



Superannuation Industry (Supervision) Act 1993

EXPLANATORY MEMORANDUM

ACCOMPANYING

**AMENDMENT OF
MODIFICATION DECLARATION No 23**

PURPOSE OF THE AMENDMENT

1. The purpose of the amendment of modification declaration number 23 is to:
 - ensure that amendments made by the *Superannuation Legislation Amendment Act (No 3) 1999* (“**SLAA3**”) to definitions relating to small superannuation funds contained in the *Superannuation Industry (Supervision) Act 1993* (the “**SIS Act**”) are reflected in modification declaration number 23; and
 - provide more certainty for actuaries in preparing the actuarial report required by the modification declaration.

BACKGROUND

2. The purpose of modification declaration number 23 (issued on 12 January 1999) is to ensure that regulated superannuation funds that are paying complying pensions (other than allocated pensions and pensions backed by life insurance annuities) are subject to appropriate prudential standards relating to solvency. Specifically, modification declaration number 23 requires superannuation funds which provide such pensions to obtain an annual actuarial report which sets out the actuary’s opinion regarding the probability that the pensions will continue to be able to be paid in accordance with the fund’s governing rules. (See regulations 9.29 to 9.31 of the *Superannuation Industry (Supervision) Regulations 1994* (the “**SIS Regulations**”), as modified by modification declaration number 23.) The Australian Prudential Regulation Authority (“**APRA**”) has a discretion to alter the frequency of the actuarial report from annually to not less frequently than once every three years for funds that have five or more members. (See paragraph 9.29A(2)(c), added by modification declaration number 23.)

3. The Institute of Actuaries of Australia (“**IAA**”) is currently developing a Guidance Note to assist its members to prepare the actuarial report. As presently drafted, paragraph 9.31(1)(ba), which was added by modification declaration number 23, requires the actuary to state in the actuarial report his or her opinion that there is a “reasonable degree of probability” that the fund will be able to pay the pensions. After extensive discussions between the IAA, APRA and the Department of Family and Community Services it was agreed that a more recognised and assessable term such as “high degree of probability” should be used in paragraph 9.31(1)(ba). This would resolve the difficulties in determining what “reasonable” means and enable a Guidance Note to be more readily produced for the actuarial profession.
4. Modification declaration number 23 uses the superseded term “excluded fund”. SLAA3 removed the term “excluded fund” from the SIS Act. “Excluded fund” was defined (insofar as the term applied to superannuation funds) as a superannuation fund with less than five members. SLAA3 added section 17A to the SIS Act, which contains a new definition, namely “self managed superannuation fund” (“**SMSF**”). That section defines an SMSF as a superannuation fund with less than five members, all of whom have a relationship with the fund of a kind described in that section (such as being a member or trustee of the fund). SLAA3 also transferred the responsibility for regulating SMSFs from APRA to the Australian Taxation Office. Superannuation funds that have less than five members and that are not an SMSF continue to be regulated by APRA.
5. Because SLAA3 removed the term “excluded fund” from the SIS legislation, it has become necessary to replace all references to excluded funds in modification declaration number 23 with another appropriate description.

SUMMARY OF THE AMENDMENT

6. The amendment of modification declaration number 23 amends that modification declaration by:
 - replacing “is not an excluded fund” in subparagraph 9.29A(2)(b)(ii) and paragraph 9.29A(2)(c) of the SIS Regulations (which were added by modification declaration number 23) with “has five or more members”; and
 - replacing “reasonable degree of probability” in paragraph 9.31(1)(ba) of the SIS Regulations (which was added by modification declaration number 23) with “high degree of probability”.

COMMENCEMENT

7. The amendment of modification declaration number 23 commences on gazettal.

REGULATION IMPACT STATEMENT

8. The Office of Regulation Review has advised that a Regulation Impact Statement is not necessary in relation to the amendment of modification declaration number 23, as the amendments are of a minor and technical nature.

Dated October 2000

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