

Modification Declaration No. 3 of 2006

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Superannuation Industry (Supervision) Act 1993 section 332

This explanatory statement relates to Modification Declaration No.3 (**MD 3**) made by APRA under section 332 of the *Superannuation Industry (Supervision) Act 1993 (the SIS Act)* on 29 June 2006. Section 332 of the SIS Act provides that APRA may, in writing, declare that a modifiable provision of the SIS Act is to have effect, in relation to a particular person or class of persons, as if it were modified as specified in the declaration. The modifiable provisions¹ include regulations made for the purposes of Part 3 of the SIS Act and therefore include regulation 6.21 of the *Superannuation Industry (Supervision) Regulations 1994 (the SIS Regulations)*.

Background

1. MD 3 modifies SIS regulation 6.21 which deals with the circumstances in which superannuation benefits must be paid out or cashed, whether this be as a pension or as lump sum.
2. In general terms, regulation 6.21 requires that benefits be cashed where a member has attained age 65 and has not been gainfully employed for at least 240 hours in the previous financial year, the member has attained age 75 or the member has died.
3. MD 3 adds new subregulations 6.21(1D) and (1E) which remove the obligation on trustees of regulated superannuation funds to compulsorily cash benefits of members aged 65 or older during the period from 10 May 2006 to 30 June 2007.
4. MD3 does not remove the obligation to compulsorily cash benefits after the death of a member.

Purpose of the instrument

5. In the document “A Plan to Simplify and Streamline Superannuation” released with the Budget on 9 May 2006, the Government set out a number of changes which it proposes to make to superannuation and taxation law. As part of the plan, the requirement for compulsory cashing of benefits for members aged 65 or older would be removed (compulsory cashing of death benefits would continue to apply). On 13 June 2006 the Treasurer announced (via press release No. 58) that compulsory cashing would be removed with effect from 10 May 2006.
6. Regulations to give effect to the Government’s announcement on compulsory cashing will not be made until other aspects of the simplification plan have been legislated. This legislation is not expected to be made until after the public consultation on the plan is completed on 9 August 2006.

¹ *Modifiable provisions* is defined in section 327 of the SIS Act.

7. MD 3 provides interim relief in conformity with the proposed amendments to regulation 6.21 foreshadowed in the Treasurer's announcement on 13 June 2006.

8. MD 3 applies both to members who turn age 65 during the period 10 May 2006 to 30 June 2007 as well as to members who were already aged 65 or older on 10 May 2006. Compulsory cashing of death benefits is unaffected by MD 3.

Operation of the instrument

9. MD 3 modifies SIS regulation 6.21 by adding subregulations 6.21(1D) and 6.21(1E).

10. Subregulation 6.21(1D) removes the obligation on trustees to cash the benefits of members aged 65 or older for the period from 10 May 2006 to 30 June 2007.

11. Subregulation 6.21(1E) has the effect that a trustee that has cashed a member's benefits in accordance with regulation 6.21 between 10 May 2006 and the date of registration of the declaration is not in breach regulation 6.21 as modified by the declaration. That is, a trustee that cashed benefits in accordance with regulation 6.21 as it stood before the coming into effect of the declaration would not be taken to have breached the regulation in its modified form. Given the retrospective application of the declaration, subregulation 6.21(1E) was inserted to overcome any inequities that may arise if a trustee cashed out benefits in accordance with regulation 6.21 prior to the commencement of the amendments. With the inclusion of subregulation 6.21(1E), APRA is satisfied that no rights of a person will be affected so as to disadvantage them as at the date of registration of the instrument.

Consultation

12. APRA undertook a brief consultation process with relevant government agencies and industry organisations. No substantive issues were identified in the consultation process.

Commencement

13. MD 3 comes into force on the date it is registered on the Federal Register of Legislative Instruments.

Regulation Impact Statement

A Regulation Impact Statement is not necessary in relation to MD 3, as the declaration is of a minor or machinery nature and does not substantially alter existing arrangements.