. This number may be referred to as a Superannuation Product Identification Number and will distinguish between the products offered by a superannuation fund where the fund may have more than one superannuation product;
- the number or another identifier an employer may use to identify an employee, for example, the employee's payroll number, if the employee has one.

New regulation 9D

The Regulations insert new **regulation 9D** into the SG Regulations to prescribe that the standard choice form which must be provided to employees by employers under section 32P of the SG Act, is an approved form under section 388-50 of the *Taxation Administration Act 1953*.

Item 4

This item replaces "the Schedule" in subregulation 12(1) with "Schedule 3" in the SG regulations as the amending Regulations insert two new schedules.

Item 5

This item inserts Schedule 1 and Schedule 2 after regulation 15 in the SG Regulations. Schedule 1 lists the minimum level of insurance with the corresponding age range which a superannuation fund must offer in order to meet the minimum life insurance requirement.

Schedule 2 relates to reserved **new regulation 9B** and has been reserved.

Item 6

This item renumbers “Schedule” in the SG Regulations to “Schedule 3” as the amending regulations insert two additional schedules.

ATTACHMENT B

Details of the *Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 1)*

Regulation 1 specifies the name of the regulations as the *Superannuation Industry (Supervision) Amendment Regulations 2005 (No. 1)*.

Regulation 2 provides that the regulations commence on 1 July 2005.

Regulation 3 provides that Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations).

Schedule 1 - Amendments

Item 1

New regulation 13.18A

This regulation prescribes exemptions from the general rule in section 68A of the *Superannuation Industry (Supervision) Act 1993* which prohibits a trustee or associate of a trustee from offering to supply a good or service, or refusing to supply a good or service to an employer on the condition that their employees must become members of the fund.

New **paragraph 13.18A(1)(a)** allows a trustee, or associate of the trustee of a regulated superannuation fund to supply a business loan on a commercial arm's length basis to an employer where only the employer is required to be a member of the superannuation fund (new **subregulation 13.18A(2)** also refers). For example, an associate of a regulated superannuation fund may supply a business loan to an employer on the basis that the employer is a member of the superannuation fund. An employer is still required to meet the standard credit approval process that applies to someone else applying for a loan.

New **paragraph 13.18A(1)(b)** allows a trustee, or associate of the trustee of a regulated superannuation fund to supply a service to an employer which forwards on the superannuation contributions (and related information) made by the employer on behalf of their employees to their chosen funds. This service is often referred to as a clearing house service. A clearing house is a service that will distribute contributions to an employee's chosen fund on behalf of the employer.

New **paragraph 13.18A(1)(c)** allows a trustee, or associate of the trustee of a regulated superannuation fund to provide an administration or advice service to either the employer or employees of the employer which relates to the payment of superannuation contributions. For example, a fund may provide software to an employer to allow them to make contributions to the superannuation fund.

New **paragraph 13.18A(1)(d)** allows a trustee, or associate of the trustee of a regulated superannuation fund to supply a good or service to an employer. However, the supply or offer must be available to all of the employer's employees who are members of the fund. The terms of the supply or offer to each employee must be no

less than the terms offered to the employer. For example, an associate of a superannuation fund may offer members discounted computers, low cost health insurance, or a discounted shopping service (which for example, enables members to acquire discounted accommodation or entertainment) as a result of their membership with the superannuation fund.

New **paragraph 13.18A(2)** refers to new paragraph 13.18A(1)(a). A trustee or associate of a trustee of a regulated superannuation fund is only able to supply or offer a business loan to an employer if it is only the employer who is required to be a member of the superannuation fund.