

Small Superannuation Accounts Regulations 2002 2002 No. 216

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 216

Issued by authority of the Minister for Revenue and Assistant Treasurer

Small Superannuation Accounts Act 1995

Small Superannuation Accounts Regulations 2002

Section 94 of the *Small Superannuation Accounts Act 1995* (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 Act established the Superannuation Holding Accounts Reserve (SHAR). Employers can make superannuation contributions into a SHAR account for employees if they are unable to find a fund willing to accept the contribution (e.g. if the contribution is too small).

Recent amendments to the *Family Law Act 1975* and related legislation will in future allow superannuation to be split between couples on the breakdown of marriage. Pursuant to amendments made to the Act by the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001* accounts in SHAR will also be able to be split.

The Act provides that in splitting the account of an account holder (the 'member spouse') the amount to be allocated to the other party to the marriage breakdown (the 'non-member spouse') is to be worked out in accordance with the regulations.

The purpose of the regulations is to provide that the balance of the new account for the nonmember spouse is to be an amount determined from the superannuation agreement flag lifting agreement or splitting order served on the Commissioner of Taxation (who administers SHAR).

Details of the Regulations are set out in the Attachment.

The Regulations would commence on the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*, which received Royal Assent on 18 September 2001, and which is expected to commence in late December 2002.

ATTACHMENT

Small Superannuation Account Regulations 2002

Explanation of the amendments

Regulation 1 - specifies the name of the Regulations as the Small Superannuation Accounts Regulations 2002.

Regulation 2 - provides that the Regulations would commence on the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*. That Act in turn commences at the same time as commencement of the *Family Law Legislation Amendment (Superannuation) Act 2001* which commences on a date to be proclaimed or 18 months after Royal Assent (which would be 28 December 2002).

Regulation 3 - provides definitions for certain terms used in the Regulations. In particular the terms member spouse, non-member spouse, payment split superannuation agreement, flag lifting agreement, and splitting order, have the same meaning as in Part VIIIB of the *Family Law Act 1975*.

Regulation 4 - sets out how the Commissioner of Taxation (Commissioner) is to determine the balance of the new SHAR account for the non-member spouse when the member spouse's SHAR account is split on marriage breakdown. The balance of the new account for the nonmember spouse is to be ascertained from the superannuation agreement flag lifting agreement or splitting order (whichever is relevant) that has been served on the Commissioner. These documents will either specify the actual amount for the non-member spouse's account or a means by which the Commissioner can determine an amount (e.g. it may specify a percentage that can be applied for the purposes of splitting the account).

Paragraph 4(2)(b) ensures that the new account for the non-member spouse cannot exceed the amount in the member spouse's account at the time the account is split.

Under section 15(5) of the Act the member spouse's account will be reduced by the amount that is allocated to the non-member spouse's account.