

Superannuation Industry (Supervision) Amendment Regulations 2002 (No. 3) 2002 No. 150

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 150

Issued by the Authority of the Minister for Revenue and Assistant Treasurer

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Amendment Regulations 2002 (No. 3)

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (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 Regulations is to implement the Government's superannuation election commitments relating to child superannuation accounts, superannuation from the Baby Bonus and continuing superannuation contributions to age 75 and make other minor miscellaneous amendments.

The Regulations:

- implement the following superannuation election commitments which were announced in *A Better Superannuation System* and confirmed in the 2002-03 Budget:
 - allow parents, grandparents, other relations and friends to make superannuation contributions on behalf of a child of up to \$3,000 per child per three year period;
 - allow recipients of the Baby Bonus to contribute the Baby Bonus, as well as any other amount, to superannuation, even if they have never worked before; and
 - allow working people aged over 70 but less than 75 to make personal contributions to superannuation;
- reflect a change in the legislation regulating Western Australia's exempt public sector superannuation schemes; and
- make a number of miscellaneous amendments to correct matters of drafting style, remove an obsolete reference to section 18A of the Act and correct a previous misdescribed amendment.

The Regulations:

- ensure that a regulated superannuation fund which is not a public offer superannuation fund can accept contributions on behalf of children from current members without becoming a public offer superannuation fund;
- introduce transitional disclosure requirements that must be satisfied by regulated superannuation funds before issuing child accounts. The provisions would apply to a regulated superannuation fund only if it is not subject to the operation of the *Financial Services Reform Act 2001* disclosure provisions during the 2-year transitional period;

- amend the compulsory cashing requirement for members aged over 70 but less than 75 to ensure that the superannuation benefits of these members must only be cashed if they are no longer working part-time (at least 10 hours per week); and
- ensure that a regulated superannuation fund can accept contributions in respect of children and recipients of the Baby Bonus and can accept personal contributions from working members aged over 70 but less than 75.

EXPLANATION OF PROVISIONS

Regulation 1 - Name of Regulations

This clause is a formal provision specifying the mode of citation of the Regulations.

Regulation 2 - Commencement

The Regulations will commence on 1 July 2002.

Regulation 3 - Amendment of Superannuation Industry (Supervision) Regulations 1994

This clause provides that the Superannuation Industry (Supervision) Regulations 1994 (the SIS Regulations) are amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

ITEM 1 - DEFINITIONS

Regulation 1.03 (1) of the SIS Regulations defines the terms used in the Regulations. **Item 1** defines *child account* as a superannuation product issued as a result of accepting child contributions and *child contributions* as contributions made under paragraph 7.04(1)(e).

ITEMS 2 TO 6 - MISCELLANEOUS AMENDMENTS

Items 2 to 5 correct matters of drafting style in Part 1A of the SIS Regulations.

Item 6 removes an obsolete reference to section 18A of the SIS Act.

ITEMS 7 AND 8 - DEFINITION OF PUBLIC OFFER SUPERANNUATION FUND

Regulation 3.01 lists classes of persons who are considered 'prescribed classes' in determining whether a superannuation fund is a public offer fund. Public offer superannuation funds are, generally speaking, those funds which make offers of superannuation to the public. However, sub-subparagraph 18(1)(a)(ii)(B) of the SIS Act provides that a standard employer-sponsored fund will be a public offer superannuation fund if, among other things, it has at least one member who is not a standard employer-sponsored member and who is not a member of a prescribed class. A public offer superannuation fund is subject to more onerous supervisory requirements.

Items 7 and 8 insert new paragraphs (g) and (h) into regulation 3.01 to provide for new subclasses of the prescribed class of persons. The amendments ensure that a standard employer-sponsored fund will not become a public offer superannuation fund if it issues child accounts in certain circumstances.

The new subclass in paragraph (g) comprises a person in relation to whom the fund has accepted child contributions from an existing or former standard employer-sponsored member of the fund. This subclass enables a fund to accept child contributions from a standard employer-sponsored member without becoming a public offer superannuation fund.

The new subclass in paragraph (h) comprises a person in relation to whom the fund has accepted child contributions from an existing or former standard employer-sponsored member of another fund which has the same standard employer-sponsor as the fund. This subclass enables a fund to accept child contributions from a standard employer-sponsored member of another fund without becoming a public offer superannuation fund where the two funds concerned have the same standard employer-sponsor. This would apply, for example, where an employer has several funds, some of which may be 'closed' and others 'open' to new contributions. In these circumstances, paragraph (h) will allow a person who is only a member of a 'closed' fund to make child contributions to one of the 'open' funds operated by the employer (rather than having to use some other fund) without the 'open' fund becoming a public offer fund.

ITEM 9 - PART 4A CHILD ACCOUNTS

Item 9 inserts a new part, Part 4A, into the SIS Regulations. The purpose of Part 4A is to:

- prescribe who can make decisions in relation to a child account; and
- introduce transitional disclosure requirements that must be satisfied by regulated superannuation funds before issuing child accounts.

The standards set out in Part 4A are operating standards for the purposes of subsections 31(1) of the SIS Act. **[Reg 4A.01]**

Child is defined for the purposes of Part 4A as an individual who is under the age of 18. **[Reg 4A.02]**

Decisions about accounts

The amendments prescribe that the child's legal personal representative or, if the child does not have a legal personal representative, the child's parent or guardian, must make decisions in relation to child accounts. This ensures that an appropriate adult will make any decisions regarding the child account, such as whether to transfer the balance to another fund. The operation of accounts opened by employers for employees under the age of 18 will be unaffected by this requirement.

Once the child reaches age 16 the parent or guardian can notify the fund that the child will make any decisions regarding the account. This allows, for example, working children over 16 years of age to take responsibility for their superannuation account if their parent or guardian agrees. **[Reg 4A.03]**

Transitional arrangements - disclosure

Part 4A provides disclosure provisions for regulated superannuation funds which are not subject to the disclosure provisions contained in the *Financial Services Reform Act 2001*. These regulations will only apply during the 2-year transitional period for financial products under section 1438 of the *Corporations Act 2001*. **[Reg 4A.04]**

The terms *eligible application*, *FSR commencement*, *old Regulations* and *old SIS Act* are defined for the purposes of Division 2 of Part 4A. An eligible application in relation to the issue of a child account is an application that meets the requirements of regulation 4A.05 (explained below). FSR commencement has the meaning given by section 1410 of the *Corporations Act 2001*. Old

Regulations and old SIS Act are the SIS Regulations and SIS Act as in force immediately before the FSR commencement. **[Reg 4A.05]**

The requirements for an eligible application in relation to a child account differ depending on whether the child account is issued by a public offer superannuation fund or a fund that is not a public offer superannuation fund.

For a public offer superannuation fund, an eligible application in relation to a child account must comply with the application requirements under section 153 of the old SIS Act. The person making the application must have received the additional information and documents (if any) that would have been received by the applicant under paragraph 153(3)(c) of the old SIS Act.

For a regulated superannuation fund that is not a public offer superannuation fund, the person making the application must have received the information for new members that would have been required under Division 2.3 of the old SIS Regulations.

In both cases, the application must include evidence of the consent of the child's legal personal representative, or if the child does not have a legal personal representative, the child's parent or guardian, the name and address of that person and the name. The application must also include the name, address and date of birth of the child. **[Reg 4A.06]**

The trustee of a superannuation entity must not issue a child account to a person unless the child account is issued as a result of an eligible application made by that person. However, an eligible application will not be required where a child account is issued by a self managed superannuation fund and the person making the application is both a trustee of the fund and the child's legal personal representative, parent or guardian. **[Reg 4A.07]**

ITEM 10 - COMPULSORY CASHING OF BENEFITS

Regulation 6.21 provides that benefits in a regulated superannuation fund must be cashed or rolled over for immediate cashing as soon as practicable after certain events. **Item 10** amends the compulsory cashing standards to align the treatment of members aged 70 but less than 75 with that of members aged 65 but less than 70. As a result, compulsory cashing will only apply to the benefits of a member aged 70 but less than 75 (other than post-65 employer-financed benefits) if the member is no longer gainfully employed for at least ten hours each week. The current compulsory cashing standards applying to members over the age of 75 are maintained.

ITEMS 11 TO 29 - CONTRIBUTION AND BENEFIT ACCRUAL STANDARDS

Items 11 to 19 amend the contribution standards to ensure that a regulated superannuation fund can accept contributions in respect of children and from recipients of the Baby Bonus and that they can accept personal contributions from working members aged over 70 but less than 75. The amendments also ensure that a defined benefit fund can grant an accrual of benefits in these circumstances.

Item 11 defines child for the purposes of Part 7 as an individual who is under the age of 18.

Items 12 to 14 allow a regulated superannuation fund to accept contributions made in respect of a child, a recipient of the Baby Bonus or personal contributions from working members aged 70 but less than 75.

A child cannot make child contributions on their own behalf. Additionally, contributions made by, or on behalf of, an employer of a child are not child contributions. A regulated superannuation fund may only accept child contributions up to a maximum amount of \$3,000 in each 3 year period. The first three year period begins on the date that the first child contribution is made in respect of the child.

A regulated superannuation fund may accept contributions in respect of a recipient of the Baby Bonus, that is, a person who is entitled to a first child tax offset under Subdivision 61-I of the *Income Tax Assessment Act 1997*. Contributions can only be accepted under paragraph 7.04(1)(f) if they are made within 1 year after the person was notified by the Commissioner of Taxation that they are entitled to the Baby Bonus.

A regulated superannuation fund may accept contributions in respect of a member who is aged 70 but less than 75 only if the contributions are personal contributions, in addition to mandated employer contributions as currently provided. Personal contributions are contributions made by the member for their own benefit. The current contribution standards applying to members over the age of 75 are maintained.

Items 15 and 19 ensure that the current provisions relating to contributions made, or benefit accruals granted, after the relevant period are maintained.

Items 16 and 17 allow a defined benefit fund to grant an accrual of benefits in respect of a member if the accrual is attributable to child contributions or if the member is entitled to the Baby Bonus, that is, a first child tax offset under Subdivision 61-I of the *Income Tax Assessment Act 1997*. Child contributions to a defined benefit fund will be subject to the limits specified in subregulation 7.04(1E). An accrual that is granted under paragraph 7.05(1)(f) must be granted within 1 year after the person was notified by the Commissioner of Taxation that they are entitled to the Baby Bonus.

Item 18 allows a defined benefit fund to grant an accrual of benefits in respect of a member who is aged 70 but less than age 75 if the accrual is attributable to personal contributions, in addition to mandated employer contributions as currently provided. The current benefit accrual standards applying to members over the age of 75 are maintained.

ITEM 20 - PREVIOUS MISDESCRIBED AMENDMENT

Item 20 corrects a previous misdescribed amendment in subregulation 47.2 of Statutory Rules No. 193 of 1998.

ITEM 21 - EXEMPT PUBLIC SECTOR SUPERANNUATION SCHEMES

Exempt Public Sector Superannuation Schemes (EPSSS) are listed in Schedule 1AA of the SIS Regulations. These schemes are not subject to the provisions of the SIS Act, however, under a Heads of Government agreement, the Commonwealth, States and Territories undertake to ensure that these schemes operate in a manner consistent with the Commonwealth's retirement incomes policy. Item 21 amends Schedule 1AA to reflect a change in the legislation regulation Western Australia's EPSSS.