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Statutory Rules 1997 No. 1

414

**Superannuation Industry (Supervision)
(Transitional Provisions) Regulations²
(Amendment)**

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 Industry (Supervision) Act 1993*.

Dated 1 1997.

18 December

WILLIAM DEANE
Governor-General

By His Excellency's Command,

1
Assistant Treasurer

C. R. KEMP

1. Commencement

1.1 These Regulations are taken to have commenced on 1 July 1996.

2. Amendment

2.1 The Superannuation Industry (Supervision) (Transitional Provisions) Regulations are amended as set out in these Regulations.

3. Regulation 3 (Interpretation)

3.1 Subregulation 3 (1) (definitions of “lodgment day” and “pre-lodgment period”):

Omit the definitions, substitute:

“**pre-lodgment period**” means:

- (a) for a late-lodging fund—the period mentioned in paragraph 50 (1) (e) of the Act; or
- (b) for a terminating fund—the pre-termination period of the fund within the meaning of paragraph 50 (2) (g) of the Act;”.

3.2 Subregulation 3 (1):

Insert the following definitions:

“**late-lodging fund**” means a fund to which paragraphs 50 (1) (a), (b), (c) and (d) of the Act applies;

“**terminating fund**” means a fund to which paragraphs 50 (2) (a), (b), (c), (d), (e), and (f) of the Act applies;”.

3.3 Paragraph 3 (3) (b):

Omit the paragraph, substitute:

“(b) the provisions of those Regulations (as in force on 30 November 1993) that are specified in, and modified by, Part 2 of Schedule 2.”.

4. Regulation 3A (Notification of delay in lodging an election—obligations of trustee)

4.1 Omit “paragraph 50 (4) (d)”, substitute “paragraph 50 (1) (d)”.

4.2 Omit “about”, substitute “about:”.

4.3 Paragraph 3A (c):

Omit the paragraph.

4.4 Subparagraph 3A (e) (i):

Omit “paragraph 50 (4) (b)”, substitute “paragraph 50 (1) (b)”.

5. Regulation 4 (Purposes)

5.1 Omit “50 (1) (c), (2) (c), (3) (c) and (4) (e)”, substitute “50 (1) (e) and (2) (g)”.

6. Schedule 1 (Applied OSS Act)

6.1 Schedule 1, Part 2 (definitions of “lodgment day” and “pre-lodgment period”):

Omit the definitions, substitute:

“**pre-lodgment period**’ has the meaning given by subregulation 3 (1) of the Superannuation Industry (Supervision) (Transitional Provisions) Regulations;”.

7. Schedule 2 (Applied OSS Regulations)

7.1 Schedule 2, Part 1:

Omit “17, 18B,”, substitute “11, 17, 18B, 18E.”

7.2 Schedule 2, Part 2:

Omit the Part, substitute Part 2 as set out in the Schedule.

8. Schedule 3 (Form of notice under paragraph 50 (4) (d) of the Act)

8.1 Omit the Schedule.

SCHEDULE

Subregulation 7.2

**NEW PART 2 FOR INSERTION IN SCHEDULE 2 TO THE
SUPERANNUATION INDUSTRY (SUPERVISION)
(TRANSITIONAL PROVISIONS) REGULATIONS**

PART 2—MODIFIED PROVISIONS

1. Regulation 3 (Interpretation)

1.1 Subregulation 3 (1):

Omit the subregulation, substitute:

“(1) In these Regulations, unless the contrary intention appears:

‘**actuary**’ means a Fellow or an Accredited Member of The Institute of Actuaries of Australia;

‘**benefit**’ means a superannuation pension or an annuity, or an amount payable under a superannuation pension or an annuity, and includes an ETP;

‘**business income**’ means the income of a business run by a person either alone or in partnership;

‘**commencement day**’, in relation to a superannuation pension or an annuity, means the first day of the period to which the first payment of the pension or annuity relates;

‘**Commonwealth industrial authority**’ means any board, court, tribunal, body or person having authority under a Commonwealth Act to exercise any power of conciliation or arbitration in relation to industrial disputes;

‘**CPI**’ means the consumer price index (all capital cities) published by the Australian Statistician;

‘**defined benefit superannuation fund**’ means a superannuation fund whose governing rules provide that:

- (a) in all cases—one or more members of the fund are entitled, on retirement, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

(i) the amount of the member's annual salary:

(A) at the date of the member's retirement; or

(B) at a date before retirement; or

- (C) averaged over a period of employment before retirement;
- (ii) a specified amount; and
- (b) if the fund is not a public sector fund—some or all of the contributions to the fund (out of which, together with earnings on those contributions, benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual member but are paid into and accumulated in a fund in the form of an aggregate amount;

‘eligible bank’ means:

- (a) a savings bank or trading bank as defined by subsection 5 (1) of the *Banking Act 1959*; or
- (b) a public authority constituted by a law of a State or Territory, being a public authority that carries on banking business;

‘eligible financial corporation’ means a registered corporation within the meaning of the *Financial Corporations Act 1974*, being a corporation that is:

- (a) a corporation to which that Act applies by reason of paragraph 8 (1) (a) or (b) of that Act; and
- (b) a financial corporation within the meaning of paragraph 51 (xx) of the Constitution;

‘eligible rollover fund’ has the meaning given by section 242 of the *Superannuation Industry (Supervision) Act 1993*;

‘eligible scheme’ has the meaning given by section 159TE of the Tax Act;

‘employer’ includes a person who engages another person to perform work under a subcontract;

‘employer representative’, in relation to a board or committee of trustees of a superannuation fund, the board of a body corporate acting as the sole trustee of a superannuation fund or a management board, management committee or other management body that exercises actual control over the policies of a superannuation fund, means a member of that board, committee or body nominated by the employer or employers of the members of the fund or by an organisation nominated by that employer or those employers as representing the interests of that employer or those employers;

‘ETP’ means an eligible termination payment;

‘fully funded fund’ means a defined benefit superannuation fund that is funded in advance in accordance with actuarial advice at a level that is intended to be reasonably adequate to provide for present and prospective liabilities in respect of benefits relating to the fund;

‘issue’, in relation to a prospectus, has the meaning given to it by section 9 of the Corporations Law;

‘large fund’ has the meaning given by subregulation 13 (2);

‘life assurance company’ means:

- (a) a company registered under section 19 of the *Life Insurance Act 1945*; or
- (b) a public authority constituted by a law of a State or Territory, being a public authority that carries on life insurance business within the meaning of subsection 4 (1) of that Act;

‘life policy’ has the same meaning as in the *Life Insurance Act 1945*;

‘member-financed benefits’ means:

- (a) where the amount of benefits that are vested in a member of a superannuation fund on withdrawal from the fund is calculated on the basis of contributions to the fund or such contributions and income derived from those contributions—the sum of:
 - (i) the contributions made by the member to the fund; and
 - (ii) the net earnings of the fund allotted to the member in accordance with the governing rules in respect of the earnings attributable to those contributions;

less an amount equal to any administrative or other costs that are deducted from those contributions in accordance with the governing rules but:

- (iii) are not otherwise deducted from those contributions; and
- (iv) are not otherwise deducted from fund income for the purpose of determining the net earnings of the fund; and
- (v) are not otherwise charged to the account of the member; and

- (b) where the amount of benefits that are vested in a member of a superannuation fund on withdrawal from the fund is calculated on the basis of the benefits purchased under an endowment or whole of life policy—the amount of the benefits purchased by contributions made by the member to that policy, whether payment of the benefits pursuant to the policy is to be made on death, retirement, disablement or the occurrence of some other event; and
- (c) where the amount of benefits that are vested in a member of a superannuation fund on withdrawal from the fund is defined in terms that include the member's salary at the date of withdrawal from the fund or at a date prior to such withdrawal or averaged over a period of employment prior to such withdrawal—benefits calculated in accordance with subregulation (5), together with the net earnings of the fund that are allotted to the member, in accordance with the terms of the governing rules, on the basis of such of those last-mentioned benefits as have been preserved in the fund;

'member representative', in relation to a board or committee of trustees of a superannuation fund, the board of a body corporate acting as the sole trustee of a superannuation fund or a management board, management committee or other management body that exercises actual control over the policies of a superannuation fund, means a member of that board, committee or body nominated by the members of the fund or by a trade union or other organisation representing the interests of those members;

'minimum requisite benefit', in relation to a member of a superannuation fund, means the minimum benefit required to be vested in the member by the superannuation fund conditions;

'potential entitlement' has the meaning given by subregulation 9 (1C);

'prescribed agreement or award' means an agreement or award (including a consent award) that is certified or made by a Commonwealth industrial authority or a State industrial authority on or after 1 July 1986;

'private sector fund' means a superannuation fund other than a public sector fund;

‘public sector fund’ means a superannuation fund established:

- (a) by a law of the Commonwealth or of a State or Territory;
or
- (b) under the authority of:
 - (i) the Commonwealth or the government of a State or Territory; or
 - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory;

‘recognised member’ has the meaning given by section 159TE of the Tax Act;

‘registered auditor’ means a person registered as an auditor, or deemed to be registered as an auditor, under the *Companies Act 1981* or a law of a State or Territory relating to companies;

‘registered medical practitioner’ means a person who is registered as a medical practitioner under a law of a State or Territory providing for the registration of medical practitioners;

‘registered organisation’ means:

- (a) an association registered under a law of a State or Territory as a trade union; and
- (b) a society registered under a law of a State or Territory providing for the registration of friendly or benefit societies; and
- (c) an association of employees that is registered as an organisation under the *Conciliation and Arbitration Act 1904*;

‘regulated superannuation fund’ has the meaning given by section 19 of the *Superannuation Industry (Supervision) Act 1993*;

‘related entity’, in relation to a fund, means a corporation that is, under subsection 7 (5) of the *Companies Act 1981*, deemed to be related to the trustee or to any of the trustees, as the case may be, of the fund for the purposes of that Act;

‘rules’, in relation to a superannuation fund, means a trust instrument, other document or legislation, or any combination of those things, governing the establishment and operation of the fund;

‘shortfall component’ means a shortfall component within the meaning of section 64 of the Guarantee Act;

‘SIS approved deposit fund’ means an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

‘SIS (TP) Regulations’ means the Superannuation Industry (Supervision) (Transitional Provisions) Regulations;

‘State industrial authority’ means:

- (a) any board or court of conciliation or arbitration, or tribunal, body or person, having authority under any State law to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the State; or
- (b) any special board constituted under any State law relating to factories;

‘superannuation fund conditions’, in relation to a superannuation fund, means the superannuation fund conditions referred to in section 12 of the Act that are applicable to the fund;

‘the Act’ means the *Occupational Superannuation Standards Act 1987* as modified by the SIS (TP) Regulations (being the applied OSS Act, within the meaning of those Regulations);

‘the Guarantee Act’ means the *Superannuation Guarantee (Administration) Act 1992*;

‘the unmodified Regulations’ means the Occupational Superannuation Standards Regulations as in force from time to time;

‘these Regulations’ means the Occupational Superannuation Standards Regulations as modified by the SIS (TP) Regulations (being the applied OSS Regulations, within the meaning of those Regulations).”.

2. Regulation 4 (Approved auditor)

2.1 Regulation 4:

Omit the regulation, substitute:

Instruments to apply for the purposes of the modified Regulations

“4. For the purposes of these Regulations:

- (a) a prospectus registered, or taken to be registered, under regulation 5AAA, of the unmodified Regulations; or

- (b) an instrument made under a provision of the unmodified Regulations;
(whether registered or taken to be registered, or made, before or after the date of commencement of the SIS (TP) Regulations) is taken, where applicable, to be:
- (c) registered, or taken to be registered, for the purposes of these Regulations; or
- (d) made for the purposes of the corresponding provision of these Regulations;
- as the case requires.”.

3. Regulation 11 (Preservation and portability standards)

3.1 Subregulation 11 (1):

Omit the subregulation, substitute:

“(1) For the purposes of subsection 7 (1) of the Act, the following standards are prescribed in relation to the preservation and portability of benefits arising directly or indirectly from amounts contributed to superannuation funds:

- (a) in relation to each member of a superannuation fund, the benefits referred to in regulations 9, 10 and 25A that relate to the member, except to the extent to which those benefits become payable on the retirement of the member before attaining the age of 55 years in the form of a non-commutable pension or annuity payable for life, shall be preserved until:
- (i) those benefits are transferred in accordance with paragraph (c); or
- (ii) the member has:
- (A) retired from the workforce; and
- (B) attained an age of not less than 55 years; or
- (iii) those benefits become payable in one of the following circumstances:
- (A) the retirement of the member from the workforce before attaining the age of 55 years on the ground of permanent incapacity or permanent invalidity;
- (B) the death of the member;
- (C) the permanent departure of the member from Australia;

- (CA) because of the operation of paragraph 5AC (2) (a), (b) or (c);
- (D) such other circumstances (if any) as the Commissioner approves;
- (b) a member seeking payment of benefits from a superannuation fund on his or her retirement from the workforce on the ground of permanent incapacity or permanent invalidity shall be required to give to the trustees of the fund a certificate signed by 2 registered medical practitioners certifying that, in the opinion of those medical practitioners, the member is unlikely ever to be able to work again in a job for which the member is reasonably qualified by education, training or experience;
- (c) where a person who was a member of a superannuation fund withdraws from the fund, or ceases to be a member of the fund, in circumstances other than those specified in subparagraph (a) (ii) or (iii), all benefits to which a person is entitled on such withdrawal, or on so ceasing to be a member, and that are required to be preserved in relation to the person shall be:
 - (i) retained in the fund; or
 - (ii) transferred directly to, for preservation in relation to the person in:
 - (A) another superannuation fund nominated by the person, being a superannuation fund of which the person is, or intends to become, a member and that is required to preserve any benefits so transferred in accordance with the standards set out in this regulation; or
 - (B) an approved deposit fund nominated by the person, being a fund that is required to preserve any benefits so transferred in accordance with the standards set out in these Regulations; or

- (C) a deferred annuity nominated by the person, being a deferred annuity that cannot be surrendered or assigned before the person attains the age of 55 years and that does not pay benefits except in the circumstances specified in subparagraph (a) (ii) or (iii); or
- (iii) rolled over to an eligible rollover fund in accordance with Part III.”.

4. Regulation 17 (Financial reports and disclosure of information standards)

4.1 Subregulation 17 (1):

Omit the subregulation, substitute:

“(1) For the purposes of subsection 7 (1) of the Act, the following standards are prescribed in relation to the financial and actuarial reports to be prepared in relation to superannuation funds and the reduction of benefits of members of superannuation funds:

- (a) in relation to a defined benefit superannuation fund, an actuarial investigation shall be made:
 - (i) in the case of a private sector fund in operation on 22 December 1987 into which an actuarial investigation has been made within the immediately preceding 2 years—as at a date within the period of 3 years beginning on the day on which the last actuarial investigation was so made; and
 - (ii) in the case of a private sector fund in operation on 22 December 1987 to which subparagraph (i) does not apply—as at a date not later than:
 - (A) 3 years after the day on which the fund began to operate; or
 - (B) 1 January 1989;
 whichever is the later; and
 - (iii) in the case of a public sector fund in operation on 1 July 1990 into which an actuarial investigation has been made within the immediately preceding 2 years—as at a date within the period of 3 years beginning on the day on which the last actuarial investigation was so made; and

(iv) in the case of a public sector fund in operation on 1 July 1990 to which subparagraph (iii) does not apply—as at a date not later than:

(A) 3 years after the day on which the fund began to operate; or

(B) 1 July 1991;

whichever is the later; and

(v) in any other case—as at a date within the period of 3 years beginning on the day on which the fund began to operate;

and thereafter regular actuarial investigations shall be made, each of them being as at a date not later than 3 years after the previous date as at which an actuarial investigation was made;

(b) in relation to a defined benefit superannuation fund, an actuarial report shall be required to be given to the trustee or trustees of the fund, in relation to each investigation referred to in paragraph (a), within the period of 12 months commencing on the day following the day as at which each such investigation is made or within such extended period as the Commissioner allows, being a report containing:

(i) in relation to a private sector fund or a fully funded public sector fund—the matters specified in subregulation (2); or

(ii) in relation to a public sector fund (other than a fully funded public sector fund)—the matters specified in subregulation (3);

(c) an audit of the accounts and records of a superannuation fund shall be required to be carried out, after the end of each year of income of the fund but not later than the day by which the return referred to in subsection 12 (1) of the Act is to be given to the Commissioner, by an approved auditor and an auditor's report shall be required to be given to the trustee or trustees of the fund in respect of each such audit;

- (d) subject to subregulation (4), a beneficiary's right or claim to accrued benefits, and the amount of those accrued benefits, must not be altered adversely to the beneficiary by amendment of the governing rules or by any other act carried out, or consented to, by the trustee of the fund.

“(2) A report referred to in paragraph (1) (b) in relation to a private sector fund or a fully funded public sector fund shall contain, in addition to any other matter:

- (a) a statement of the value of the assets of the superannuation fund at the date of the latest valuation; and
- (b) a statement of the actuary's opinion on whether the value of the assets of the fund at the date of the latest valuation is adequate to meet the liabilities of the fund in respect of vested benefits in the fund; and
- (c) a statement recommending, in respect of the 3-year period immediately following the period to which the report relates, the rate at which the actuary considers employer-contributions should be made or, where the actuary considers employer-contributions should be made at different rates in respect of 2 or more periods within that first-mentioned period, such different rates; and
- (d) a statement whether the sum of:
- (i) all liabilities of the fund during that 3-year period that can reasonably be anticipated; and
- (ii) all benefits of the fund that can reasonably be anticipated to vest at the end of that 3-year period in the persons who are members of the fund on the day as at which the actuarial investigation is made;

can reasonably be met from the sum of:

- (iii) the value of the assets of the fund at the date of the latest valuation; and
- (iv) the assumed member contributions during that 3—year period; and
- (v) the assumed employer contributions during that 3—year period calculated at the rate or rates referred to in paragraph (c); and

- (vi) the earnings of the fund assumed by the actuary with respect to that 3-year period; and
- (e) a statement as to whether or not an event that is a prescribed event for the purposes of paragraph 15D (4) (a) of the Act occurred in the period to which the report applies.

“(3) A report referred to in paragraph (1) (b) in relation to a public sector fund (other than a fully funded fund) must contain, in addition to any other matter:

- (a) a statement of the value of the assets of the fund; and
- (b) a statement of any liability for benefit payments not expected to be covered by:
 - (i) the assets of the fund; or
 - (ii) any future contributions to, or earnings of, the fund; or
 - (iii) a guarantee by the government or other body that established the fund; or
 - (iv) an appropriation in respect of the fund.

“(4) The standard stated in paragraph (1) (d) does not apply to an alteration if:

- (a) subject to subregulation (5), the beneficiary has consented in writing to the alteration; or
- (b) the Commissioner has consented in writing to the alteration after either:
 - (i) the alteration has been approved by at least two-thirds of all of the beneficiaries of the fund who are affected by it, in accordance with the procedures specified in subregulation (6); or
 - (ii) subject to subregulation (7), if the fund complies with the basic equal representation rules provided for by section 89 of the *Superannuation Industry (Supervision) Act 1993*, the alteration has been approved by at least two-thirds of the total number of trustees or, if the fund has a single corporate trustee, by two-thirds of the directors of the corporate trustee; or
- (c) the alteration is necessary for compliance with the Act, the Tax Act, the *Income Tax Act 1986* or these Regulations; or

- (d) the alteration is expressly permitted by the Act or these Regulations; or
- (e) the alteration:
 - (i) is solely for the purpose of rectifying a mistake which has resulted in a beneficiary's right or claim to accrued benefits, or the amount of the beneficiary's accrued benefits, being advantageously altered; and
 - (ii) the Commissioner has approved the alteration.

“(5) A consent referred to in paragraph (4) (a) is not effective for the purposes of this regulation unless, before the consent is given:

- (a) the trustee of the fund has given to the beneficiary a notice that:
 - (i) informs the beneficiary that it is proposed that the beneficiary's right or claim to accrued benefits, or the amount of those benefits, be affected adversely; and
 - (ii) explains the effect of the alteration on the beneficiary's rights or claims to accrued benefits and the amount of those benefits; and
 - (iii) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration; and
- (b) the beneficiary has been allowed adequate time to consider the proposed alteration and its effect on the beneficiary's rights or claims to accrued benefits and the amount of those benefits.

“(6) For the purposes of subparagraph (4) (b) (i), the procedures to be followed in obtaining the approval of beneficiaries are as follows:

- (a) the trustee of the fund must send to each beneficiary of the fund who would be adversely affected by the alteration a notice that:
 - (i) informs the beneficiary that it is proposed that the beneficiary's right or claim to accrued benefits, or the amount of those benefits, be affected adversely; and

- (ii) explains the effect of the alteration on the beneficiary's rights or claims to accrued benefits and the amount of those benefits; and
 - (iii) explains that the alteration requires:
 - (A) the approval of at least two-thirds of all of the beneficiaries of the fund who are affected by it, obtained by ballot in accordance with this subregulation; and
 - (B) the consent of the Commissioner; and
 - (iv) explains the manner in which the beneficiary can cast his or her vote in relation to the ballot; and
 - (v) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration;
- (b) the ballot must be conducted in a manner that ensures that each beneficiary is given not less than 21 days to consider the notice and the proposed alteration before voting.

“(7) An approval referred to in subparagraph (4) (b) (ii) is not effective for the purposes of this regulation unless, at least 21 days before the giving of that approval, the trustee of the fund has given to each beneficiary of the fund who would be adversely affected by the alteration a notice that:

- (a) informs the beneficiary that it is proposed that the beneficiary's right or claim to accrued benefits, or the amount of those benefits, be affected adversely; and
- (b) explains the effect of the alteration on the beneficiary's rights or claims to accrued benefits and the amount of those benefits; and
- (c) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration.

“(8) In this regulation:
‘beneficiary’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.”.

5. Regulation 18B (Standards relating to contributions)

5.1 Omit the regulation, substitute:

Standards relating to contributions

“**18. (1)** For the purposes of subsection 7 (1) of the Act, the standards in subregulations (2), (3) and (4) are prescribed.

“(2) Where:

- (a) a requirement referred to in subregulation (2) is applicable to the operation of a superannuation fund established on or before 30 June 1990; and
- (b) the governing rules of the fund do not, on 30 June 1990:
 - (i) include the requirement; or
 - (ii) include a provision that has the effect that the requirement, as in force from time to time, is taken to be included in the governing rules;

the trustees of the fund must:

- (c) have made before 30 June 1990 arrangements in writing for the governing rules of the fund to be amended to:
 - (i) include the requirement referred to in paragraph (a); or
 - (ii) include the provision referred to in subparagraph (b) (ii); and
- (d) if required to do so by the Commissioner by notice in writing, produce to the Commissioner, within a period of not less than 14 days specified in the notice, documentary evidence that satisfies the Commissioner that the trustees have so made those arrangements.”.

6. Regulation 18E (Trustees of certain funds to disclose information in certain circumstances)

6.1 Subregulation 18E (5):

Omit the subregulation.

7. Part III (Approved deposit funds)

7.1 Omit the Part, substitute:

**“PART III—ROLLOVER OF BENEFITS TO ELIGIBLE
ROLLOVER FUNDS**

Interpretation

“20. In this Part:

‘lost member’ has the meaning given in regulation 1.03 of the *Superannuation Industry (Supervision) Regulations*;

‘transferor fund’ means a superannuation fund that is not a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

‘withdrawal benefit’ has the meaning given in regulation 1.03 of the *Superannuation Industry (Supervision) Regulations*.

Rollover of benefits from superannuation fund

“21. (1) The trustee of a transferor fund may apply to the trustee of an eligible rollover fund, on behalf of a beneficiary of the transferor fund (the ‘first person’) or the issue to the first person of a superannuation interest in the eligible rollover fund.

“(2) The application is to be made on the basis that:

- (a) the consideration for the issue is to be paid, on behalf of the first person, by the trustee of the transferor fund; and
- (b) the amount of the consideration for the issue is equal to the amount of the first person’s withdrawal benefit in the transferor fund; and
- (c) the trustee of the transferor fund is not entitled to recover the consideration from the first person (except as a result of the operation of subregulation (4)).

“(3) Despite any direction to the contrary by the first person, the first person is taken to have authorised the trustee of the transferor fund:

- (a) to make the application; and
- (b) to pay the consideration.

“(4) If the superannuation interest is issued in accordance with the application:

(a) the first person ceases to have rights against the transferor fund, including a contingent right to a death or disability benefit; and

(b) if:

(i) immediately before the interest was issued in accordance with the application, a second person had a contingent right against the transferor fund to a death or disability benefit; and

(ii) the contingent right was derived from the first person’s capacity as a beneficiary of the transferor fund;

the second person ceases to have the contingent right against the transferor fund.

“(5) This regulation has effect despite anything in the governing rules of the transferor fund.

Notice to beneficiaries of circumstances in which benefits may be rolled over

“22. (1) The trustee of a transferor fund must give to each member of the fund when he or she becomes a member a written notice:

(a) setting out the circumstances in which the member’s benefits may be paid to an eligible rollover fund; and

(b) specifying the name and address of the place of business of the eligible rollover fund to which any such benefits will be paid in those circumstances.

“(2) The trustee may by written notice to the member to whom the trustee gave a written notice under subregulation (1) change the eligible rollover fund to which it proposes to pay benefits under regulation 21.

“(3) The failure of a trustee to notify a member under subregulation (1) or (2) does not affect the rights of the trustee under regulation 21.

Tax file numbers

“23. If the trustee of a transferor fund pays a benefit to an eligible rollover fund under regulation 21 in respect of a person, the trustee must not give the trustee of the eligible rollover fund the tax file number of the person unless the person has given his or her consent to the disclosure of his or her tax file number in those circumstances.

Trustee to give information regarding lost member to eligible rollover fund

“24. If the trustee of a transferor fund pays a benefit to an eligible rollover fund under regulation 21 in respect of a lost member, the trustee must also give to the trustee of the eligible rollover fund:

- (a) a statement that the member is a lost member; and
- (b) if the lost member has specifically asked the transferor fund not to disclose information of a specified kind, a statement to the effect that the member has asked the transferor fund not to disclose information of that kind; and
- (c) all information in the possession of the trustee of the transferor fund that could reasonably help the trustee of the eligible rollover fund to locate or identify the lost member, other than information of a kind that the lost member has specifically asked the trustee of the transferor fund not to disclose.”.

8. Regulation 25 (Prescribed fees)

8.1 Omit the regulation, substitute:

Circumstances in which amounts may be paid out of an employer-sponsored fund to an employer-sponsor

Application of this regulation

“25. (1) This regulation applies to a superannuation fund that, at any time after 29 November 1993, has had more than 4 members.

Definitions

“(2) In this regulation:

‘**associate**’ has the meaning given by section 12 of the *Superannuation Industry (Supervision) Act 1993*;

‘**controlling interest**’ has the meaning given by subregulation 18E (1), except that a reference in that subregulation to a company is taken to be a reference to a body corporate;

‘**employer-sponsor**’, for a superannuation fund, means an employer who:

- (a) contributes to the fund; or
- (b) would, apart from a temporary cessation of contributions, contribute to the fund;

for the benefit of:

- (c) a member of the fund who is an employee of:
 - (i) the employer; or
 - (ii) an associate of the employer; or
- (d) the dependants of such a member in the event of the death of the member;

‘**employer-sponsored fund**’ means a superannuation fund that has at least 1 employer-sponsor;

‘**independent director**’ and ‘**independent trustee**’ have the meanings given by section 10 of the *Superannuation Industry (Supervision) Act 1993*;

‘**related**’, for bodies corporate, has the meaning given by section 20 of the *Superannuation Industry (Supervision) Act 1993*;

‘**relative**’ has the meaning given by subregulation 18E (1).

“(2A) In this regulation, a reference to an employer-sponsor, for an employer-sponsored fund, includes:

- (a) if an employer-sponsor is a body corporate—another body corporate that is related to the employer-sponsor; or
- (b) if an employer-sponsor is an individual—an associate of the employer-sponsor.

Basic prohibition on payments

“(4) Except as provided by this regulation, the trustee of an employer-sponsored fund must not pay an amount, or permit an amount to be paid, out of the fund to an employer-sponsor.

Exception—management services

“(5) A reasonable amount may be paid out of any employer-sponsored fund to an employer-sponsor for services rendered in connection with the management or operation of the fund.

Exception—special procedures followed

“(6) An amount may be paid out of an employer-sponsored fund to an employer-sponsor if:

- (a) apart from this regulation, the governing rules would require or permit the amount to be paid to the employer-sponsor; and
- (b) whichever of the following subparagraphs is applicable has been complied with:
 - (i) if the fund has a single corporate trustee:
 - (A) the directors of the trustee have, by resolution, declared their intention to pay the amount out of the fund to the employer-sponsor; and
 - (B) when that resolution was passed, the board of the corporate trustee consisted of equal numbers of employer representatives and member representatives;
 - (ii) if the fund has a group of 2 or more individual trustees:
 - (A) the trustees have, by resolution, declared their intention to pay the amount out of the fund to the employer-sponsor; and
 - (B) when that resolution was passed, the group of trustees consisted of equal numbers of employer representatives and member representatives;
 - (iii) in any other case—the trustee has declared his or her intention to pay the amount out of the fund to the employer-sponsor; and

- (c) before the resolution referred to in subparagraph (b) (i) or (ii) was passed or the declaration referred to in subparagraph (b) (iii) was made (as the case may be):
 - (i) an actuary had given a written certificate to the trustee stating that, if the amount were paid, the fund would remain in a satisfactory financial position; and
 - (ii) the trustee was satisfied that the payment of the amount and the making of the changes (if any) to the governing rules were reasonable having regard to the interests of the employer-sponsor and of the beneficiaries of the fund; and
- (d) the trustee gave notice in accordance with the governing rules to all members of the fund:
 - (i) stating the intention to pay the amount to the employer-sponsor; and
 - (ii) stating that an actuary has given a certificate to the trustee as required by subparagraph (c) (i); and
 - (iii) setting out particulars of any changes to the governing rules that were proposed to be made if the amount were paid to the employer-sponsor; and
- (e) at the end of 3 months after the notice mentioned in paragraph (d) was given to members, the provisions of whichever of the following subparagraphs is applicable were complied with:
 - (i) if the fund has a single corporate trustee—the directors of the corporate trustee passed a resolution agreeing to pay the amount out of the fund to the employer-sponsor;
 - (ii) if the fund has a group of 2 or more individual trustees—the trustees passed a resolution agreeing to pay the amount out of the fund to the employer-sponsor;
 - (iii) in any other case—the trustee decided to make the payment.

Commissioner may waive requirements

“(7) The Commissioner may waive any or all of the requirements specified in subregulations (6) and (10) for a particular fund.

This regulation does not apply to loans to, or investments in, an employer-sponsor

“(8) A reference in this regulation to the payment of an amount out of an employer-sponsored fund to an employer-sponsor does not include the payment of an amount by way of the making of a loan to, or an investment in, the employer-sponsor.

Additional independent trustee and additional independent director

“(9) For the purposes of the application of this regulation to a fund, a group of trustees, or the board of a corporate trustee, is taken to consist of equal numbers of employer representatives and member representatives if:

- (a) the group or board includes an additional independent trustee or an additional independent director, as the case may be; and
- (b) the additional independent trustee or additional independent director, as the case may be, is appointed at the request of the employer representatives, or the member representatives, who are the members of the group or board; and
- (c) provision is made in the governing rules for the appointment of the additional independent trustee or additional independent director, as the case may be; and
- (d) the governing rules do not allow the additional independent trustee or additional independent director, as the case may be, to exercise a casting vote in any proceedings of the group or board concerned.

Notice of proposal to alter governing rules to allow payments

“(10) The trustee of an employer-sponsored fund must give to all members of the fund written notice of any proposal to alter the governing rules of the fund to increase the benefit payable to a member, if payment of that benefit would have the effect of making a payment from the fund to:

- (a) an employer-sponsor; or
- (b) a member who is a relative of an employer-sponsor who is an individual; or
- (c) a member who holds, or will hold when the governing rules are altered to increase the benefit payable to a member, a controlling interest in an employer-sponsor that is, or will be when the governing rules are altered, a body corporate; or
- (d) a relative of a member referred to in paragraph (c);

not less than 3 months before the day when the alteration would take effect.”.

9. Regulation 25A (Late lodgement fees)

9.1 Omit the regulation, substitute:

Certain amounts rolled over from regulated superannuation funds and SIS approved deposit funds to vest and be preserved

“25A. For subsection 7 (1) of the Act, the following standards are prescribed for vesting and preservation of benefits in superannuation funds:

- (a) benefits arising directly or indirectly from amounts paid to a superannuation fund in respect of a member of the fund from a regulated superannuation fund or a SIS approved deposit fund in accordance with regulation 5.01AA of the Superannuation Industry (Supervision) Regulations, being amounts that were minimum benefits of the member within the meaning of Part 5 of the Superannuation Industry (Supervision) Regulations in the fund from which they were paid, vest in the member when those benefits accrue;

- (b) benefits arising directly or indirectly from amounts paid to a superannuation fund for a member of the fund from a regulated superannuation fund in accordance with regulation 5.01AA of the Superannuation Industry (Supervision) Regulations, being amounts that were:
- (i) preserved benefits of the member; or
 - (ii) restricted non-preserved benefits of the member; within the meaning of Part 6 of the Superannuation Industry (Supervision) Regulations in the fund from which they were paid, must be preserved;
- (c) benefits arising directly or indirectly from amounts paid to a superannuation fund for a member of the fund from a SIS approved deposit fund in accordance with regulation 5.01AA of the Superannuation Industry (Supervision) Regulations, being amounts that were preserved benefits of the member within the meaning of Part 6 of the Superannuation Industry (Supervision) Regulations in the fund from which they were paid, must be preserved.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on / 24 December 1997.
2. Statutory Rules 1993 No. 352 as amended by 1994 No. 190; 1995 No. 157.