

**Statutory Rules 1993 No. 52**1

**Superannuation Guarantee (Administration) Regulations**

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Guarantee (Administration) Act 1992.*

Dated 27 April1993.

BILL HAYDEN

Governor-General

By His Excellency’s Command,

GARY JOHNS

Parliamentary Secretary to the Treasurer for and on behalf of the Treasurer

**Citation**

**1.** These Regulations may be cited as the Superannuation Guarantee (Administration) Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901* s. 48]

**Interpretation**

**2.** In these Regulations, unless the contrary intention appears:

**“Act”** means the *Superannuation Guarantee* (*Administration*) *Act 1992*;

**“charge”** includes:

(a) superannuation guarantee charge; and

(b) additional superannuation guarantee charge under section 49 or Part 7 of the Act;

**“employer contribution rate”**,in relation to a member of a superannuation scheme, means the rate:

(a) at which contributions relating to the member are paid into the superannuation fund in respect of the scheme by an employer of the member; and

(b) that is expressed as a percentage of his or her annual salary within the meaning of the governing rules of the scheme;

**“minimum requisite benefit”** has the same meaning as in the Occupational Superannuation Standards Regulations.

**Benefit certificates**

**3. (1)** An employer must obtain a benefit certificate from an actuary:

(a) if the employer is required to lodge a superannuation guarantee statement—on or before the day on which the superannuation guarantee statement for the year, or the first year, to which the certificate relates is lodged; or

(b) if the employer is not required to lodge a superannuation guarantee statement—on or before 14 August in the year following the year, or the first year, to which the certificate relates;

or on or before such later date as the Commissioner allows.

**(2)** A benefit certificate must:

(a) include the name of each defined benefit superannuation scheme to which the certificate relates; and

(b) specify, or identify by reference to the governing rules of each scheme to which the certificate relates, the minimum requisite benefit; and

(c) specify:

(i) the notional employer contribution rate in relation to each scheme, or combination of schemes, to which the certificate relates; and

(ii) the class of members of the scheme or schemes to which the notional employer contribution rate relates; and

(d) include a statement to the effect that each notional employer contribution rate referred to in paragraph (c) has been calculated in accordance with these Regulations; and

(e) specify the date of effect of the benefit certificate in relation to each scheme to which the certificate relates; and

(f) include the name, business address and actuarial qualifications of the actuary who issues the certificate; and

(g) include the signature of the actuary and the date on which the certificate is signed.

**Notional employer contribution rate: general**

**4.** **(1)** Subject to subregulation (2), the notional employer contribution rate in relation to a class of employees who are members of a defined benefit superannuation scheme is the rate determined in accordance with regulation 5 or 6.

**(2)** If regulation 5 or 6 is not applicable to a class of employees, the notional employer contribution rate for that class is calculated in accordance with a method determined by an actuary, who certifies that the method:

(a) is applicable to the class; and

(b) is consistent with regulation 5 or 6; and

(c) determines a rate that is comparable to the rate at which the employer of the employees must contribute to the superannuation scheme, or schemes, to provide the employees with the minimum requisite benefit.

**Notional employer contribution rate: accumulation benefits**

**5.** If, in relation to a class of employees who are members of a defined benefit superannuation scheme:

(a) the minimum requisite benefit in respect of each employee in that class is calculated as an accumulation of employer contributions; and

(b) the employer contribution rate used in that calculation is the same for each employee in the class; and

(c) the annual salary, for the purposes of the governing rules of the scheme, of each employee in the class is a notional earnings base within the meaning of section 13 or 14 of the Act;

the notional employer contribution rate in relation to the class is that employer contribution rate.

**Notional employer contribution rate: defined benefits**

**6.** **(1)** For the purposes of this regulation:

**DF**, in relation to a person:

(a) who has not turned 45—is 0.3; or

(b) who has turned 45 but has not turned 65—is the number that is calculated by multiplying 0.00125 by:

(i) in the case of a person whose age, expressed in months, when he or she withdraws from a superannuation scheme is a whole number of months—the number that is equal to 780 less the number of months; or

(ii) in the case of a person whose age, expressed in months, when he or she withdraws from a superannuation scheme exceeds a whole number of months—the number that is equal to 779 less the number of months; or

(c) who has turned 65—is 0; and

**F** is:

(a) if a benefit is expressed in the governing rules of a superannuation scheme as a multiple of the annual salary of the person as at the day on which he or she withdraws from the scheme—0.0833; and

(b) if a benefit is expressed in the governing rules of the scheme as a multiple of the average annual salary of the person in the period of 3 years ending on the day on which he or she withdraws from the scheme—0.09; and

(c) if a benefit is expressed in those governing rules as a multiple of the average annual salary of the person in a particular number of years of membership of the person in the scheme—0.0833 + (0.0022 ×that number of years); and

**MB** has the same meaning as in subregulation (5); and

**MCR**, in relation to a member of a superannuation scheme, is the rate at which contributions are paid by the member into a superannuation fund in respect of the scheme, being a rate that is expressed as a percentage of his or her annual salary for the purposes of the governing rules of the scheme; and

**NM**, in relation to contributions to a superannuation scheme in respect of a person that are made after 30 June 1992, is:

(a) in the case of a person who withdraws from the scheme at the end of a period that is a whole number of months after the day on which the first contribution was made—that whole number; and

(b) in the case of a person who withdraws from the scheme at the end of a period that exceeds a whole number of months after the day on which the first contribution was made—the number that is equal to the sum of:

(i) that whole number; and

(ii) the fraction that is calculated by dividing the number of days in the month in which the person withdrew from the scheme, up to and including the day of withdrawal, by the total number of days in that month; and

**SAL** is:

(a) if a benefit is expressed in the governing rules of a superannuation scheme as a multiple of the annual salary of a member of that scheme as at the day on which he or she withdraws from the scheme—his or her annual rate of salary as at that day; or

(b) if a benefit is expressed in the governing rules of the scheme as a multiple of the average annual salary of a member of the scheme in a period referred to in paragraph (b) or (c) of the definition of ‘F’—his or her average annual rate of salary in the relevant period; and

**TCR** has the same meaning as in subregulation (4); and

**TR**, in relation to a complying superannuation scheme, is the rate of tax payable in respect of the scheme in relation to the standard component, within the meaning of section 267 of the *Income Tax Assessment Act 1936*,of the taxable income of the scheme.

**(2)** The notional employer contribution rate in relation to a defined benefit superannuation scheme in respect of a class of employees is calculated in accordance with this regulation if:

(a) MCR and TCR are greater than 0 and have not changed since 1 July 1992; and

(b) MCR and TCR are the same in respect of each employee in the class; and

(c) TR has not changed since 1 July 1992; and

(d) the whole of the minimum requisite benefit constitutes a taxed element within the meaning of subsection 27 AB (1) of the *Income Tax Assessment Act 1936*;and

(e) the benefit certificate to which the notional employer contribution rate relates is in respect of a single superannuation scheme; and

(f) the date of effect of the benefit certificate is 1 July 1992; and

(g) the annual salary, for the purposes of the governing rules of the scheme, of each employee in the class is a notional earnings base within the meaning of section 13 or 14 of the Act; and

(h) the minimum requisite benefit in respect of each employee in the class is prescribed in the governing rules of the scheme as a multiple of:

(i) the annual salary of the employee as at the day when he or she withdraws from the fund; or

(ii) the average annual salary of the employee in a period ending when he or she withdraws from the scheme.

**(3)** The notional employer contribution rate in relation to a class of employees specified in a benefit certificate relating to a defined benefit superannuation scheme is calculated using the formula:



**(4)** TCR is calculated using the formula:



**(5)** MB is calculated using the formula:



where:

**MRB** means the minimum requisite benefit in respect of the person; and

**PAB** means the part of that benefit that accrued to the person before 1 July 1992, calculated in accordance with subregulation (6).

**(6)** PAB is calculated using the formula:



where:

**A** is the lesser of:

(a) the amount of the benefit vested in the member as at 30 June 1992 in accordance with the governing rules of the superannuation scheme; and

(b) the amount of the benefit that has accrued in respect of the member as at 30 June 1992 in accordance with those governing rules; and

**B** is the amount that would have been SAL if the member had withdrawn from the scheme on 30 June 1992.

**Certain employees and payments excluded**

**7.** **(1)** For the purposes of paragraph 27 (1) (d) of the Act, each of the following employees is a prescribed employee:

(a) an employee who is the holder of an executive (overseas) visa or entry permit (code number 413) granted under the Migration Regulations as in force in the period from the beginning of 19 December 1989 to the end of 31 January 1993;

(b) an employee who is the holder of a Class 413 (executive (overseas)) visa or entry permit granted under the Migration (1993) Regulations.

**(2)** For the purposes of paragraph 27 (1) (e) of the Act, payments of salary or wages made under the employment program of the Commonwealth that is known as the Community Development Employment Program are prescribed.

**Lodgment of superannuation guarantee statements**

**8.** **(1)** A superannuation guarantee statement must be lodged:

(a) if the Commissioner gives notice to an employer specifying the address to which the statement must be sent—at that address; and

(b) if paragraph (a) does not apply—with an officer authorised by the Commissioner to receive superannuation guarantee statements at an office of the Australian Taxation Office.

**(2)** A superannuation guarantee statement must specify matters set out in the statement in sufficient detail to allow proper consideration of the statement.

**(3)** Unless the Commissioner allows otherwise, an attachment to a superannuation guarantee statement must:

(a) be endorsed with the words:

“This is an attachment of *(insert the number of pages)* pages referred to in the superannuation guarantee statement *(insert a description of the statement)* signed by *(insert ‘me’ or ‘us’)* and dated *(insert the date of signing)*”;and

(b) be signed by, or on behalf of, the employer making the statement; and

(c) be dated by each person signing the statement; and

(d) if the attachment has more than 1 page, have the pages numbered consecutively beginning with “1”.

**Payment of superannuation guarantee charge**

**9.** **(1)** Charge is payable in Australian currency in cash, or by cheque, bank draft or money order:

(a) at an office of the Australian Taxation Office to an officer authorised by the Commissioner to receive payment of charge in the form concerned; or

(b) by deposit to the credit of the Commissioner, or of a Deputy Commissioner, at a branch of the Reserve Bank of Australia; or

(c) at an Australian diplomatic or consular mission in a foreign country to a diplomatic or consular officer authorised by the Commissioner to receive payment of charge in the form concerned.

**(2)** An officer referred to in paragraph (1) (a) or (c) who receives payment of charge must, on request, issue a receipt for the payment.

**(3)** Payment of an amount by cheque is taken not to have occurred if the cheque is not honoured on presentation.

**Notification of certain shortfall components**

**10.** **(1)** The Commissioner:

(a) if the amount of a shortfall component, or the sum of amounts of shortfall components, in respect of the employee exceeds $20—must give a notice in writing to an employee; or

(b) if that amount, or the sum of those amounts, is $20 or a lesser amount—may give a notice in writing to an employee.

**(2)** A notice must include:

(a) the name of the employer; and

(b) the amount or the sum of the amounts.

**(3)** Subject to subregulations (4) and (5), after being given notice by the Commissioner, the employee may request in writing the trustees of a complying superannuation fund nominated in the request to collect the amount, or the sum of the amounts, from the Commissioner.

**(4)** If the employee is under 55 and has retired from the workforce because of permanent incapacity or permanent invalidity, the employee must:

(a) give the Commissioner written notice of the retirement that is signed by the employee and lodged at an office of the Australian Taxation Office; and

(b) lodge with the notice a copy of a certificate signed by 2 registered medical practitioners certifying that the person is unlikely to be able to work again in a capacity for which he or she is reasonably qualified by education, training or experience.

**(5)** If the employee has died, the legal personal representative of the deceased employee must:

(a) give the Commissioner written notice of the death that is signed by the legal personal representative and lodged at an office of the Australian Taxation Office; and

(b) lodge with the notice a copy of the death certificate of the deceased employee.

**(6)** The trustees must:

(a) give the employee written notice of receipt of the request; and

(b) specify in the notice the date of its receipt.

Penalty: 5 penalty units.

**(7)** If the trustees decline to comply with the request, the trustees must notify the employee who made the request within 14 days of receipt of the request.

Penalty: 5 penalty units.

**(8)** Subject to subregulation (9), the trustees must lodge the request, or a copy of the request, with the Commissioner at an office of the Australian Taxation Office within:

(a) 14 days of receipt of the request from the employee; or

(b) such further period of not more than 10 years of notice being given to the employee by the Commissioner under subregulation (1) as the Commissioner allows.

Penalty: 5 penalty units.

**(9)** If the request, or a copy of the request, is not lodged with the Commissioner within 10 years of notice being given to the employee by the Commissioner under subregulation (1), the entitlement of the employee in respect of the benefit of the shortfall component lapses.

**Shortfall component not to be paid in certain circumstances**

**11.** The Commissioner must not pay the amount of a shortfall component in respect of an employee unless sufficient information is reasonably available to the Commissioner to allow him or her to identify the employee.

**Payment of allowances for expenses**

**12.** **(1)** Subject to subregulation (2), a person required by the Commissioner to attend before the Commissioner must be paid an amount, or amounts, of allowances for expenses in relation to the attendance in accordance with the Schedule.

**(2)** Allowances for expenses are not payable to a person attending before the Commissioner in the capacity of employer, employee or person representing an employer.

**Last known addresses of employers and employees**

**13.** **(1)** If the postal address of an employer or employee changes from that last set out in a superannuation guarantee statement (in this regulation called **“the old address”**), the employer must give notice in writing of the change to the Commissioner at the office of the Australian Tax Office where the superannuation guarantee statement was lodged:

(a) in the case of the postal address of the employer—within 1 month of the change of address; or

(b) in the case of the postal address of an employee—within 1 month of becoming aware of the change of address.

Penalty: 5 penalty units.

**(2)** If the postal address of an employer or employee changes and the employer has not given notice in accordance with subregulation (1), the old address is taken to be the postal address of the person concerned for the purposes of these Regulations.

**Annotations on superannuation guarantee statements**

**14.** If the Commissioner, or a person employed in the Australian Tax Office, acting in the performance of his or her duties, annotates a superannuation guarantee statement, he or she must use ink of a colour that is different from the colour of the ink used to make the statement.

**SCHEDULE** Subregulation 12 (1)

ALLOWANCES FOR EXPENSES

**1**. A person attending before the Commissioner because of his or her professional, scientific or other special skill or knowledge must be paid:

(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of his or her attendance; and

**SCHEDULE**—continued

(b) in any other case—an amount of $100 for each day on which he or she attends.

**2**. A person attending before the Commissioner, other than a person to whom clause 1 applies, must be paid:

(a) if the person is remunerated in his or her occupation by wages, salary or fees—an amount equal to the amount of wage, salary or fees not paid to the person because of his or her attendance; and

(b) in any other case—an amount of $60 for each day on which he or she so attends.

**3**. A person attending before the Commissioner must be paid a reasonable amount for allowances for:

(a) transport between the usual place of residence of the person and the place that he or she attends for that purpose; and

(b) if he or she is required to be absent overnight from his or her usual place of residence—meals and accommodation;

up to a daily maximum of $400.

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 28 April 1993.