

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 141

Superannuation Guarantee (Administration) Act 1992

Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 2)

Section 80 of the *Superannuation Guarantee (Administration) Act 1992* (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 purpose of the proposed Regulations is to amend the *Superannuation Guarantee (Administration) Regulations 1993* (the Principal Regulations) to support the Government's policy of allowing employees to choose the superannuation fund or retirement savings account (RSA) for their employer contributions.

The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* amended the Act to enable many employees to choose the complying superannuation fund or RSA their employer makes compulsory superannuation contributions into on their behalf, with effect from 1 July 2005.

The Principal Regulations were amended in March 2005 to support the introduction of the superannuation choice arrangements.

The Regulations further amend the Principal Regulations to prescribe the Commonwealth, State and Territory legislation which will be exempt from the choice of fund requirements. This prevents some employers from being subject to 'double coverage' situations where they would be required to contribute to a certain fund under the Commonwealth or State legislation while also required to make contributions to another fund under Commonwealth legislation.

The Regulations additionally provide that where the governing rules of a superannuation fund will pay a benefit upon the member's death of at least \$50,000, this fund will meet the minimum insurance requirement for choice of fund. This corrects a previous drafting error, which prevented this exemption from applying to employees other than those for whom the employer was making contributions on or before 11 March 2005. This was not the intention of the exemption.

The Regulations also correct a drafting error.

Details of the Regulations are set out in the Attachment.

Schedule 1 to the Regulations (which deals with the Commonwealth, State and Territory legislation, exemption to the insurance requirement and correction of the previous drafting error) commenced on 1 July 2005.

Schedule 2 to the Regulations (which deals with removal of certain state legislation from the Regulations) commences on 1 July 2006. This schedule removes certain

state legislation which was prescribed as a transitional measure in Schedule 1, from the Regulations.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

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

In the development of these regulations, consultations were held with the State and Territory governments to determine what legislation should be presented for the purposes of section 32C(9) of the *Superannuation Guarantee (Administration) Act 1992*.

ATTACHMENT

Details of the Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 2)

Regulation 1 specifies the name of the regulations as the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 2)*

Regulation 2 provides that the regulations relating to regulations 1 to 3 and Schedule 1 commenced on 1 July 2005, while those relating to Schedule 2 commenced on 1 July 2006.

Regulation 3 provides that Schedule 1 amends the *Superannuation Guarantee (Administration) Regulations 1993* as amended by the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 1)*. Schedule 2 amends the *Superannuation Guarantee (Administration) Regulations 1993*.

Schedule 1 – Amendments

Item 1

The governing rules of some superannuation funds provide for 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.

Currently, an employer is not required to make a contribution to a fund which meets the minimum insurance requirement when 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.

The Principal Regulations limit this exemption to employees for whom the employer was making contributions on 11 March 2005, which is not the policy intention. The amendment to paragraph 9A(2)(g) would extend this exemption to include contributions made by the employer for all employees, including those that commenced employment after 11 March 2005.

Item 2

The Regulations deletes the note to **Regulation 9A**, which states that **Regulation 9B** is reserved for the prescription of exempt Commonwealth, State and Territory legislation from choice of funds. As the Regulations include the prescription of Commonwealth, State and Territory legislation (see item 3 below), it is no longer necessary for the regulations to contain this note.

Item 3

Subsection 32C(9) of the Act provides an exemption for superannuation funds which are prescribed under certain Commonwealth, State or Territory law.

To facilitate this exemption, the Regulations inserted new **Regulation 9B** which would refer to the laws mentioned in new **Schedule 2**. The laws listed in **Schedule 2** are prescribed under **subsection 32C(9)** in the Act with effect from 1 July 2005.

Item 4

Regulation 9D contains an incorrect legislative reference to the *Taxation Administration Act 1953*.

The Regulations have amended the wording to correctly describe the legislative reference as **section 388-50 of Schedule 1** to the *Taxation Administration Act 1953*. It is currently listed as **section 388-50** of the *Taxation Administration Act 1953*.

Item 5

The Regulations delete the note to **Schedule 1** which states that **Schedule 2** is reserved for future use. As these Regulations include the prescribed Commonwealth, State and Territory legislation in new **Schedule 2** (see item 6 below), it is no longer necessary for the regulations to contain this note.

Item 6

The Regulations insert a new **Schedule 2 - Commonwealth, State and Territory laws** which contain tables of the relevant jurisdictions and the legislation which receives an exemption from choice of fund requirements under **subsection 32C(9)**.

This schedule relates to new **Regulation 9B** which identifies the legislation to be prescribed in the regulations. The following is a list of the legislation that is prescribed in the schedule:

Commonwealth

- *Parliamentary Superannuation Act 2004*

New South Wales

- *First State Superannuation Act 1992*
- *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*

Victoria

- *Emergency Services Superannuation Act 1986*
- *Parliamentary Contributory Superannuation Act 1962*
- *State Employees Retirement Benefits Act 1979*

- *State Superannuation Act 1988*
- *Transport Superannuation Act 1988*

Queensland

- *Local Government Act 1993*
- *Coal and Oil Shale Mine Workers' Superannuation Act 1989*

Western Australia

- *Fire and Emergency Services Superannuation Act 1985*
- *State Superannuation Act 2000*
- *Local Government Act 1995*
- *Coal Industry Superannuation Act 1989*

South Australia

- *Electricity Corporations Act 1994*
- *Local Government Act 1999*
- *Southern State Superannuation Act 1994*

Tasmania

- *Ambulance Service Act 1982*
- *Retirement Benefits (Parliamentary Superannuation) Regulations 2002*
- *State Fire Commission Superannuation Scheme Act 1994*

Schedule 2 – Amendments commencing on 1 July 2006

Item 1

The prescription of the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* (the Coal Act) of New South Wales is only intended to assist the transition to the choice of fund initiative and is removed from the Principal Regulations on 1 July 2006. It was not the policy intention for the exemption under subsection 32C(9) of the Act to apply to private sector employees. However, the Coal Act places obligations on employers which would result in a ‘double coverage’ issue. To ensure employers are not placed in this position, the Government will be making changes to the Act that will override this prescribed legislation on 1 July 2006.

Item 2

The prescription of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (the Coal Act) of Queensland is only intended to assist the transition to the choice of

fund initiative and is removed from the Principal Regulations on 1 July 2006. It was not the policy intention for the exemption under subsection 32C(9) of the Act to apply to private sector employees. However, the Coal Act places obligations on employers which would result in a 'double coverage' issue. To ensure employers are not placed in this position, the Government will be making changes to the Act that will override this prescribed legislation on 1 July 2006.

Item 3

The prescription of the *Local Government Act 1995* (the Local Government Act) of Western Australia is only intended to assist the transition to the choice of fund initiative and is removed from the Principal Regulations on 1 July 2006. This will remove the potential for a 'double coverage' issue while the Western Australian government implements an announcement that local government employees will be able to choose a fund.

The prescription of the *Coal Industry Superannuation Act 1989* (the Coal Act) of Western Australia is only intended to assist the transition to the choice of fund initiative and is removed from the Principal Regulations on 1 July 2006. It was not the policy intention for the exemption under subsection 32C(9) of the Act to apply to private sector employees. However, the Coal Act places obligations on employers which would result in a 'double coverage' issue. To ensure employers are not placed in this position, the Government will be making changes to the Act that will override this prescribed legislation on 1 July 2006.