

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 150

Issued by authority of the Minister for Revenue and Assistant Treasurer

Superannuation Guarantee (Administration) Act 1992
Retirement Savings Accounts Act 1997

Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 3)
Retirement Savings Accounts Amendment Regulations 2005 (No. 2)

Section 80 of the *Superannuation Guarantee (Administration) Act 1992* (the SG 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 200 of the *Retirement Savings Accounts Act 1997* (the RSA Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The purpose of the Regulations is to amend the *Superannuation Guarantee (Administration) Regulations 1993* (the Principal SG Regulations) to support the Government's policy of allowing employees to choose the superannuation fund or retirement savings account (RSA) to which their employer contributions are paid. The Regulations would also amend the *Retirement Savings Accounts Regulations 1997* (the Principal RSA Regulations) to provide exemptions to the rules that prevent goods and services being offered or supplied to employers whose employees are holders of RSAs.

The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* amended the SG 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 *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* (the Choice of Funds Act 2005), which received Royal Assent on 29 June 2005, has further amended the SG Act to give effect to the Government's choice of fund measure. That Act also inserts a regulation making power into the RSA Act in relation to improper conduct in the provision of RSAs. The Royal Assent of the Bill was required before these Regulations were made.

Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 3)

The Superannuation Holding Accounts Special Account (SHASA) was established under the *Small Superannuation Accounts Act 1995* to function as a 'holding account' for employer contributions. It does not offer insurance, and therefore does not satisfy the life insurance requirement under the Choice of Funds Act 2004.

The Regulations implement a transitional arrangement, for one year, allowing an employer to make deposits to the SHASA and thus meet their choice of fund obligations where no fund has been chosen by an employee. Contributions are 'held' until they are transferred to another superannuation fund.

The SHASA will be closed to new deposits from 1 July 2006.

Details of the proposed Regulations are set out in Attachment A.

Schedule 1 to the proposed Regulations (which deals with the exemption of the life insurance requirement for deposits to SHASA) commences on 1 July 2005.

Schedule 2 to the Regulations (which deals with the removal of the exemption of the insurance requirement from SHASA) commences on 1 July 2006. This schedule removes the insurance exemption, inserted as a transitional measure by Schedule 1, from the Principal SG Regulations.

Retirement Savings Accounts Amendment Regulations 2005 (No. 2)

The Choice of Funds Act 2005 has amended section 78 of the RSA Act to allow the creation of regulations to prescribe exemptions to the legislation which generally prohibits an RSA provider from offering goods and services to a person on the condition that one or more of the person's employees is or would be a holder of an RSA administered by that provider.

The exemptions from this prohibition ensure that common practices which are not harmful to an employee, but are currently not allowed under the RSA Act, are allowed. Additionally, these exemptions also ensure uniformity with superannuation funds that already have the same exemptions from the equivalent provisions in the *Superannuation (Industry) Supervision Regulations 1993*.

Details of the Regulations are set out in Attachment B.

The Regulations commence on 1 July 2005.

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

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

In the development of these regulations, consultations were not conducted. It was determined that given the nature of these legislative changes, which largely consisted of removal of restrictions would be unlikely to impact the superannuation industry and concerned interest groups in a negative fashion. Consultations were conducted for earlier exemptions from the 'kickback rule' for superannuation funds, which was considered sufficient to identify the impacts that would result from the replicated changes to the RSA 'kickback' provisions.

The Office of Regulation Review has advised that a Regulatory Impact Statement (RIS) is not required to be included with these regulations. The RIS was not required due to the nature of the amendments being of minor and machinery of government nature and don't alter existing obligations for employees and employers.

ATTACHMENT A

Details of the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 3)*

Regulations 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 3)*

Regulation 2 - Commencement

This regulation provides for regulations 1 to 3 and Schedule 1 to commence on 1 July 2005 to coincide with the Choice of Fund Act and Schedule 2 to commence on 1 July 2006.

Regulation 3 – Amendment of *Superannuation Guarantee (Administration) Regulations 1993*

This regulation provides that Schedule 1 amends the *Superannuation Guarantee (Administration) Regulations 1993* (the Principal Regulations) as amended by the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 1)*. The regulation also provides that Schedule 2 amends the Principal Regulations as set out in the Schedule.

Schedule 1 – Amendment commencing on 1 July 2005

Item [1] – After subregulation 9A(2)

The Choice of Funds Act 2004 provides that employers may make contributions on behalf of their employees to an eligible choice fund that is nominated by the employee after 1 July 2005. Where no fund is chosen by the employee, the employer may make deposits to the Superannuation Holding Account Special Account (SHASA).

Under the Choice of Funds Act, there will be a statutory minimum level of life insurance to be provided by the fund chosen by the employer, to the member. Further details of the level of life insurance requirement are outlined in the *Superannuation Guarantee (Administration) Amendment Regulations 2005 (No. 1)* which describe the level and criteria of life insurance coverage for funds chosen by the employer. SHASA doesn't provide insurance, as it functions as a holding account for employer deposits (contributions), making it necessary to amend the Principal Regulations to allow this exemption. Therefore employer deposits are simply 'held' in SHASA until they are transferred to another superannuation fund.

By inserting a new subregulation 9A(3) to remove the life insurance requirement in respect to SHASA, employers are able to make deposits to SHASA from 1 July 2005 and satisfy their choice of fund obligations, in respect of those employees who do not choose a fund.

Schedule 2 - Amendment commencing on 1 July 2006

Item [1] – Subregulation 9A(3)

This item removes proposed subregulation 9A(3). The effect of this is that SHASA won't satisfy choice of fund requirements from 1 July 2006. The exemption for SHASA is no longer required beyond this date, as SHASA is closed to new contributions.

ATTACHMENT B

Details of the *Retirement Savings Accounts Amendment Regulations 2005 (No. 2)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Retirement Savings Accounts Amendment Regulations 2005 (No. 2)*.

Regulation 2 - Commencement

This regulation provides for the Regulations to commence on 1 July 2005.

Regulation 3 – Amendment of Retirement Savings Accounts Regulations 1997

This regulation provides that Schedule 1 amends the *Retirement Savings Accounts Regulations 1997*.

Schedule 1 – Amendments

Item [1] – After regulation 6.16

New regulation 6.16A

This new regulation prescribes exemptions from the general rule in section 78 of the RSA Act. This section prohibits an RSA provider 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 holders of RSAs issued by the provider. The amendment confers the same treatment received by superannuation funds in the *Superannuation Industry (Supervision) Regulations 1994* to RSA providers.

6.16A Conditional offer of goods or services - exemptions

New **paragraph 6.16A(1)(a)** allows an RSA provider or associate of the provider to supply a business loan on a commercial arm's length basis to a person where only that person is required to be a holder of an RSA issued by that provider. For example, an associate of an RSA provider is able to supply a business loan to an employer on the basis that the employer is an RSA holder. An employer is still required to meet the standard credit approval process that applies to someone else applying for a loan.

New **paragraph 6.16A(1)(b)** allows RSA providers or their associates to provide a service to a person which forwards on the superannuation contributions (and related information) made by that person on behalf of anyone employed by the person. This service is often referred to as a clearing house service. A clearing house service distributes contributions to an employee's chosen fund on behalf of the employer.

New **paragraph 6.16A(1)(c)** allows RSA providers or their associates to provide an administration or advice service to either a person or employees of the person which relates to the payment of superannuation contributions. For example, a fund providing software to an employer to allow them to make contributions to the RSAs.

New **paragraph 6.16A(1)(d)** allows RSA providers or their associates 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 RSA holders. 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 an RSA provider is able to offer members discounted computers, low cost health insurance, or a discounted shopping service (which, for example, would enable members to acquire discounted accommodation or entertainment) as a result of them being a holder of an RSA issued by that provider.

New **subsection 6.16A(2)** refers to new paragraph 6.16A(1)(a). It clarifies that an RSA provider or their associate is only able to supply or offer a business loan to a person where that person is the only person required to be a holder of a RSA issued by that provider.