

EXPLANATORY STATEMENT

Superannuation Industry (Supervision) Act 1993, section 332

MODIFICATION DECLARATION No 24

PURPOSE OF DECLARATION

- 1 The purpose of Modification Declaration No 24 (MD 24) is to provide for transitional arrangements in respect of the amendments to subregulations 6.21(1) and 6.21(1A) of the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) made by the *Superannuation Industry (Supervision) Amendment Regulations 2004 (No 4)* (SR No 148 of 2004).

BACKGROUND

- 2 SR No 148 of 2004 amended subparagraphs 6.21(1)(a)(ii) and 6.21(1A)(a)(ii) of the SIS Regulations, with effect from 1 July 2004, to simplify the compulsory cashing rules for individuals aged 65 to 74.
- 3 Prior to these amendments, trustees had to cash out the benefits of a member aged between 65 and 74 where the person ceased being gainfully employed for at least 10 hours in a week.
- 4 Under the amendments, a complying superannuation fund must cash out the benefits of a member aged between 65 and 74 only where the person had ceased to be gainfully employed “at a part-time equivalent level”. New subregulation 6.21(6) provides that a person is gainfully employed at a “part-time equivalent level” if the person was gainfully employed for at least 240 hours during the financial year that ended on the last occurring 30 June (ie the most recent financial year).
- 5 Thus, with effect from 1 July 2004, the work test for compulsory cashing changed from assessing work undertaken in the current financial year (the requirement being that the member remain working at least 10 hours per week) to assessing work undertaken in the previous financial year (the requirement being that the member have worked for at least 240 hours in that year).

REASON FOR DECLARATION

- 6 SR No 148 of 2004 contains no transitional provisions in relation to the introduction of an annual work test for compulsory cashing. While the amendments do not, strictly speaking, have retrospective effect, there is potential for inequity to result from the application of the new annual work test in the first year of operation as it refers to periods of activity that occurred prior to the commencement of the amendments.

EXPLANATION FOR DECLARATION

- 7 MD 24 provides transitional arrangements for implementing the change from a weekly work test to one based on the previous financial year.
- 8 From 1 July 2004 the 10 hours per week work test ceases to apply.
- 9 MD 24 inserts a new subregulation 6.21(1B) into the SIS Regulations. New subregulation 6.21(1B) removes the requirement for trustees to compulsorily cash benefits in accordance with paragraphs 6.21(1)(a) and 6.21(1A)(a) of the SIS Regulations during the period from 1 July 2004 to 30 June 2005. There is therefore no requirement for compulsory cashing based on work tests for individuals aged 65 to 74 in 2004-05.
- 10 New subregulation 6.21(1C) provides that a trustee is not in breach of paragraph 6.21(1)(a) or 6.21(1A)(a) of the SIS Regulations if, during the period 1 July 2004 to the date of commencement of MD 24, the trustee did not compulsorily cash members' benefits in accordance with those paragraphs as they existed prior to the commencement of MD 24.
- 11 From 1 July 2005 trustees must apply the new annual work test. This work test will take into account gainful employment undertaken in the 2004-05 financial year.

COMMENCEMENT

- 12 MD 24 commences on the date it is signed.

REGULATION IMPACT STATEMENT

- 13 A Regulation Impact Statement is not necessary in relation to MD 24, as the declaration is of a minor or mechanical nature and does not substantially alter existing arrangements.

Dated 2 May 2005

(Published by the Australian Prudential Regulation Authority)