

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 86

Issued by authority of the Minister for Financial Services and Superannuation

Superannuation Industry (Supervision) Act 1993
Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 2)

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the SIS Act. The *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) are made under section 353 of the SIS Act.

The Regulation implements a recommendation of the Super System Review to repeal the member protection standards in the SIS Regulations.

On 16 December 2010 the Government announced the Stronger Super package of reforms in response to recommendations of the Super System Review. Following extensive consultation, on 22 October 2012 the Government announced it would repeal the member protection standards from 1 July 2013.

Under these standards, a member with an account balance of less than \$1,000 cannot have their balance reduced by administrative fees that are greater than the earnings accruing to their account. However:

- trustees can deduct administrative fees in years with a negative investment return despite a member's balance being less than \$1,000;
- the standards effectively require members with larger balances to subsidise the reduced cost for low balance members;
- the standards may be a disincentive for members to consolidate small account balances where the combined balance would be more than \$1,000;
- trustees must maintain inconvenient, complex and costly administrative systems and procedures to meet the member protection standards;
- costs levied before earnings are allocated to members (such as insurance premiums and tax) can erode small balances, despite the standards.

MySuper fees rules, which are to commence on 1 July 2013, will require that all MySuper members be charged fees on the same basis, a requirement that cannot be met at the same time as the member protection standards, which require fees for small balances to not exceed the investment earnings on the overall account.

From 1 July 2013, superannuation funds will transfer small inactive accounts to the Australian Taxation Office, which will protect these accounts from being eroded by fees and charges. Interest will be paid on these accounts at a rate equivalent to CPI

inflation. Members will be able to reclaim these account balances from the Australian Taxation Office at any time.

The regulation will have effect from 1 July 2013. However, the amended SIS regulations will still allow the trustee of a regulated superannuation fund or approved deposit fund to continue to protect the benefits of members to a greater degree than is required by the SIS Regulations, despite anything in the governing rules of the fund, subject to a requirement to act fairly between classes of members. For example, a trustee might choose to continue to protect the benefits of all members from 1 July 2013 until the date the trustee commences to enrol members in a MySuper product.

There are no other conditions which need to be satisfied before the powers to make the Regulation may be exercised.

The Commonwealth consulted publicly on an exposure draft of the Regulation during January and February 2013. The purpose of the consultation was to ensure the changes were technically correct and created no unintended or undesirable consequences for the industry or members.

Details of the Regulation are set out in the Attachment A.

A statement of the Regulation's compatibility with human rights is set out in Attachment B.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 July 2013.

Authority: Subsection 353(1) of the
*Superannuation Industry
(Supervision) Act 1993*

ATTACHMENT A**Details of the *Superannuation Legislation Amendment Regulation 2013 (No. 2)*****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Superannuation Legislation Amendment Regulation 2013 (No. 2)*.

Section 2 – Commencement

This section provides for the Regulation to commence on 1 July 2013.

Section 3 – Authority

This section provides that the Regulation is made under the *Superannuation Industry (Supervision) Act 1993*.

Section 4 – Schedules**Schedule 1****Item [1]**

Item [1] omits the definition of an excluded member from Subregulation 1.03(1), as it only applies to the member protection standards, which will be removed by later items.

Item [2]

Item [2] omits the definition of member-protection standards from Subregulation 1.03(1), as it only applies to the member protection standards.

Item [3]

Item [3] omits Regulation 1.03B which provides the meaning of a protected member. A protected member is a member of a superannuation fund with a balance of less than \$1000. The definition of a protected member is relevant only in relation to the member protection standards.

Item [4]

Item [4] replaces the note from Regulation 5.01B. This note provides an example of how a superannuation fund trustee can provide greater member protection than the regulation requires.

Item [5]

Item [5] omits the words ‘the member-protection standards and’ from Subregulation 5.02(3).

Item [6]

Item [6] omits Regulation 5.02A, which defines what is meant by ‘fair and reasonable’ in the member protection standards.

Item [7]

Item [7] omits ‘the member-protection standards,’ from Subregulation 5.03(2).

Item [8]

Item [8] omits Division 5.5, which provides the member-protection standards.

Item [9]

Item [9] omits Division 5.6, concerning existing personal superannuation members. This Division serves no purpose without the member protection standards.

Item [10]

Item [10] removes Paragraph 10.06(3)(a), which references protected members, and substitutes Paragraph 10.06(3)(b) as Subregulation 10.06(3).

ATTACHMENT B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 2)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to repeal the member protection standards in the *Superannuation Industry (Supervision) Regulations 1994*.

MySuper fees rules, which are to commence on 1 July 2013, will require that all MySuper members be charged fees on the same basis, a requirement that cannot be met at the same time as the member protection standards, which require fees for small balances to not exceed the investment earnings on the overall account.

From 1 July 2013, superannuation funds will transfer small inactive accounts to the Australian Taxation Office, which will protect these accounts from being eroded by fees and charges. Interest will be paid on these accounts at a rate equivalent to CPI inflation. Members will be able to reclaim these account balances from the Australian Taxation Office at any time.

Human rights implications

This Legislative Instrument engages and promotes the right to equality and non-discrimination in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the International Covenant on Civil and Political Rights.

The member protection standards currently require fees for small balances to not exceed the investment earnings on the overall account.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the right to equality and non-discrimination.

William Richard Shorten

Minister for Financial Services and Superannuation