

# **Superannuation Industry (Supervision) Regulations (Amendment) 1997 No. 343**

## EXPLANATORY STATEMENT

### STATUTORY RULES 1997 No. 343

Issued by the authority of the Assistant Treasurer

*Superannuation Industry (Supervision) Act 1993*

Superannuation Industry (Supervision) Regulations (Amendment)

*The Superannuation Industry (Supervision) Act 1993* (the Act) and the Superannuation Industry (Supervision) Regulations (the Principal Regulations) provide for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts and for their supervision by the Insurance and Superannuation Commissioner.

Section 353 of the Act provides that the Governor-General may make Regulations for the purposes of the Act.

At present, superannuation benefits are generally required to be 'preserved' in the superannuation system until retirement on or after age 55. However, subject to the governing rules of the superannuation fund, early release of 'preserved' benefits is permitted under the Principal Regulations in certain restricted circumstances including severe financial hardship' or 'compassionate' grounds.

The purpose of the Regulations is to vary the original measures announced in the 1997-98 Budget to tighten and streamline the administration of the early release of superannuation benefits.

The Regulations:

- \* amend the objective test for 'severe financial hardship' announced in the 1997-98 Budget and introduce a subjective test of 'severe financial hardship' to be administered by fund trustees (Regulation 2);
- \* introduce flexibility in the arrangements for the release of benefits on 'compassionate' grounds, tightly linked to the defined criteria announced in the 1997-98 Budget (Regulation 3);
- \* insert a minimum threshold of \$200 for the preservation of benefits on the termination of employment (Regulation 4), and
- \* provide for a transitional period where preserved superannuation can be accessed on the ground of permanent departure from Australia (Regulation 4).

The Regulations are described in detail in the attachment.

The Regulations commence on date of gazettal.

## **ATTACHMENT**

### **Regulation 1 - Amendment**

Regulation 1 provides that the Superannuation Industry (Supervision) Regulations (the Principal Regulations) are amended as set out in these Regulations.

## **Regulation 2 - Regulation 6.01 (Interpretation)**

The Principal Regulations were amended with effect from 1 July 1997, as announced in the 1997-98 Budget, to remove the subjective assessment of applications for release of benefits on the ground of 'severe financial hardship' by the Insurance and Superannuation Commissioner. An objective test of hardship was inserted to be administered by fund trustees based on evidence that members had received specified Commonwealth income support payments for a continuous period of 52 weeks (or for people aged 55 years and 39 weeks or over, a cumulative period of 39 weeks after turning age 55 years).

The new Regulations reduce the required period of receipt of Commonwealth income support payments for persons both over and under 55 years and 39 weeks to 26 weeks as well as insert a subjective test to be administered by the fund trustee. The test for persons aged 55 years and 39 weeks and over of a cumulative period of 39 weeks after turning age 55 years will continue to apply, in addition to the new test, as an optional, alternative test of 'severe financial hardship'.

Subregulation 2.1 omits paragraph 6.01 (5)(a) and inserts a new paragraph 6.01 (5)(a). New paragraph 6.01 (5)(a) sets out the test for persons to be taken to be in 'severe financial hardship' as follows:

- \* receipt of Commonwealth income support payments for a continuous period of 26 weeks; and
- \* satisfy a subjective test of 'severe financial hardship', to be administered by the fund trustee, that requires a fund trustee to be satisfied that the person is unable to meet reasonable and immediate family living expenses.

In addition, persons aged 55 years and 39 weeks or over are taken to be in 'severe financial hardship' (existing paragraph 6.01 (5)(b) refers) if

- \* they have received specified Commonwealth income support payments for a cumulative period of 39 weeks after turning age 55 years (the new trustee-administered subjective test will not apply); and
- \* they are not gainfully employed on a full-time or part-time basis on the date of application to the fund trustee.

## **Regulation 3 - Regulation 6.19A (Release of benefits on compassionate grounds)**

Regulation 6.19A defines the criteria for the release of benefits on 'compassionate' grounds as announced in the 1997-98 Budget.

Subregulation 3.1 omits subparagraph 6.19A(1)(e)(iv) and substitutes a new subparagraph 6.19A(1)(e)(iv) to provide for a new criteria for the release of benefits on 'compassionate' grounds (see subregulation 3.2 below).

Subregulation 3.2 inserts a new paragraph 6.19A(1)(f) to provide the Insurance and Superannuation Commissioner with a qualified discretion in relation to 'compassionate' grounds to approve cases that almost fall within the boundaries of the objective criteria in paragraphs 6.19A(1)(a) to (c) but at present cannot be approved because they do not strictly meet the letter of the criteria.

## **Regulation 4 - Schedule 1 (Condition of release and cashing restrictions preserved benefits and restricted non-preserved benefits)**

Subregulation 4.1 inserts item 103A and item 104 into Schedule 1 to the Principal Regulations.

As announced in the 1997-98 Budget, the Principal Regulations do not provide for access to superannuation benefits on the ground of permanent departure from Australia from 1 July 1997.

The new Regulations provide for a transitional period where people may apply for access to superannuation benefits on the ground of permanent departure from Australia.

Item 103A provides a new transitional provision to enable fund trustees to release an amount on the ground of permanent departure in respect of members who make an application for the release of their superannuation benefits and permanently depart overseas prior to 1 July 1998.

Item 104 inserts a new condition of release enabling a preserved benefit which is less than \$200 to be accessed on termination of employment on or after 1 July 1997. The 1997-98 budget measures provided that the threshold would be removed from 1 July 1997 requiring all preserved superannuation balances to remain in the superannuation system.

Subregulation 4.2 amends item 105 so that the maximum amount that can be released on the ground of 'severe financial hardship' in any year, is reduced from \$15,000 to \$10,000.

## **Regulation 5 - Application**

Subregulation 5.1 provides that the amendments made by regulation 2 and subregulation 4.2 do not relate to applications made to a fund trustee before the date of gazettal of these Regulations. This amendment will ensure that the Principal Regulations apply in relation to applications for the early release of superannuation benefits on the ground of 'severe financial hardship' received by fund trustee from 1 July 1997 until the date of gazettal of the Regulations.

Subregulation 5.2 provides that the transitional arrangements put in place in respect of those people who have applied for the release of benefits. on the ground of permanent departure from Australia before 1 July 1997 are maintained.