



# Superannuation Legislation Amendment Regulation 2013 (No. 1)

## Select Legislative Instrument No. 26, 2013

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I, Quentin Bryce, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*, the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Industry (Supervision) Act 1993*.

Dated 1 March 2013

Quentin Bryce  
Governor-General

By Her Excellency's Command

William Richard Shorten  
Minister for Financial Services and Superannuation

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## 1 Name of regulation

This regulation is the *Superannuation Legislation Amendment Regulation 2013 (No. 1)*.

## 2 Commencement

- (1) Each provision of this regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4	1 July 2013.	1 July 2013
2. Schedule 1	1 July 2013.	1 July 2013
3. Schedule 2	1 January 2014.	1 January 2014
4. Schedule 3	1 July 2013.	1 July 2013

Note: This table relates only to the provisions of this regulation as originally made. It will not be amended to deal with any later amendments of this regulation.

- (2) Any information in column 3 of the table is not part of this regulation. Information may be inserted in this column, or information in it may be edited, in any published version of this regulation.

## 3 Authority

This regulation is made under the *Corporations Act 2001*, the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Industry (Supervision) Act 1993*.

## 4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the

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Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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2      *Superannuation Legislation Amendment Regulation 2013 (No. 1)*      *No. 26, 2013*

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## **Schedule 1—Amendment of the Corporations Regulations 2001**

### **1 After regulation 7.9.11L**

Insert:

#### **7.9.11LA Attribution of accrued default amount to MySuper product—exemption from significant event notice requirements**

For paragraph 1020G(1)(a) of the Act, a person is exempt from section 1017B of the Act in relation to the attribution or transfer of an accrued default amount if the person:

- (a) is an RSE licensee within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
- (b) must comply with a requirement under regulation 9.46 of the *Superannuation Industry (Supervision) Regulations 1994* in relation to the attribution or transfer.

#### **7.9.11LB Attribution of accrued default amount to MySuper product—modification of significant event notice requirements**

If a person:

- (a) is an RSE licensee within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
- (b) is exempted under subregulation 9.46(2) of the *Superannuation Industry (Supervision) Regulations 1994* from notice requirements in relation to the attribution or transfer of an accrued default amount;

then, for paragraph 1020G(1)(c) of the Act, section 1017B of the Act applies to the person as if subsection 1017B(4) were omitted and the following subsection were substituted:

- (4) The notice must mention the following:
  - (a) the accrued default amount that was attributed or transferred;
  - (b) the name of the MySuper product to which the amount was attributed or transferred;

- (c) how the member may obtain a product disclosure statement for the MySuper product;
- (d) any other information that the member needs to understand the attribution or transfer.

**2 At the end of regulation 7.9.16G**

Add:

- (3) For paragraph 1017B(1A)(c) of the Act, the attribution, on the recommendation of the trustee, of an amount in relation to a member in a MySuper product to another class of beneficial interest in the fund is specified.



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## Schedule 2—Amendment of the Superannuation Guarantee (Administration) Regulations 1993

### 1 Subregulation 9A(1)

Repeal the subregulation, substitute:

- (1) For paragraph 32C(2)(d) of the Act, for a MySuper member, other than a member who is a defined benefit member, the requirement is that insurance be provided by the fund in the event of the death of the member:
  - (a) for a person of an age in an age range mentioned in an item in Schedule 1—at the level mentioned in the item or higher;  
or
  - (b) for a person who has not attained the age of 56 years—at a premium of at least \$0.50 per week, or the equivalent.
- (1A) The provision, by a regulated superannuation fund, of insurance in respect of death in accordance with subregulation (1) is subject to such reasonable conditions as the trustees of the fund determine.
- (1B) However, if a MySuper member, other than a member who is a defined benefit member, has elected that insurance in relation to death not be provided, or that insurance in relation to death be provided at a lower level than provided for in subregulation (1), the requirement is that insurance be offered by the fund in the event of the death of the member:
  - (a) for a person of an age in an age range mentioned in an item in Schedule 1—at the level mentioned in the item or higher;  
or
  - (b) for a person who has not attained the age of 56 years—at a premium of at least \$0.50 per week, or the equivalent.
- (1C) For paragraph 32C(2)(e) of the Act, for a defined benefit member, or a member other than a MySuper member, the requirement is that insurance be offered by the fund in the event of the death of the member:
  - (a) for a person of an age in an age range mentioned in an item in Schedule 1—at the level mentioned in the item or higher;  
or

- (b) for a person who has not attained the age of 56 years—at a premium of at least \$0.50 per week, or the equivalent; or
- (c) if the contribution is made to a defined benefit superannuation scheme on behalf of a defined benefit member—that provides a death benefit with a future service component that is at least equivalent to the level of insurance in relation to death mentioned in paragraph (a).

**2 Subregulation 9A(2)**

Omit “subregulation (1)” (wherever occurring), substitute “subregulation (1), (1B) or (1C)”.

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## **Schedule 3—Amendment of the Superannuation Industry (Supervision) Regulations 1994**

### **1 After regulation 1.03B**

Insert:

#### **1.03C Meaning of *permanent incapacity***

For subsection 10(1) of the Act, a member of a superannuation fund or an approved deposit fund is taken to be suffering permanent incapacity if a trustee of the fund is reasonably satisfied that the member's ill-health (whether physical or mental) makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.

### **2 Before regulation 4.08**

Insert:

#### **4.07C Definitions**

In this Division:

***anti-detriment payment*** means a tax saving amount for paragraph 295-485(1)(b) of the *Income Tax Assessment Act 1997*.

***insured benefit***, for a member, means a right, other than an anti-detriment payment, for the member's benefits to be increased on the realisation of a risk.

#### **4.07D Operating standard—permitted types of insurance**

- (1) This regulation is made for subsection 31(1) of the Act.
- (2) A trustee of a regulated superannuation fund must not provide an insured benefit in relation to a member of the fund unless the insured event is consistent with a condition of release specified in item 102, 102A, 103 or 109 of Schedule 1.

- (3) However, subregulation (2) does not apply to:
  - (a) the continued provision of benefits to members who joined a fund before 1 July 2014; or
  - (b) the provision of benefits under an approval granted before 1 July 2014 under subparagraph 62(1)(b)(v) of the Act.
- (4) If a trustee is unable to amend the governing rules of a fund, to make the governing rules comply with subregulation (2):
  - (a) the rules that do not comply with subregulation (2) are taken to have been omitted from the governing rules; and
  - (b) the rules omitted under paragraph (a) are taken to have been replaced by rules that allow the provision of benefits that are permitted under subregulation (2).
- (5) This regulation does not apply until 1 July 2014.

#### **4.07E Operating standard—self-insurance**

- (1) This regulation is made for subsection 31(1) of the Act.
  - Note: See also paragraph 31(2)(eb) of the Act.
- (2) If, on 1 July 2013, a regulated superannuation fund does not self-insure, in relation to a particular risk, a trustee of the fund may, on and after 1 July 2013, provide an insured benefit, in relation to that risk, to members of the fund only if the provision of the benefit is fully supported by an insurance policy provided by an insurer.
- (3) Subregulation (2) does not apply, on or before 1 July 2016, to a member who is transferred from a fund that self-insured, in relation to the member and the risk, into:
  - (a) a successor fund that, immediately before the transfer, did not self-insure in relation to the risk; or
  - (b) under Part 33 of the Act—a fund that, immediately before the transfer, did not self-insure in relation to the risk.
- (4) If, on 1 July 2013, a regulated superannuation fund self-insures, in relation to a particular risk, a trustee of the fund may, on and after 1 July 2016, provide an insured benefit, in relation to that risk, to members of the fund only if the provision of the benefit is fully supported by an insurance policy provided by an insurer.

- (5) If the governing rules of the fund mentioned in subregulation (4) do not allow the trustee to obtain the insurance policy mentioned in that subregulation, the trustee must, before 1 July 2016, amend the rules of the fund to allow the trustee to do so.
- (6) If the trustee cannot amend the rules, the rules are taken to be amended to allow the trustee to obtain the insurance policy.
- (7) Subregulation (4) does not apply if the Commonwealth Government, or the government of a State or Territory:
- (a) provides an insured benefit to members of the fund; or
  - (b) guarantees the provision of an insured benefit to members of the fund.
- (8) Subregulation (4) does not apply, in relation to defined benefit members of the fund, if:
- (a) on or before 1 July 2013, APRA has not imposed, under subsection 29EA(1) of the Act, a condition on the licence of the RSE licensee of the fund that prohibits self-insurance in relation to defined benefit members; and
  - (b) on 1 July 2013, the fund self-insures in relation to the members.
- (9) Despite subregulation (4), a beneficiary of the fund who is mentioned in column 2 of the table has the entitlement mentioned in column 3 of the table.

<b>Entitlements of beneficiaries</b>		
<b>Item</b>	<b>If one of the following applies to the beneficiary immediately before 1 July 2016 ...</b>	<b>the beneficiary is entitled, on and after 1 July 2016, to ...</b>
1	receives an insured benefit	continue to receive the insured benefit
2	lodges a claim for an insured benefit	(a) have the claim determined; and (b) receive an insured benefit, if the trustee so determines
3	is eligible to make a claim for an insured benefit	(a) lodge a claim; and (b) have the claim determined; and

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<b>Entitlements of beneficiaries</b>		
<b>Item</b>	<b>If one of the following applies to the beneficiary immediately before 1 July 2016 ...</b>	<b>the beneficiary is entitled, on and after 1 July 2016, to ...</b>
		(c) receive an insured benefit, if the trustee so determines

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(10) In this regulation:

*fund* includes a sub-fund.

### **3 Subregulation 6.01(2) (definition of *permanent incapacity*)**

Repeal the definition.

### **4 At the end of subregulation 6.29(1)**

Add:

; or (d) for section 29SAA, 29SAB, 387, 388 or 394 of the Act the trustee of the fund is required by a prudential standard made under section 34C of the Act to transfer the benefits.

### **5 After Part 9**

Insert:

## **Part 9A—Requirements relating to MySuper products**

### **9.46 Notification—accrued default amount attributed to MySuper product**

- (1) For subsection 29SAA(3) of the Act, the RSE licensee must give the member a notice in writing in accordance with subregulation (3) at least 90 days before the attribution of the accrued default amount or the transfer of the accrued default amount to another fund.
- (2) However, this regulation does not apply to the RSE licensee if the attribution or transfer will not result in any of the following:

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- (a) an increase in a fee or charge that applies to the amount;
  - (b) a reduction in an insured benefit that is attributable to the member;
  - (c) an increase in an insurance premium that is attributable to the member;
  - (d) a change in the investment strategy that relates to the amount.
- (3) For subregulation (1), the notice must mention the following:
- (a) the amount that is attributable to the member at the time the notice is sent;
  - (b) the name of the MySuper product to which the amount will be attributed or transferred;
  - (c) how the member can elect, in writing, to opt out of the attribution or transfer;
  - (d) how the member may obtain a product disclosure statement for the MySuper product;
  - (e) any change to a fee or charge that applies to the amount;
  - (f) any change to the member's insured benefits as a result of the attribution or transfer;
  - (g) any change to the investment strategy applicable to the amount as a result of the attribution or transfer;
  - (h) any other information that the member needs to understand the attribution or transfer.
- (4) For paragraph (3)(e), the fee or charge must be stated in dollars.
- (5) However, ASIC may determine that the fee or charge be stated another way if, in ASIC's opinion, there is a compelling reason why it is not possible to state the fee or charge in dollars.
- (6) A determination under subregulation (5) must be published in the *Gazette*.

#### **9.49 Opt-out insurance for MySuper members cannot be obtained at reasonable cost**

For subsection 68AA(7) of the Act, the circumstances are that the trustee certifies, in writing, that the trustee is reasonably satisfied the risk that is to be insured cannot:

- (a) be placed with an insurer at a reasonable cost; or
  - (b) be provided on an opt-out basis.
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