

Explanatory Statement to Superannuation Industry (Supervision) modification
declaration No. 1 of 2008

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority

1. This Explanatory Statement accompanies Superannuation Industry (Supervision) modification declaration No. 1 of 2008 (MD 1 of 2008) made by APRA under section 332 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Section 332 of the SIS Act provides that APRA may, in writing, declare that a modifiable provision of the SIS Act is to have effect, in relation to a particular person or class of persons, as if it were modified as specified in MD 1 of 2008. The modifiable provisions¹ include regulations made for the purposes of Part 3 of the SIS Act and, therefore, include regulation 9.09 of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

Background

2. Subregulation 9.09(1) of the SIS Regulations requires the trustee of a defined benefit fund to obtain from an actuary a funding and solvency certificate in relation to the fund.
3. Subregulation 9.09(2) requires the trustee to, as soon as practicable, give a copy of the certificate obtained under this regulation to each employer-sponsor who has contributed or is contributing to the fund.
4. For the purposes of subsection 31(1) of the SIS Act, regulation 9.07 provides that the standard in regulation 9.09 is prescribed as a standard applicable to the operation of defined benefit funds to which division 9.3 applies.
5. Regulation 9.09 does not recognise that a defined benefit fund may include employer-sponsors whose employees have an accumulation benefit and not a defined benefit in the fund (**hybrid superannuation fund**). Regulation 9.09 does not take into account the irrelevance of its requirements for employer-sponsors who contribute to the defined benefit fund only for accumulation members and who have no obligation to contribute for defined benefit members.
6. The definition of 'defined benefit fund' in subregulation 1.03(1) includes "a regulated superannuation fund (other than a public sector superannuation scheme) that has at least 1 defined benefit member; and some or all of the contributions to which 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 aggregated amount."
7. APRA has provided relief to individual trustees of hybrid superannuation funds from the requirement to give a copy of the funding and solvency certificate to employer-sponsors who are only responsible for contribution for accumulation members, as requested on an ad hoc basis. There are approximately 161 hybrid superannuation funds regulated by APRA.

¹ *Modifiable provision* is defined in section 327 of the SIS Act.

Purpose of the instrument

8. The purpose of MD 1 of 2008 is to modify the requirements of subregulation 9.09(2) of the SIS Regulations. APRA intends to provide relief to trustees of hybrid superannuation funds from the requirement to give a copy of the certificate to employer-sponsors who only contribute to the fund for accumulation members and who have no obligation to contribute for defined benefit members. It is considered unnecessary for a trustee of a hybrid superannuation fund to give a copy of the certificate to employer-sponsors with no liability to make superannuation contributions for any defined benefit members.

Operation of the instrument

9. MD 1 of 2008 provides that regulation 9.09 of SIS Regulations has effect, in relation to trustees of superannuation entities (other than public sector superannuation schemes), as if the SIS Regulations were modified as set out in MD 1 of 2008. This is to require the trustee to give a copy of the funding and solvency certificate only to each employer-sponsor who is contributing, has contributed or has the obligation to contribute to the fund in respect of one or more defined benefit members of the fund.

Consultation

10. Section 17 of the *Legislative Instruments Act 2003* imposes consultation obligations on the makers of Legislative Instruments.
11. APRA has consulted with Treasury and the ATO about MD 1 of 2008. Further consultation with industry about MD 1 of 2008 is considered unnecessary or inappropriate, as MD 1 of 2008 is considered to be of a minor or machinery nature. MD 1 of 2008 does not substantially alter existing arrangements, except to slightly ease the administrative and cost burden for some trustees of hybrid superannuation funds. It is unlikely to result in any industry objections.

Commencement

12. MD 1 of 2008 comes into force from the date of registration on the Federal Register of Legislative Instruments.