

Approval of provision of benefits No. 1 of 2007

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority

Paragraph 62(1)(b)(v) of the *Superannuation Industry (Supervision) Act 1993*

The purpose of the instrument is to revoke Approval of provision of benefits issued by the Insurance and Superannuation Commissioner (ISC) on 1 July 1997 and to make a revised Approval of provision of benefits under subparagraph 62(1)(b)(v) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) .

Background

1. The sole purpose requirements in section 62 of the SIS Act limit the provision of superannuation benefits by regulated superannuation funds to a range of prescribed or approved retirement or retirement-related circumstances under the core and ancillary purposes. The core purposes set out the reasons for which a fund may exist and pay benefits. They operate in conjunction with the payment standards. Ancillary purposes are those purposes for which a superannuation fund may be maintained under paragraph 62(1)(b) of the SIS Act. A regulated superannuation fund maintained for an ancillary purpose must also be maintained for at least one of the core purposes set out in paragraph 62(1)(a) of the SIS Act. Under subparagraph 62(1)(b)(v) of the SIS Act, a fund may provide other ancillary benefits not specified in the prescribed core or ancillary purposes where the fund has obtained the Regulator's written approval.
2. Both the Australian Prudential Regulation Authority (APRA) and the Australian Taxation Office (ATO) have the power to approve other ancillary purposes in writing under subparagraph 62(1)(b)(v). This power was previously held by the former Insurance and Superannuation Commissioner whose 1 July 1997 approval of ancillary purposes for which benefits may be provided continued to have effect after APRA and the ATO took over the administration of the SIS Act from the ISC. The 1 July 1997 legislative instrument approved, in limited circumstances, the provision of welfare and long service leave benefits by certain funds and benefits provided on demutualisation of specified companies in which funds had invested. As those categories of benefit payments have been finalised, such approval is no longer relevant or appropriate. The 1 July 1997 legislative instrument approved the provision of benefits under Part 6 of the SIS Regulations and the revised approval will continue this while clarifying that the approval will include the provision of benefits under Part 6 as affected by modification declarations and exemptions.

Purpose of the instrument

3. The instrument revokes the 1 July 1997 approval and enacts a revised approval for funds under APRA's jurisdiction. This revocation and approval applies only to

regulated superannuation funds under the trusteeship of Registrable Superannuation Entity (RSE) Licensees and has no application to the trustees of self managed superannuation funds regulated by the ATO.

4. The instrument approves the provision of benefits for, or in respect of, each member of a fund which Part 6 of the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) permits or requires to be paid when, to the extent that, and to the persons to whom, the fund is permitted or required under Part 6 of the SIS regulations to pay them. To avoid doubt, the instrument makes clear that this includes situations where benefits are provided in accordance with Part 6 of the SIS Regulations as modified by APRA under section 332 of the SIS Act and/or the provision has been facilitated by an exemption made by APRA under section 328 of the SIS Act.

Operation of the instrument

5. The ancillary purpose approval relating to the provision of benefits under Part 6 of the SIS Regulations addresses tensions which might otherwise arise between the sole purpose test of section 62 and the payment standards of Part 6. For example:
 - the sole purpose provisions allow for payment of benefits only to members, dependants or the legal personal representative of the member, whereas regulation 6.22 authorises payment of benefits in certain, very limited, circumstances to any individual;
 - the sole purpose test may prohibit payment of benefits that had become unrestricted non-preserved benefits because of termination of employment, but that had been rolled over to a second fund. The benefits would not then be payable from the second fund owing to the terms of paragraph 62(1)(b)(i), which apply only to benefits to which the relevant employer had contributed; and
 - the sole purpose test may prohibit payment of a benefit under \$200 to a lost member who is found. The benefit may be paid under item 111 of the Conditions of release under Schedule 1 of the SIS Regulations.However, the ancillary purpose approval ensures these benefits remain payable at any time.
6. The approval of benefits also recognises that the application of payment standards under Part 6 of the SIS Regulations may be affected by APRA's powers of exemption and modification. Part 6 of the SIS Regulations is a 'modifiable provision' under paragraph 327(c) of the Act, as the payment standards of Part 6 are regulations made for the purposes of Part 3 of the Act.

Consultation

7. APRA consulted with relevant government agencies and industry organisations. No substantive issues were identified in the consultation process.

Commencement

8. The revocation and the approval of provision of benefits under subparagraph 62(1)(b)(v) of the SIS Act come into force from the date of registration of the instrument on the Federal Register of Legislative Instruments.