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About this compilation

This is a compilation of the *Superannuation Industry (Supervision) Regulations* that shows the text of the law as amended and in force on 22 July 1998 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

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If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

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Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 1

1.01 Citation....1
1.02 Commencement....1
1.03 Interpretation....1
1.03A Lost member....5
1.04 Prescribed matters (Act, s 10)....6

Part 1A—Annuities and pensions 9

Division 1A.1 9

1.05 Meaning of *annuity* (Act, s 10)....9
1.06 Meaning of *pension* (Act, s 10)....12
1.07 Periods when beneficiary may not receive benefits....15

Division 1A.2—Operating standards 16

1.08 Restriction on factors for converting pensions....16

Part 2—Information for members and others 17

Division 2.1—Introductory 17

2.01 Interpretation....17
2.02 Scope and application of this Part....18
2.03 Duties and requirements arising under this Part....19
2.04 Reasonable efforts are sufficient....19
2.05 Members to whom trustees are not required to give information....19
2.06 Charges for information requested....20
2.07 Trustee may make a sub-plan....21

Division 2.2—Information for prospective members and employer-sponsors of public offer superannuation funds and certain approved deposit funds 22

2.08 Application....22
2.09 Subdivision 3A of Part 19 of the Act....22
2.10 Information to prospective members....23
2.11 Information by public offer superannuation funds to prospective standard employer-sponsors....26
2.11A Information by eligible rollover funds to trustees of transferor funds and to RSA providers....29

Division 2.3—Information for new members of certain regulated superannuation funds 30

2.12 Application....30
2.13 Time for compliance....30
2.14 Requirement taken to have been met....30
2.14A Compliance by trustee of capital guaranteed fund....31
2.15 General requirement....31
2.16 Specific requirements in all cases....31
2.16A Specific requirement in relation to capital guaranteed funds....32

Division 2.4—Information to be given for each reporting period 34

Subdivision 2.4.1—Preliminary 34

2.17 Interpretation....34

Authorised Version F2025C00501 registered 08/05/2025

2.18 Application....34
2.19 Reporting periods....34
2.20 Application in relation to reporting period....35
2.21 Time for compliance....36
Subdivision 2.4.2—Member information 36
2.22 General requirement....36
2.23 Specific requirements in all cases....36
2.24 Specific requirements in particular cases....37
2.24A Specific requirements in relation to capital guaranteed funds....38
2.24B Information if benefits in capital guaranteed fund reaches $10,000....39
2.25 Exception—pensioners....40
2.26 Exception—certain cases of members leaving fund....40
2.26A Exception—members subject to compulsory protection of small amounts....40
2.26B Exception—members with small amounts that are expected to grow quickly....41
Subdivision 2.4.3—Fund information 41
2.27 General requirement....41
2.28 Specific requirements in all cases....41
2.29 Specific requirements in particular cases....42
2.30 Excluded funds—special provision....45
2.31 Exception—benefits determined by life policies....45
Division 2.5—Information concerning significant events 46
2.32 Application....46
2.33 Time for compliance....46
2.34 Contact details to accompany information....47
2.35 General requirement....47
2.36 Specific requirements....47
2.36A Specific requirements—benefit to be paid to eligible rollover fund....48
Division 2.6—Information on request 50
2.37 Application....50
2.38 Documents may be made available for inspection....50
2.39 Time for compliance....50
2.40 General requirement....50
2.41 Specific requirements....51
Division 2.6A—Information about complaints 53
2.41A Application....53
2.41B Information about complaints....53
Division 2.7—Information when a member leaves a fund 54
2.42 Application....54
2.43 Time for compliance....54
2.44 Exit reporting period....54
2.45 General requirement....54
2.46 Specific requirements in all cases....55
2.47 Specific requirements in particular cases....55
2.48 Exceptions to *exit reporting period* provisions....57
2.48A Exception—members subject to compulsory protection of small amounts....57

Authorised Version F2025C00501 registered 08/05/2025

Division 2.7A—Information to be given to other entities on transfer of lost members 59
2.48B Application of Division 59
2.48C Information to be given on transfer of lost members....59
Division 2.8—Pooled superannuation trusts 60
Subdivision 2.8.1—Preliminary 60
2.49 Application....60
2.50 Operating standards 60
2.51 Statement of particulars must accompany information 60
Subdivision 2.8.2—Information for prospective unit-holders 60
2.52 Subdivision 3A of Part 19 of the Act....60
2.53 Information by a trustee of a PST for prospective unit-holders 60
Subdivision 2.8.3—Information in respect of reporting periods 60
2.54 Interpretation....60
2.55 Reporting periods....61
2.56 Application in relation to reporting period 61
2.57 Time for Compliance 62
2.58 Exemption from giving information 62
2.59 General requirement 62
2.60 Specific requirements in all cases 62
2.61 Specific requirements in particular cases....63
Subdivision 2.8.4—Significant events 64
2.62 Time for compliance 64
2.63 Information concerning significant events 65
2.64 Information about notice of non-compliance....65
Subdivision 2.8.5—Information on leaving 65
2.65 Information when a person ceases to be a unit-holder....65
2.66 Persons ceasing to be unit-holders....66
2.67 Exceptions to reporting requirement where person ceases to be unit-holder....66
Part 3—Matters prescribed or specified in relation to public offer entities 67
3.01 Public offer superannuation fund—member of a prescribed class 67
3.02 Deciding an application for approval....67
3.03 Deciding an application for approval....67
3.04 Section 54 of the Act—prescribed percentages 68
3.04A Removal of trustee of public offer entity—s. 60A(2) of the Act....68
3.05 Policy committees—sections 91, 92 and 93 of the Act 68
3.06 Policy committees—functions (paragraphs 91(3)(b), 92(3)(b) and 93(3)(b) of the Act)....70
3.07 Definition of policy committee in section 10 of the Act—matters specified for purposes of paragraph (a) 70
3.08 Policy committees—duties of trustee 71
3.09 Dissolution of policy committees 71
3.09A Circumstances in which superannuation interest may be issued without application (Act, s 153(1)(d)) 71
3.09B Circumstances in which a person may become a standard employer-sponsor (Act, s 153(2)(b)) 71
3.10 Commission and brokerage 72

Authorised Version F2025C00501 registered 08/05/2025

3.11 Statements by experts—keeping of written consents 73
3.12 Requirements concerning application money held on trust....73
3.13 When cooling-off does not apply (Act, s.170(e)) 73

Part 4—Management and trusteeship of superannuation entities 74

Division 4.1—Prescribed matters 74

4.01 Covenants in governing rules of a superannuation entity—prescribed information and documents....74
4.02 Covenants in governing rules of a superannuation entity—beneficiary investment choice 74
4.03 Trustee of employer-sponsored fund prescribed direction by employer-sponsor or associate of employer-sponsor....75
4.04 Governing rules of a superannuation entity—prescribed exercise of discretion by non-trustee....76
4.05 Governing rules of a superannuation entity—prescribed circumstances of amendment....76
4.06 Removal of member representatives—prescribed circumstances 77
4.07 Removal of independent trustee or independent member—prescribed circumstances 77

Division 4.2—Operating standards 79

4.08 Operating standard—voting rule where equal representation applies 79
4.09 Operating standard—investment strategy....79
4.10 Operating standard—investment by non-complying superannuation funds....80
4.11 Operating standard—investment by non-complying approved deposit funds 80
4.12 Operating standard—acceptance by regulated superannuation and approved deposit funds of rollovers and transfers 80
4.13 Operating standard—lending to members of an approved deposit fund 81

Part 5—Benefit protection standards 82

Division 5.1—Preliminary 82

5.01 Interpretation....82
5.01A Operating standards—determination of costs and investment return....85
5.01B Trustee may provide greater protection than this Part requires 85
5.02 Determination of costs 85
5.02A Meaning of *fair and reasonable* 86
5.02B Priority in deducting surcharge or instalment....86
5.02C Refund of costs 86
5.03 Investment returns....87

Division 5.2—Minimum benefits 88

5.04 Minimum benefits—regulated superannuation funds....88
5.05 Mandated employer contributions—regulated superannuation funds 88
5.06 Certain benefits rolled over or transferred to regulated superannuation funds taken to be minimum benefits 89
5.06A Benefits rolled over or transferred from an RSA to regulated superannuation funds taken to be minimum benefits 90
5.07 Minimum benefits—approved deposit funds 90

Division 5.3—Treatment of minimum benefits 91

5.08 How minimum benefits are to be treated....91

Authorised Version F2025C00501 registered 08/05/2025

Division 5.4—Restrictions on exit fees on the rollover or transfer of benefits in certain cases 92
5.09 Application of Division 92
5.10 Operating standard—restriction on exit fees 92
5.11 Inconsistency between this Division and the member-protection standards 92
Division 5.5—Member-protection standards 93
5.12 Interpretation....93
5.13 Operating standards—member protection 93
5.14 Member-protection standards not to apply to certain funds 93
5.15 Member-protection standards not to apply to certain protected members....94
5.15A Limitation of application of member-protection standards to certain personal superannuation members....94
5.15B Member-protection standards taken not to have applied to certain members....94
5.15C Member-protection standards not to apply to pensions....95
5.15D Member-protection standards not to apply to traditional life insurance policies....95
5.16 Application of member-protection standards to sub-fund 95
5.17 Member-protection standards 96
5.18 Costs not to be deferred 98
Division 5.6—Existing personal superannuation members 99
5.19 Interpretation....99
5.20 Operating standards—existing personal superannuation members 99
5.21 Trustee may offer election to existing personal superannuation members....99
5.22 What happens if the member waives member protection? 100
5.23 What happens if the member elects to have benefits paid out of the fund? 101
5.24 What happens if the trustee pays benefits paid out of the fund? 101
Part 6—Payment standards 102
Division 6.1—Introductory 102
Subdivision 6.1.1—General interpretation 102
6.01 Interpretation....102
Subdivision 6.1.2—Preserved benefits 106
6.02 Preserved benefits in regulated superannuation funds—before 1 July 1999....106
6.03 Preserved benefits in regulated superannuation funds—on and after 1 July 1999....106
6.05 Preserved benefits in approved deposit funds....107
6.06 Effect of rollover or transfer on preserved benefits 107
Subdivision 6.1.3—Restricted non-preserved benefits 107
6.07 Restricted non-preserved benefits in regulated superannuation funds—before 1 July 1999....107
6.08 Restricted non-preserved benefits in regulated superannuation funds—on and after 1 July 1999....108
6.09 Effect of rollover or transfer on restricted non-preserved benefits....109

Authorised Version F2025C00501 registered 08/05/2025

Subdivision 6.1.4—Unrestricted non-preserved benefits 109
6.10 Unrestricted non-preserved benefits—regulated superannuation funds....109
6.11 Unrestricted non-preserved benefits—approved deposit funds....110
6.12 Movement of benefits between categories by satisfaction of conditions of release....111
6.13 Effect of rollover or transfer on unrestricted non-preserved benefits....111
Subdivision 6.1.5—Miscellaneous 111
6.14 Indexation....111
6.15 Contributions and benefits taken to be preserved benefits....111
6.15A Certain benefits taken to be unrestricted non-preserved benefits....112
6.16 Redistribution of member benefits within a fund in certain circumstances by operation of governing rules or action of trustee....112
6.16A When non-preserved benefits may be reduced....112
Division 6.2—Payment of benefits 114
6.17 Restriction on payment....114
Division 6.3—Cashing of benefits 115
Subdivision 6.3.1—Regulated superannuation funds 115
6.18 Voluntary cashing of preserved benefits in regulated superannuation funds....115
6.19 Voluntary cashing of restricted non-preserved benefits in regulated superannuation funds....115
6.19A Release of benefits on compassionate grounds....116
6.20 Voluntary cashing of unrestricted non-preserved benefits in regulated superannuation funds....117
6.21 Compulsory cashing of benefits in regulated superannuation funds....118
6.22 Limitation on cashing of benefits in regulated superannuation funds in favour of persons other than members or their legal personal representatives....119
6.22A Priority in cashing benefits in certain cases—regulated superannuation funds....120
6.22B When benefits in regulated superannuation funds may be cashed in favour of persons except members....120
Subdivision 6.3.2—Approved deposit funds 120
6.23 Voluntary cashing of preserved benefits in approved deposit funds....120
6.24 Voluntary cashing of unrestricted non-preserved benefits in approved deposit funds....121
6.25 Compulsory cashing of benefits in approved deposit funds....121
6.26 Limitation on cashing of benefits in approved deposit funds in favour of persons other than members or their legal personal representatives....121
6.27 Limitation on cashing benefits in approved deposit funds of less than $500....122
6.27A Priority in cashing benefits in certain cases—approved deposit funds....122
Division 6.4—Rollover and transfer of benefits in regulated superannuation funds and approved deposit funds 123
6.27B Definition....123
6.28 Rollover—regulated superannuation funds and approved deposit funds....123
6.29 Transfer—funds....123

Authorised Version F2025C00501 registered 08/05/2025

Division 6.4A—Certain beneficiaries at 30 June 1995 124
6.29A Interpretation....124
6.29B Trustee of fund may apply on beneficiary's behalf to eligible rollover fund—certain beneficiaries of funds on 30 June 1995....124
Division 6.5—Additional standards for eligible rollover funds 125
6.30 Obligations of trustees....125
Part 7—Contribution and benefit accrual standards (regulated superannuation funds) 126
7.01 Interpretation....126
7.02 Application....126
7.03 Restriction on accepting contributions or granting benefit accruals....126
7.04 Acceptance of contributions—regulated superannuation funds....126
7.05 Accrual of benefits—defined benefit funds....127
Part 8—Financial reporting 129
8.01 Accounts—statement of financial position and financial statement....129
8.01A Statement of cash flows....129
8.02 Accounts and statements that must be prepared....130
8.03 Period within which audit report must be given....130
Part 9—Financial management of funds 131
Division 9.1—Introductory 131
9.01 Interpretation....131
Division 9.2—Financial position of funds 132
9.02 Application....132
9.03 Subsection 130(1) of the Act etc—obligations of actuaries and auditors....132
9.04 Subsection 130(7) of the Act—unsatisfactory financial position....133
Division 9.3—Funding and solvency of defined benefit funds 134
9.05 Application....134
9.06 Interpretation....134
9.07 Prescription of standards....135
9.08 Funding standard....135
9.09 Funding and solvency certificates—operating standard....135
9.10 Contents of funding and solvency certificates....136
9.11 Effective date of funding and solvency certificates....136
9.12 Period of effect of funding and solvency certificates....137
9.13 Effect of notifiable events on funding and solvency certificates....137
9.14 Further funding and solvency certificates to be obtained....138
9.15 Minimum benefit index....139
9.16 Non-compliance with solvency requirement—technical insolvency....140
9.17 Technical insolvency—operating standard....140
9.18 Technical insolvency program—special funding and solvency certificate....140
9.19 Technical insolvency programs—procedure....142
Division 9.4—Winding-up of defined benefit funds 143
9.20 Application....143
9.21 Interpretation....143
9.22 Prescription of standards....144

Authorised Version F2025C00501 registered 08/05/2025

9.23 Winding-up of defined benefit funds....144
9.24 Alternative programs approved by APRA....144
9.25 Winding-up proceedings—priorities....145
Division 9.5—Actuarial standards relating to defined benefit funds 146
9.26 Application....146
9.27 Interpretation....146
9.28 Prescription of standards....146
9.29 Actuarial investigation standard....146
9.30 Actuarial reporting standard....147
9.31 Contents of actuarial report—private sector funds and fully funded public sector superannuation schemes....147
9.32 Contents of actuarial report—public sector superannuation schemes that are not fully funded....148
9.33 Content of actuarial report—newly established or converted funds....149
Division 9.6—Solvency of accumulation funds 150
9.34 Application....150
9.35 Interpretation....150
9.36 Prescription of standards—accumulation funds....151
9.37 Accumulation funds solvency standard....151
9.38 Technical insolvency of accumulation funds—operating standard....151
9.39 Technical insolvency program for accumulation funds—procedure....151
Division 9.7—Winding-up of accumulation funds 153
9.40 Application....153
9.41 Interpretation....153
9.42 Prescription of standards—winding-up of accumulation funds....153
9.43 Winding-up of accumulation funds....154
9.44 Alternative programs approved by APRA for accumulation funds....154
9.45 Accumulation fund winding-up proceedings—priorities....154
Part 10—Eligible rollover funds 156
Division 10.1—Introductory 156
10.01 Definition of *eligible rollover fund* (Act, s 242)....156
Division 10.2—Prescribed matters 157
10.02 Interpretation....157
10.03 Payment of benefit to eligible rollover fund....157
Division 10.3—Additional operating standards applicable to eligible rollover funds 158
10.06 Operating standards—eligible rollover funds....158
Part 11—Information to be given to the Regulator and related matters 159
11.01 Definition....159
11.02 Lodgment of annual returns by superannuation entities....159
11.03 Period for giving information to APRA, Act, s 254 (1)....159
11.04 Prescribed information (subsection 254(1))—regulated superannuation funds....159
11.05 Prescribed information (subsection 254(1))—approved deposit funds....160
11.06 Prescribed information (subsection 254(1))—PSTs....160
11.07 Operating standard—disclosure of certain information....161

Authorised Version F2025C00501 registered 08/05/2025

11.08 Information regarding lost members to be provided to ASIC 161

Part 12—Pre-1 July 1988 funding credits and debits 164

12.01 Definitions 164
12.02 Pre-1 July 88 funding amounts 164
12.03 Shortfall-in-assets amount—calculation 165
12.04 Estimation of net market value of fund assets 166
12.05 Value A of accrued benefits 166
12.06 Value B of accrued benefits 167
12.07 Calculation of value A or B of accrued benefits 169
12.08 Date before which applications to be made 169
12.09 Application fees 170
12.10 Prescribed events for the purposes of paragraph 342(4)(a) of the Act 170
12.11 When and how APRA to be notified of prescribed events 170
12.12 Transfer of PJFCs—trustees of transferor funds 171
12.13 Transfer of PJFCs—trustees of transferee funds 171
12.14 Transfer of PJFCs—revocation of approval 172
12.15 Transfer of PJFCs—requirements to be satisfied 172
12.19 Actuaries to certify in relation to determinations 173
12.20 Substituted accounting periods 173

Part 13—Miscellaneous 174

Division 13.1—Transitional provisions 174

Subdivision 13.1.1—Preliminary 174
13.01 Interpretation 174

Subdivision 13.1.1A—Information to be given to members 175
13.02 Application 175
13.03 Operating standard—OSS provisions 175

Subdivision 13.1.3—Part 31 of the Act (transition to scheme provided for in the Act): retirement provisions 175
13.05 Amendment by trustee of governing rules 175

Subdivision 13.1.4—Part 31 of the Act (transition to scheme provided for in the Act): modifications 175
13.06 Application 175
13.07 Modifications of the Act and these Regulations 176
13.08 Modification of the A.C.T. Corporations Law and Regulations 177
13.09 A.C.T. Corporations Law and Regulations—interpretation of applied provisions 178
13.10 Offences—Corporations Law, sections 1070, 1072 and 1074 as modified 179

Division 13.2—Various operating standards 180
13.11 Interpretation 180
13.12 Assignments of superannuation interests 180
13.13 Charges over a member's benefits 180
13.14 Charges over assets of funds 180
13.15 Restrictions on the standards 180
13.15A Charges in relation to certain derivatives contracts 181
13.16 Accrued benefits—restriction on alteration 182
13.17 Approved deposit funds—restrictions on loans and investments 184

Authorised Version F2025C00501 registered 08/05/2025

13.17A Public offer superannuation funds—restrictions on loans and investments 184
13.17AA Rules for certain investments by funds in related bodies corporate 184
13.17B Orders etc. of the Superannuation Complaints Tribunal to be complied with 185
13.17C Funds that cease to be eligible rollover funds must maintain entitlements 185
Division 13.3—Various prescribed matters 186
13.18 Sole purpose test—specified age 186
13.19 Custodians of superannuation entities—specified amounts 186
13.20 Advertisement of scheme for winding-up or dissolution of superannuation entity 186
13.21 Report of inspector—prescribed agencies 186
13.22 Statements made at an examination—manner of authentication 187
Division 13.4—Repeal 188
13.23 Superannuation Industry (Supervision) (Approval of Trustees) Regulations 188
Division 13.5—Reconsideration and review of decisions 189
13.24 Notice of reviewable decisions and reasons for decisions 189
13.25 Reconsideration of certain decisions 189
13.26 Review by Tribunal of reconsidered decisions 190
Schedule 1AAA—Approved auditors—Professional Organisations 191
Schedule 1AA 192
Part 1—Exempt public sector superannuation schemes (1994-95 and 1995-96 years of income) 192
Part 2—Exempt public sector superannuation schemes (1996-97 year of income) 195
Part 3—Exempt public sector superannuation schemes (1997-98 year of income and subsequent years of income) 198
Schedule 1A—Payment limits 201
Schedule 1B—Pension valuation factors 206
Schedule 1—Conditions of release and cashing restrictions—preserved benefits and restricted non-preserved benefits 210
Part 1—Regulated superannuation funds 210
Part 2—Approved deposit funds 212
Schedule 2—Modifications of the OSS laws in relation to preserved benefits in regulated superannuation funds 213

Authorised Version F2025C00501 registered 08/05/2025

Part 1—Modifications of the *Occupational Superannuation Standards Act 1987* 213

Part 2—Modifications of the Occupational Superannuation Standards Regulations 214

Schedule 3—Prescribed form of advertisement of scheme for winding-up or dissolution 216

Endnotes 217

Endnote 1—About the endnotes 217

Endnote 2—Abbreviation key 218

Endnote 3—Legislation history 219

Endnote 4—Amendment history 221

Authorised Version F2025C00501 registered 08/05/2025

Authorised Version F2025C00501 registered 08/05/2025

Part 1—Preliminary

1.01 Citation

These Regulations may be cited as the Superannuation Industry (Supervision) Regulations.

1.02 Commencement

The following provisions of these Regulations commence on 1 July 1994:

(a) Division 2.2;
(b) Subdivision 2.8.2;
(c) Regulations 3.10, 3.11 and 3.12;
(d) Division 6.5;
(e) Parts 9 and 10;
(f) Regulation 11.08;
(g) Part 12.

1.03 Interpretation

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

accumulation fund means a regulated superannuation fund that is not a defined benefit fund.

Act means the *Superannuation Industry (Supervision) Act 1993*.

advance instalment of surcharge means the advance instalment payable under section 11 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

benefit certificate has the meaning given by section 10 of the SG(A) Act.

capital gains tax exempt component has the same meaning as ***CGT exempt component*** in subsection 27A(1) of the Tax Act.

commencement day, in relation to a pension or an annuity, means the first day of the period to which the first payment of the pension or annuity relates.

contributions, in relation to a fund, includes:

(a) payments of shortfall components to the fund; and
(b) payments to the fund from the Superannuation Holding Accounts Reserve;

but does not include benefits that have been rolled over or transferred to the fund.

defined benefit fund means:

(a) a public sector superannuation scheme that:
    (i) is a regulated superannuation fund; and

Authorised Version F2025C00501 registered 08/05/2025

(ii) has at least 1 defined benefit member; or

(b) a regulated superannuation fund (other than a public sector superannuation scheme):

(i) that has at least 1 defined benefit member; and

(ii) some or all of the contributions to which (out of which, together with earnings on those contributions, the 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.

defined benefit member means a member entitled, on retirement or termination of his or her employment, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

(a) the amount of:

(i) the member's salary at a particular date, being the date of the termination of the member's employment or of the member's retirement or an earlier date; or

(ii) the member's salary averaged over a period before retirement; or

(b) a specified amount.

eligible rollover fund has the same meaning as in Part 24 of the Act.

eligible spouse contributions has the meaning given by section 159TC of the Tax Act.

eligible termination payment has the same meaning as in Subdivision AA of Division 2 of Part III of the Tax Act.

employer contribution, in relation to a regulated superannuation fund, means a contribution by, or on behalf of, an employer-sponsor of the fund.

excluded member means:

(a) a member of a regulated superannuation fund that is an excluded superannuation fund; or

(b) a defined benefit member of a defined benefit fund.

full-time, in relation to being gainfully employed, means gainfully employed for at least 30 hours each week.

gainfully employed means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

industrial authority means:

(a) a court, or a tribunal or other body or person, constituted under a law of the Commonwealth, a State or a Territory with power of conciliation or arbitration in relation to industrial disputes; or

(b) a special board constituted under the law of a State relating to factories.

lost member has the meaning given by regulation 1.03A.

Authorised Version F2025C00501 registered 08/05/2025

lost RSA holder has the meaning given by regulation 1.06 of the RSA Regulations.

member, except in Part 2, means:

(a) in relation to an approved deposit fund—a depositor in the fund; and

(b) in relation to a regulated superannuation fund—a member of the fund; and

(c) in relation to a PST—a unit-holder in the PST.

Note: The meaning of the term ***member*** in Part 2 is defined in subregulation 2.01(2).

member-protection standards means the standards set out in subregulation 5.17(2) and regulation 5.18.

minimum requisite benefit, in relation to a member, means the benefit certified by an actuary in a relevant benefit certificate as the minimum benefit in respect of the member.

part-time, in relation to being gainfully employed, means gainfully employed for at least 10 hours, and less than 30 hours, each week.

protected member means a member (other than an excluded member) of a regulated superannuation fund who has withdrawal benefits, or benefits of any other type that are payable on leaving the fund otherwise than voluntarily, net of any applicable exit fee, that:

(a) are less than $1,000; and

(b) contain, or have contained, benefits that are mandated employer-financed benefits (within the meaning of subregulation 5.01(1)).

Note: See subregulation (3) as to an assumption that the trustee must make regarding benefits.

PST means a pooled superannuation trust.

relevant benefit certificate, in relation to a regulated superannuation fund, means a benefit certificate that relates to a defined benefit superannuation scheme (within the meaning of the SG(A) Act) of which the fund forms part.

relevant entity means:

(a) a public offer entity; or

(b) an approved deposit fund.

Note: The expression ***relevant entity*** is defined in the same terms as in section 22 of the Act.

reserves, in relation to a superannuation entity, means reserves maintained under section 115 of the Act.

reviewable decision means a decision of the Regulator:

(a) not to approve an application under subregulation 1.04(2A) or to approve such an application subject to conditions; or

(b) to revoke an approval under subregulation 1.04(2C); or

(ba) to determine consent for the purposes of subregulation 4.12(2) and paragraph 6.27B(b); or

Authorised Version F2025C00501 registered 08/05/2025

(bb) to specify a day under regulation 12.08; or
(c) not to approve an application under regulation 12.12 or 12.13; or
(d) to revoke an approval under regulation 12.14; or
(e) after reconsideration under regulation 13.25, to confirm or vary a decision referred to in any of the preceding paragraphs of this definition.

RSA Act means the *Retirement Savings Accounts Act 1997*.

RSA holder has the same meaning given to the term ***holder*** in section 9 of the RSA Act.

RSA institution has the meaning given by section 11 of the RSA Act.

RSA Regulations means the Retirement Savings Accounts Regulations.

SG(A) Act means the *Superannuation Guarantee (Administration) Act 1992*.

shortfall component has the same meaning as in the SG(A) Act.

successor fund, in relation to a transfer of benefits of a member from a fund (called ***the original fund***), means a fund which satisfies the following conditions:
(a) the fund confers on the member equivalent rights to the rights that the member had under the original fund in respect of the benefits;
(b) before the transfer, the trustee of the fund has agreed with the trustee of the original fund that the fund will confer on the member equivalent rights to the rights that the member had under the original fund in respect of the benefits.

superannuation contributions surcharge means the superannuation contributions surcharge imposed by the *Superannuation Contributions Tax Imposition Act 1997*.

Superannuation Holding Accounts Reserve means the Reserve established under that name by section 8 of the *Small Superannuation Accounts Act 1995*.

Tax Act means the *Income Tax Assessment Act 1936*.

withdrawal benefit, in relation to a member of a superannuation entity, means the total amount of the benefits that would be payable to:
(a) the member; and
(b) the trustee of another entity in respect of the member; and
(c) an RSA in respect of the member;
if the member voluntarily ceased to be a member.

(2) In these Regulations, other than Part 2:

fund means:
(a) an approved deposit fund; or
(b) a regulated superannuation fund.

Note: For the meaning of ***fund*** in Part 2, *see* subregulation 2.01(3).

Authorised Version F2025C00501 registered 08/05/2025

(3) For the purposes of the definition of ***protected member*** in subregulation (1), a benefit in a fund is taken to contain or to have contained mandated employer-financed benefits unless:

(a) if the benefits arose in relation to contributions made before 1 July 1995—the trustee of the fund reasonably believes otherwise; or

(b) if the benefits arose in relation to contributions made on or after 1 July 1995—the trustee of the fund knows otherwise.

1.03A Lost member

(1) A member of a fund is taken to be a lost member at a particular time if:

(a) the member is uncontactable, that is, if and only if:

(i) the fund has never had an address for him or her; or

(ii) 2 written communications or, if the trustee so chooses, 1 written communication have been sent by the fund to the member's last known address and returned unclaimed; or

(b) the member is an inactive member, that is, if and only if:

(i) he or she has been a member of the fund for longer than 2 years; and

(ia) he or she was, at the time he or she joined the fund, a person in respect of whom there was in effect a contribution arrangement of the kind referred to in subsection 16(5) of the Act (which deals with the definition of ***standard employer-sponsored member***); and

(ii) the fund has not received a contribution or rollover in respect of him or her within the last 2 years of his or her membership of the fund; or

(c) the member joined the fund from another fund as a lost member; or

(ca) the member joined the fund from an RSA provider as a lost RSA holder;

unless:

(d) within the last 2 years of the member's membership, the trustee of the fund has verified that the member's address is correct and has no reason to believe that that address is now incorrect; or

(e) the member is permanently excluded from being a lost member.

(2) For the purposes of subregulation (1), and subject to subregulation (3), a member of a fund is permanently excluded from being a lost member if:

(a) the member is an inactive member who has indicated by a positive act (for example, deferring a benefit in the fund) that he or she wishes to continue to be a member of the fund; or

(b) the member has contacted the fund at any time after the time at which he or she joined the fund and indicated that he or she wishes to continue being a member of the fund; or

(c) the member is a member of an excluded fund.

(3) The trustee of a fund may decide that:

(a) a member, a class of members, or all members of the fund cannot be permanently excluded from becoming lost members; or

Authorised Version F2025C00501 registered 08/05/2025

(b) a member who is, a class of members who are, or all members of the fund who are permanently excluded from being lost is or are not to continue being permanently excluded from being lost.

Note: The consequences of a member becoming a lost member are:

(a) that the trustee of the fund must protect the benefits of the member (*see* Division 5.5); and

(b) that the trustee of the fund must report certain details to the Commissioner (*see* regulation 11.08); and

(c) that if the member is transferred to another fund the trustee of the transferring fund must supply certain information regarding the member to the trustee of the transferee fund (*see* Division 2.7A).

There may also be consequences regarding the information to be supplied to the member (*see* regulation 2.05).

1.04 Prescribed matters (Act, s 10)

(1) The purpose of this regulation is to prescribe matters for the purposes of various definitions in section 10 of the Act.

approved auditor

(2) For the purposes of the definition of ***approved auditor*** in section 10 of the Act, the following class of persons is specified, namely, individuals each of whom:

(a) in the case of an auditor of an excluded superannuation fund:

(i) is, under Division 2 of Part 9.2 of the Corporations Law, registered, or taken to be registered, as an auditor; or

(ii) is associated with a professional organisation specified in Schedule 1AAA in the manner specified, in respect of that organisation, in that Schedule; or

(iii) is the Auditor-General of the Commonwealth, a State or Territory; and

(b) in the case of an auditor of a superannuation entity other than an excluded superannuation fund:

(i) is, under Division 2 of Part 9.2 of the Corporations Law, registered, or taken to be registered, as an auditor and is either:

(A) associated with a professional organisation specified in Schedule 1AAA in the manner specified, in respect of that organisation, in that Schedule; or

(B) approved by APRA under subregulation (2A); or

(ii) is the Auditor-General of the Commonwealth, a State or Territory.

(2A) APRA may, on application in writing by a person who is, under Division 2 of Part 9.2 of the Corporations Law, registered, or taken to be registered, as an auditor, approve that person for the purposes of sub-subparagraph (2)(b)(i)(B) in relation to a fund or funds specified in the application if APRA is satisfied that that person will audit the fund, or funds, in accordance with the Australian Auditing Standards issued by the Auditing Standards Board or with similar standards.

Authorised Version F2025C00501 registered 08/05/2025

(2B) An approval under subregulation (2A) must be in writing and is subject to such conditions as are set out in the approval.

(2C) APRA may, by notice in writing given to the person to whom an approval is given under subregulation (2A), revoke the approval if the person fails to comply with any of those conditions.

excluded approved deposit fund

(4) For the purposes of paragraph (b) of the definition of ***excluded approved deposit fund*** in section 10 of the Act, the following condition is specified, namely, that the fund must be either:

(a) a fund established before 1 July 1994; or

(b) a fund established on or after 1 July 1994 in which, on the establishment of the fund, the eligible termination payments of the fund's beneficiary that are invested with the fund have an initial value of at least $400,000.

exempt public sector superannuation scheme

(4A) For the purposes of the definition of ***exempt public sector superannuation scheme*** in section 10 of the Act the schemes listed in Schedule 1AA are specified.

(4B) If a scheme listed in Schedule 1AA is re-named, the reference to that scheme includes the scheme as so re-named.

(4C) Subregulation (4A) has effect in relation to a scheme specified in Part 1 of Schedule 1AA in respect of the 1994–95 and 1995–96 years of income of that scheme.

(4D) Subregulation (4A) applies in relation to a scheme specified in Part 2 of Schedule 1AA during the 1996-97 year of income of that scheme.

(4E) Subregulation (4A) applies in relation to a scheme specified in Part 3 of Schedule 1AA during the 1997-1998 year of income, and subsequent years of income, of that scheme.

pooled superannuation trust

(5) For the purposes of paragraph (b) of the definition of ***pooled superannuation trust*** in section 10 of the Act, the definition applies to a unit trust that is:

(a) used only for investing the following kinds of assets:

(i) assets of a regulated superannuation fund;

(ii) assets of an approved deposit fund;

(iii) assets of a PST;

(iv) assets of a life assurance company (within the meaning of Division 8 of Part III of the Tax Act) that are assets of a tax-advantaged insurance fund (within the meaning of section 111B of the Tax Act);

(v) assets of a registered organisation (within the meaning of Division 8A of Part III of the Tax Act) solely for the tax-advantaged business

Authorised Version F2025C00501 registered 08/05/2025

(within the meaning of section 116GC of the Tax Act) of the organisation;

(vi) assets of an exempt entity within the meaning of, subparagraph (a), (c) or (d) of the definition of exempt entity in section 102M of the Tax Act; and

(b) a resident unit trust within the meaning of section 102H of the Tax Act.

Note: 1. The phrase ***life assurance company*** is defined in subsection 110(1) of the Tax Act;

2. The phrase ***registered organisation*** is defined in subsection 116E(1) of the Tax Act.

Authorised Version F2025C00501 registered 08/05/2025

Part 1A—Annuities and pensions

Division 1A.1

1.05 Meaning of *annuity* (Act, s 10)

(1) A benefit provided by a life insurance company or a registered organisation is taken to be an annuity for the purposes of the Act if it is a benefit that:
  (a) arises under a contract that meets the standards of subregulation (2), (4), (6), (7) or (8); and
  (b) in the case of a benefit purchased on or after 3 August 1993—is purchased with the whole or part of a rolled-over amount within the meaning given to that term by section 27A of the Tax Act.

(2) A contract for the provision of a benefit (in this subregulation called ***the annuity***) meets the standards of this subregulation if it ensures that:
  (a) the annuity is paid at least annually throughout the life of the primary beneficiary in accordance with paragraphs (b) and (c) and, if there is a reversionary beneficiary:
    (i) throughout the reversionary beneficiary's life; or
    (ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the annuity—at least until his or her 16th birthday; or
    (iii) if the person referred to in subparagraph (ii) is a full-time student at age 16—at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner); and
  (b) the size of payments of benefit in a year is fixed, allowing for variation only:
    (i) as specified in the contract; or
    (ii) to allow commutation to pay a superannuation contributions surcharge; and
  (c) unless APRA otherwise approves, the sum payable as benefit to the primary beneficiary or to the reversionary beneficiary, as the case may be, increases year by year by an amount that is at least the lesser of:
    (i) 5%; or
    (ii) a rate equal to the rate of increase (if any) determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter preceding the date on which the payment is to be made with the quarterly CPI first published by the Australian Statistician for that quarter in the preceding year; and
  (d) the amount paid as the purchase price is wholly converted into annuity income; and
  (e) the annuity does not have a residual capital value; and
  (f) the annuity cannot be commuted except:

Authorised Version F2025C00501 registered 08/05/2025

(i) if the commutation is made within 6 months after the commencement day of the annuity; or

(ii) if the commutation is made, within 10 years after the commencement day of the annuity, to the benefit of a reversionary beneficiary on the death of the primary beneficiary; or

(iii) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under a contract that meets the standards of this subregulation or subregulation (3) or provided under rules that meet the standards of subregulation 1.06(2) or (3); or

(iv) to pay a superannuation contributions surcharge; and

(g) if the annuity reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and

(h) the annuity cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and

(i) the capital value of the annuity, and the income from it, cannot be used as security for a borrowing.

(3) For the purpose of determining whether an annuity meets the standards in subregulation (2), it is immaterial that:

(a) if the primary beneficiary dies within 10 years after the commencement day of the annuity, a surviving reversionary beneficiary may obtain a payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period of 10 years; and

(b) if the primary beneficiary dies within 10 years after the commencement day of the annuity and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period of 10 years, is payable to the primary beneficiary's estate; and

(c) if the primary beneficiary dies within 10 years after the commencement day of the annuity and there is a surviving reversionary beneficiary who also dies within that period, there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

(4) A contract for the provision of a benefit (in this subregulation called ***the annuity***):

(a) that does not meet the standards in subregulation (2); and

(b) that does not fix the size of payments of benefit in a year; and

(c) under which the commencement day is on or after 22 December 1992;

meets the standards of this subregulation if the contract at least ensures that:

(d) the standards in paragraphs (2)(h) and (i) are met; and

(e) payments are made at least annually; and

Authorised Version F2025C00501 registered 08/05/2025

(f) the payments in a year, except a payment by way of commutation, are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A.

Note: 22 December 1992 was the date of Royal Assent to the *Taxation Laws Amendment (Superannuation) Act 1992*.

(5) For the purpose of determining whether an annuity meets the standards in subregulation (4), it is immaterial:

(a) that:

(i) the commencement day of the annuity occurs or after 1 April in a financial year; and

(ii) the contract does not ensure that payments in that financial year meet the standard in that subregulation for the minimum amount; or

(b) that the contract does not ensure that the payments in the year in which the annuity is to end meet the standard in that subregulation for the minimum amount.

(6) A contract for the provision of a benefit (in this subregulation called ***the annuity***):

(a) that does not meet the standards of subregulation (2); and

(b) that fixes the size of the payments of benefit in a year, allowing for variation only as specified in the contract; and

(c) under which the commencement day is on or after 1 July 1994;

meets the standards of this subregulation if the contract at least ensures that:

(d) the standards in paragraphs (2)(g), (h) and (i) are met; and

(e) except in relation to payments, by way of commutation, for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years; and

(f) payments in accordance with paragraph (b) are made at least annually; and

(g) the amount paid as the purchase price is wholly converted into annuity income.

(7) A contract for the provision of a benefit (in this subregulation called ***the annuity***) that:

(a) does not meet the standards of subregulation (2); and

(b) provides for payments whose size in a year is fixed, allowing for variation only as specified in the contract; and

(c) provides for additional payments (in this subregulation called ***bonus payments***);

(d) the commencement day of which is on or after 1 July 1994;

meets the standards of this subregulation if it at least ensures that:

(e) in respect of the fixed-size payments—the standards in subregulation (6) are met; and

(f) the fixed-size payments amount to at least 50% of:

Authorised Version F2025C00501 registered 08/05/2025

(i) if the provider provides annuities of the kind specified in subregulation (6)—the amount that would be payable if the annuity were wholly of that kind; or

(ii) if the provider does not provide annuities of the kind specified in subregulation (6)—the fixed-size payments are at least equal in amount to 50% of the interest payable on Commonwealth bonds that have the same value as the purchase price of the annuity and that most closely correspond in term to the term of the annuity; and

(g) the amounts of the bonus payments (if any) are reasonably proportional to the investment income from which the payments purport to be derived; and

(h) the amount of a bonus payment (if any) is notified in writing by the provider each year and is paid to the beneficiary in the year next following (except when deferral of the payment would not result, in any future year, in the rate of increase in size of the total payments for the year exceeding the average rate of increase of the CPI in the preceding 3 years).

(8) A contract for the provision of a benefit (in this subregulation called ***the annuity***):

(a) that does not meet all the standards in any other provision of this regulation; and

(b) under which the commencement day is on or after 22 December 1992; and

(c) that provides for:

(i) payments whose size in a year is fixed, allowing for variation only as specified in the contract; and

(ii) additional payments whose size is not fixed, derived from the application of part of the purchase price to investments by allocation of the annuity provider;

meets the standards of this subregulation if it at least ensures that:

(d) in respect of fixed-size payments—if the commencement day is on or after 1 July 1994, the standards in subregulation (6) are met; and

(e) in respect of payments whose size is not fixed—the standards in subregulation (4) are met.

Note: 22 December 1992 was the date of Royal Assent to the *Taxation Laws Amendment (Superannuation) Act 1992*.

1.06 Meaning of *pension* (Act, s 10)

(1) A benefit is taken to be a pension for the purposes of the Act if it is a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (2), (4) or (6).

(2) Rules meet the standards of this subregulation if they ensure that:

(a) the pension is paid at least annually throughout the life of the primary beneficiary in accordance with paragraphs (b) and (c) and, if there is a reversionary beneficiary:

(i) throughout the reversionary beneficiary's life; or

Authorised Version F2025C00501 registered 08/05/2025

(ii) if he or she is a child of the primary beneficiary or of a former reversionary beneficiary under the pension—at least until his or her 16th birthday; or

(iii) if the person referred to in subparagraph (ii) is a full-time student at age 16—at least until the end of his or her full-time studies or until his or her 25th birthday (whichever occurs sooner); and

(b) the size of payments of benefit in a year is fixed, allowing for variation only:

(i) as specified in the governing rules; or

(ii) to allow commutation to pay a superannuation contributions surcharge; and

(c) unless APRA otherwise approves, the sum payable as benefit to the primary beneficiary or to the reversionary beneficiary, as the case may be, increases year by year by an amount that is at least the lesser of:

(i) 5%; or

(ii) a rate equal to the rate of increase (if any) determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter preceding the date on which payment is to be made with the quarterly CPI first published by the Australian Statistician for that quarter in the preceding year; and

(d) the pension does not have a residual capital value; and

(e) the pension cannot be commuted except:

(i) if the commutation is made within 6 months after the commencement day of the pension; or

(ii) if the commutation is made within 10 years after the commencement day of the pension to the benefit of a reversionary beneficiary on the death of the primary beneficiary; or

(iii) if the eligible termination payment resulting from the commutation is transferred directly to the purchase of another benefit provided under rules that meet the standards of this subregulation or subregulation (3) or provided under a contract that meets the standards of subregulation 1.05(2) or (3); or

(iv) to pay a superannuation contributions surcharge; and

(f) if the pension reverts or is commuted, it does not have a reversionary component greater than 100% of the benefit that was payable before the reversion or the commutation; and

(g) that the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and

(h) that the capital value of the pension and the income from it, cannot be used as security for a borrowing.

(3) For the purpose of determining whether rules meet the standards in subregulation (2), it is immaterial that:

(a) if the primary beneficiary dies within 10 years after the commencement day of the pension, a surviving reversionary beneficiary may obtain a

Authorised Version F2025C00501 registered 08/05/2025

payment equal to the total payments that the primary beneficiary would have received, if the primary beneficiary had not died, from the day of the death until the end of the period of 10 years; and

(b) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is no surviving reversionary beneficiary, an amount, not exceeding the difference between the sum of the amounts paid to the primary beneficiary and the sum of the amounts that would have been so payable in the period of 10 years, is payable to the primary beneficiary's estate; and

(c) if the primary beneficiary dies within 10 years after the commencement day of the pension and there is a surviving reversionary beneficiary who also dies within that period, there is payable to the reversionary beneficiary's estate an amount determined as described in paragraph (b) as if that paragraph applied to the reversionary beneficiary.

(4) Rules:

(a) that do not meet the standards in subregulation (2); and

(b) that do not fix the size of payments of benefit in a year; and

meet the standards of this subregulation if they at least ensure that:

(c) the standards in paragraphs (2) (g) and (h) are met; and

(d) payments are made at least annually; and

(e) on and after 22 December 1992—the payments in a year, except a payment by way of commutation, are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A.

Note: 22 December 1992 was the date of Royal Assent to the *Taxation Laws Amendment (Superannuation) Act 1992*.

(5) For the purpose of determining whether rules meet the standards in subregulation (4), it is immaterial:

(a) that:

(i) the commencement day of the pension occurs on or after 1 April in a financial year; and

(ii) the rules do not provide for the payment of an amount in that financial year that meets the standard for the minimum amount in that subregulation; or

(b) that the rules do not ensure that the payments in the year in which the pension is to end meet the standard for the minimum amount in that subregulation.

(6) Rules:

(a) that do not meet the standards in subregulation (2); and

(b) that provide that the size of the payments of benefit in a year is fixed, allowing for variation only as specified in the rules; and

(c) under which the commencement day is on or after 1 July 1994;

meet the standards in this subregulation if they at least ensure that:

(d) the standards in paragraphs (2) (f), (g) and (h) are met; and

Authorised Version F2025C00501 registered 08/05/2025

(e) except in relation to payments, by way of commutation, for superannuation contributions surcharge, variation in payments from year to year does not exceed, in any year, the average rate of increase of the CPI in the preceding 3 years; and

(f) payments in accordance with the contracted size are made at least annually; and

(g) if, under the rules, the pension can be commuted—except if conversion is in relation to a commutation to pay a superannuation contributions surcharge, the conversion to a lump sum is limited to a sum that is not greater than the sum determined by applying the appropriate pension valuation factor under Schedule 1B to the pension as if the commencement day were the day on which the commutation occurs.

1.07 Periods when beneficiary may not receive benefits

A benefit is not taken not to meet the standards in regulation 1.05 or 1.06 by reason only that payments of benefit to the beneficiary have been properly suspended during a period when the beneficiary is the holder of a paid public office.

Authorised Version F2025C00501 registered 08/05/2025

Division 1A.2—Operating standards

1.08 Restriction on factors for converting pensions

(1) For the purposes of subsection 31(1) of the Act, it is a standard applicable to the operation of a regulated superannuation fund that the fund must not use a factor, for converting a prescribed pension to a lump sum, that is greater than the pension valuation factor that would apply under Schedule 1B if the commencement day of the pension were the day on which it was commuted.

(2) Subregulation (1) does not apply to the use of a factor that:
  (a) APRA has approved in writing; or
  (b) is for conversion in relation to a commutation to pay a superannuation contributions surcharge.

(3) In this regulation, ***prescribed pension*** means a pension (including a benefit that is taken, under these Regulations, to be a pension for the purposes of the Act), other than a benefit that is taken, under subregulation 1.06(1), to be a pension by reason only that it is provided under rules of a superannuation fund that meet the standards of subregulation 1.06(2).

Authorised Version F2025C00501 registered 08/05/2025

Part 2—Information for members and others

Division 2.1—Introductory

2.01 Interpretation

(1) In this Part:

amount includes a nil amount.

building society has the same meaning as in section 16 of the RSA Act.

capital guaranteed, in relation to a policy, has the meaning given by subsection 14(2) of the RSA Act.

capital guaranteed fund means a public offer superannuation fund, or a sub-fund of a public offer superannuation fund, that has the following characteristics:

(a) its investments comprise 1 or more of the following only:
  (i) deposits with an ADI;
  (ii) deposits with a building society;
  (iii) deposits with a credit union;
  (iv) investments in a capital guaranteed policy;
(b) the contributions and accumulated earnings of its members cannot be reduced by negative investment returns (within the meaning of subregulation 5.01(1)) or by any reduction in the value of its assets.

contact details, in relation to a superannuation entity, means:

(a) the name of the superannuation entity and, if relevant, of the sub-plan; and
(b) a contact address for the superannuation entity; and
(c) a contact person and telephone number for the contact person.

contact person, in relation to a superannuation entity, means a named individual, or a person holding a designated office or position, who is available to receive and deal with inquiries or complaints by members or unit-holders (as the case may be).

credit union has the same meaning as in section 16 of the RSA Act.

excluded superannuation fund, in relation to information to be given in respect of a reporting period, means a regulated superannuation fund having fewer than 5 members on the first day of the period.

Note: Except where this definition applies, ***excluded superannuation fund*** has the meaning given by s. 10 of the Act.

policy has the same meaning as in section 16 of the RSA Act.

prescribed earning rate, in relation to a fixed-rate option offered by a capital guaranteed fund for a period, means the earning rate declared, in advance, by the fund.

Authorised Version F2025C00501 registered 08/05/2025

sub-fund, in relation to a capital guaranteed fund, means a segment of a public offer superannuation fund that has the following characteristics:

(a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries;

(b) each beneficiary of the sub-fund has an interest only in the assets of the sub-fund and not in the other assets of the public offer superannuation fund;

(c) there is no transfer of assets, benefits or money between the sub-fund and another sub-fund without a transfer of a corresponding beneficial interest;

(d) the insurance and administration costs of the sub-fund are attributable only to that sub-fund.

sub-plan, in relation to a regulated superannuation fund, means a segment of the fund comprising a member or members of the fund, being a sub-plan that the trustee, under subregulation 2.07(2), determines should be made.

unfunded defined benefits fund means a defined benefits fund under which all or some of the amounts that will be required for the payment of a benefit are not paid into the fund until the member concerned becomes entitled to receive the benefit.

(2) In this Part, where the context allows, a reference to a member is taken to mean:

(a) in relation to a superannuation entity—a person who:

(i) is a member of the entity; or

(ii) receives a pension from the entity; or

(iii) has deferred his or her entitlement to receive a benefit from the entity; and

(b) in relation to an approved deposit fund—a depositor in the fund; and

(c) in relation to a PST—a unit-holder.

(3) In a Division of this Part, a reference to a fund is a reference to a fund of the kind to which the Division applies.

(4) A reference to the telephone number of a contact person includes a reference to the telephone number of a switchboard through which the person may be reached by telephone.

2.02 Scope and application of this Part

(1) The following Divisions of this Part deal with the duty of trustees to give information to members or other persons on specified occasions. Each of the Divisions has an application provision:

(a) stating the types of entity to which the Division applies; and

(b) referring to any particular provisions of the Division, or a Subdivision of the Division, that limit or restrict the application of the Division or Subdivision.

(2) The requirements to give information are expressed in 2 forms: general requirements (which set out broad principles), and specific requirements (which

Authorised Version F2025C00501 registered 08/05/2025

set out particular provisions, and may apply in all cases or only in particular circumstances). The specific requirements are not to be taken as limiting, by implication, the scope of the general requirements.

(3) This Division governs the other Divisions of this Part.

2.03 Duties and requirements arising under this Part

(1) A requirement to give information under a Division of this Part must be met within the time specified in the Division as the time for compliance.

Requirements concerning information

(2) Information given in accordance with this Part must:
  (a) be in writing; and
  (b) be worded and presented in a clear and effective manner.

(3) Information given in accordance with this Part may be given, where appropriate, in diagrammatical form.

Where information may mislead (if incomplete, outdated, etc)

(4) If the trustee of a superannuation entity has reason to think that information that the trustee is required to give, other than under Division 2.6, will materially mislead members, or may do so, the trustee must give with the information a statement containing further information to rectify any misleading, or potentially misleading, effect.

Example: If a change in a fund's investment policy means that information about past earnings rates is not a reliable guide to future earnings, an appropriate explanation (including the change of policy and its likely effect on future earnings rates) must be given.

2.04 Reasonable efforts are sufficient

(1) For the purposes of Divisions 2.3 to 2.7 (both inclusive) and Division 2.8 other than Subdivision 2.8.2, the trustee of a superannuation entity is taken to have satisfied a duty or requirement to give information to a person if the trustee has taken reasonable steps to give the information to the person but has been unable to do so.

Information that is unknown and not reasonably obtainable

(2) Where information is unknown to the trustee, the trustee need not give the information under this Part if the trustee cannot obtain the information by making reasonable inquiries.

2.05 Members to whom trustees are not required to give information

(1) Subject to subregulation (2), the trustee of a superannuation entity need not give information to a member if:
  (a) the trustee has an address for the member, and:

Authorised Version F2025C00501 registered 08/05/2025

(i) the trustee is satisfied on reasonable grounds that that address is incorrect; and

(ii) the trustee has taken reasonable steps to locate the member but has been unable to do so; or

(b) the trustee has no address for the member and:

(i) has been unable to obtain an address for the member; and

(ii) has taken reasonable steps to locate the member, but has been unable to do so; or

(c) the member is a person who was transferred to the superannuation entity and, at the time of the transfer:

(i) the trustee of the transferor fund has fulfilled the requirements of paragraph (a) or (b) in relation to the person; or

(ii) the RSA provider has fulfilled the requirements of paragraph 2.04(1)(a) or (b) of the RSA Regulations in relation to the person.

Entity becoming aware of member's address, etc

(2) Subject to subregulation (3), where the trustee of a superannuation entity has refrained, in reliance on subregulation (1), from giving information to a member, the trustee must give information to the member if the trustee later becomes aware of the member's address or location.

(3) Subregulation (2) applies only in respect of information that the trustee of a superannuation entity becomes liable to give to the person after becoming aware of the member's address or location.

2.06 Charges for information requested

(1) Subject to this regulation, the obligation of the trustee of a superannuation entity under these Regulations to give information on request by a person arises only if the person pays the amount specified by the trustee as the charge for giving the information.

(2) The amount of the charge must not exceed the reasonable cost to the superannuation entity of giving the information (including all reasonably related costs—for example, costs of searching for, obtaining and collating the information).

(3) A policy committee is not liable to any charge for information given to it.

(4) In the case of information to be supplied under Division 2.6 to a concerned person (as defined in subregulation (5)), a charge may be made only if:

(a) the person to whom the information is to be given has requested the information; and

(b) the person had been given the same information during the period of 12 months immediately preceding the date on which the request is made.

(5) In subregulation (4):

concerned person means a person who:

Authorised Version F2025C00501 registered 08/05/2025

(a) is, or was within the preceding 12 months, a member of the superannuation entity to which the request is made; or

(b) is a beneficiary of the superannuation entity to which the request is being made.

2.07 Trustee may make a sub-plan

(1) The trustee of a regulated superannuation fund may make a determination, in accordance with subregulation (2), as to whether a sub-plan should be made for the purposes of this Part.

(2) In making a determination under subregulation (1), the trustee must have regard to all relevant matters, including each of the following:

(a) whether there is a common factor in a segment of the fund (for example, whether a group of members of the fund have the same employer);

(b) whether the governing rules of the fund provide for a particular segment to be a sub-plan.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.2—Information for prospective members and employer-sponsors of public offer superannuation funds and certain approved deposit funds

2.08 Application

(1) This Division applies only to a fund that is:
  (a) a public offer superannuation fund; or
  (b) an approved deposit fund that is not an excluded approved deposit fund.

Notes:
1. For corresponding provisions concerning pooled superannuation trusts, *see* Subdivision 2.8.2 (regulation 2.53.).
2. The purpose of the "information" provisions in relation to approved deposit funds (other than excluded approved deposit funds) and public offer superannuation funds is to prescribe information that, under Subdivision 3A of Part 19 of the Act, must be given before a public offer entity does certain acts; *see* sections 157, 157A and 158. In certain circumstances, that information is not required; *see* subsections 157 (3), (4) and (5) of the Act and subregulation 2.09 (2).
3. The disclosure requirements for public offer superannuation funds in relation to standard employer-sponsored members are prescribed in Division 2.3; *see also* subsection 157(3) of the Act.
4. The disclosure requirements in respect of eligible rollover funds regarding persons who become members of the fund under section 243 of the Act or under section 89 of the RSA Act are set out in Division 2.3 of these Regulations; *see* also subsection 157(4) of the Act.

2.09 Subdivision 3A of Part 19 of the Act

(1) The provisions of this Division are made:
  (a) under subsection 159(1) of the Act; and
  (b) for the purposes of sections 157, 157A and 158 of the Act.

(2) For the purposes of subsection 157(5) of the Act (which deals with the circumstances in which interests may be issued without information first being given), the circumstance is specified that the interest is issued by the trustee of a successor fund in relation to a transfer of benefits to that fund.

(3) For the purposes of subsection 158(3) of the Act (which deals with circumstances in which a person may become a standard employer-sponsor without information being given), the circumstance is specified that:
  (a) the person who becomes a standard employer-sponsor without having made an eligible application was a standard employer-sponsor of a fund (***the original fund***); and
  (b) the benefits of members in the original fund are transferred to a successor fund; and
  (c) the person was a standard employer-sponsor of the original fund immediately before those benefits are so transferred; and
  (d) the person is a standard employer-sponsor of the successor fund immediately after those benefits are so transferred.

Authorised Version F2025C00501 registered 08/05/2025

2.10 Information to prospective members

(1) The information that the trustee of a fund must be satisfied has been received by a person before the trustee issues a superannuation interest in the fund to the person is:

(a) subject to paragraph (c), in every case—the information specified in subregulation (2); and

(b) subject to paragraph (c), additionally, in the case of a fund other than an excluded fund—the information specified in subregulation (3); and

(c) in the case of a capital guaranteed fund—either:

(i) the information specified in subregulations (2) and (3); or

(ii) the information specified in subregulation (3A).

(2) The information referred to in paragraph (1)(a) and subparagraph (1)(c)(i) is all information that the trustee reasonably believes that a person would reasonably need for the purpose of:

(a) understanding the main features of the relevant sub-plan or, if none, of the fund; and

(b) making an informed judgment about the management and financial condition of the fund and of the relevant sub-plan (if any); and

(c) making an informed judgment about the investment performance of the relevant sub-plan or, if none, of the fund.

(3) The additional information referred to in paragraph (1)(b) and subparagraph (1)(c)(i) comprises each of the following items of information:

(a) the contact details of the fund;

(b) the name of the trustee;

(c) a summary of the main features of the relevant sub-plan or, if none, of the fund;

(d) a statement of significant benefits (as defined in subregulation (6)) to which the person becomes, or may become, entitled on joining the fund;

(e) the circumstances in which those benefits would be payable;

(f) the method of working out those benefits;

(g) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints;

(h) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;

(i) if Division 6 of Part 19 of the Act (cooling-off—redemption of interests) applies to the fund—a summary of any right of an applicant to have an interest that has been issued to him or her redeemed in accordance with a provision specified in that Division;

(j) a copy, or an updated version, of the information required to be given under Subdivision 2.4.3, that was most recently given to members of the relevant sub-plan or, if none, of the fund;

(k) in respect of the relevant sub-plan or, if none, of the fund—a statement (in outline terms) of:

Authorised Version F2025C00501 registered 08/05/2025

(i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to members (including details of the points at which, or occasions on which, they are levied or deducted); and

(ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages—those amounts or percentages; and

(iii) where subparagraph (ii) does not apply—a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined;

(l) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:

(i) details of those circumstances; and

(ii) the contact details of the eligible rollover fund; and

(iii) a statement of the effect of the payment of benefits to the eligible rollover fund;

(m) in the case of a capital guaranteed fund that has chosen to comply with subregulation (2) and this subregulation—a statement:

(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

(iii) that the person may wish to seek information about the rates of return of those superannuation arrangements; and

(iv) that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund.

(3A) The information referred to in subparagraph (1)(c)(ii) comprises each of the following items of information where applicable:

(a) the contact details of the fund;

(b) the name and ACN or ARBN of the trustee;

(c) a statement:

(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

(iii) that the person may wish to seek information about the rates of return of those superannuation arrangements;

(d) if the governing rules of the fund meet the standards of subregulation 1.06(4)—a statement that:

(i) the amount that the person can take out each year is subject to minimum and maximum limits set by the Government; and

(ii) an allocated pension may not provide an income stream for the rest of the person's life; and

Authorised Version F2025C00501 registered 08/05/2025

(iii) payments will only be made while there is money in the allocated pension provided by the fund;

(e) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;

(f) a brief statement on the benefits that the person may become entitled to on becoming a member of the fund;

(g) a brief statement of who may contribute to the fund;

(h) a brief statement of when benefits are payable;

(i) a brief statement of the taxation of the fund and benefits;

(j) if a fixed-rate option is, or fixed-rate options are, offered by the fund in relation to the whole, or a part, of the benefits—a statement of the prescribed earning rate of each fixed-rate option and the term to which that prescribed earning rate applies;

(k) if a variable-rate option is, or variable-rate options are, offered by the fund in relation to the whole, or a part, of the benefits:

(i) a statement that the earning rate, or earning rates, may increase or decrease over time; and

(ii) the actual or notional net earning rate for the same class of, or similar, options offered by the fund for each year of the previous 5 years; and

(iii) the compound average of the annual actual or notional rate of net earnings for the same class of, or similar, options offered by the fund for each year of the previous 5 years; and

(iv) a statement that past earning rates are not an indicator of future earning rates;

(l) a summary of fees and charges that may be charged directly to the fund;

(m) a brief statement about the effect of the member-protection standards;

(n) if fees and charges are deducted before earnings are credited to the fund—a statement to the effect that earnings are credited net of all expenses;

(o) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints;

(p) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;

(q) if Division 6 of Part 19 of the Act (cooling-off—redemption of interests) applies to the fund—a summary of the provisions of that Division relating to the cooling-off period;

(r) a copy, or an updated version, of the information required to be given under Subdivision 2.4.3, that was most recently given to members of the fund;

(s) a statement of the circumstances in which the trustee will pay the member's benefits to an eligible rollover fund, the effect of that payment and the contact details of the eligible rollover fund;

(t) a statement that further information is available on request.

Authorised Version F2025C00501 registered 08/05/2025

(4) If a variable-rate option has not been in existence for 5 years, the references in subparagraphs (3A)(k)(ii) and (iii) to 5 years are taken to be references to the whole period of existence of the option.

(5) The information mentioned in subparagraphs (3A)(k)(ii) and (iii) must not have been first published or issued by the fund more than 15 months before the date the information was given to the person.

(6) In this regulation:

fund includes a capital guaranteed fund.

significant benefit means a financial benefit that the trustee reasonably believes a member would reasonably expect to be told about.

2.11 Information by public offer superannuation funds to prospective standard employer-sponsors

(1) The information that the trustee of a public offer superannuation fund must be satisfied has been received by a person before the trustee permits the person to become a standard employer-sponsor of the fund is:

(a) subject to paragraph (c), in every case—the information specified in subregulation (2); and

(b) subject to paragraph (c), additionally, in the case of a fund other than an excluded fund—the information specified in subregulation (3); and

(c) in the case of a capital guaranteed fund—either:

(i) the information specified in subregulations (2) and (3); or

(ii) the information specified in subregulation (3A).

(2) The information referred to in paragraph (1)(a) and subparagraph (1)(c)(i) is all information that the trustee reasonably believes that a person would reasonably need for the purpose of:

(a) understanding the main features of the relevant sub-plan or, if none, of the fund; and

(b) making an informed judgment about the management and financial condition of the fund and of the relevant sub-plan (if any); and

(c) making an informed judgment about the investment performance of the relevant sub-plan or, if none, of the fund.

(3) The additional information referred to in paragraph (1)(b) and subparagraph (1)(c)(i), comprises each of the following items of information:

(a) the contact details of the fund;

(b) the name of the trustee;

(c) a summary of the main features of the relevant sub-plan or, if none, of the fund;

(d) a statement of significant benefits (as defined in subregulation (6)) to which the person's employees become, or may become, entitled on joining the fund;

(e) the circumstances in which those benefits would be payable;

Authorised Version F2025C00501 registered 08/05/2025

(f) the method of working out those benefits;

(g) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints;

(h) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;

(i) a copy, or an updated version, of the information required to be given under Subdivision 2.4.3, that was most recently given to members of the relevant sub-plan, or, if none, of the fund;

(j) in respect of the relevant sub-plan or, if none, of the fund—a statement (in outline terms) of:

(i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to members (including details of the points at which, or occasions on which, they are levied or deducted); and

(ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages—those amounts or percentages; and

(iii) where subparagraph (ii) does not apply—a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined;

(k) if there are circumstances in which the trustee would pay a member's benefit to an eligible rollover fund:

(i) details of those circumstances; and

(ii) the contact details of the eligible rollover fund; and

(iii) a statement of the effect of the payment of benefits to the eligible rollover fund;

(l) in the case of a capital guaranteed fund that has chosen to comply with subregulation (2) and this subregulation—a statement:

(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

(iii) that the person may wish to seek information about the rates of return of those superannuation arrangements; and

(iv) that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund.

(3A) The information referred to in subparagraph (1)(c)(ii) comprises each of the following items of information where applicable:

(a) the contact details of the fund;

(b) the name and ACN or ARBN of the trustee;

(c) a statement:

(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

Authorised Version F2025C00501 registered 08/05/2025

(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

(iii) that the person may wish to seek information about the rates of return of those superannuation arrangements;

(d) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;

(e) a brief statement on the benefits that the person may become entitled to on becoming a member of the fund;

(f) a brief statement of who may contribute to the fund;

(g) a brief statement of when benefits are payable;

(h) a brief statement of the taxation of the fund and benefits;

(i) if a fixed-rate option is, or fixed-rate options are, offered by the fund in relation to the whole, or a part, of the benefits—a statement of the prescribed earning rate of each fixed-rate option and the term to which that prescribed earning rate applies;

(j) if a variable-rate option is, or variable-rate options are, offered by the fund in relation to the whole, or a part, of the benefits:

(i) a statement that the earning rate, or earning rates, may increase or decrease over time; and

(ii) the actual or notional net earning rate for the same class of, or similar, options offered by the fund for each year of the previous 5 years; and

(iii) the compound average of the annual actual or notional rate of net earnings for the same class of, or similar, options offered by the fund for each year of the previous 5 years; and

(iv) a statement that past earning rates are not an indicator of future earning rates;

(k) a summary of fees and charges that may be charged directly to the fund;

(l) a brief statement about the effect of the member-protection standards;

(m) if fees and charges are deducted before earnings are credited to the fund—a statement to the effect that earnings are credited net of all expenses;

(n) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints;

(o) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;

(p) a copy, or an updated version, of the information required to be given under Subdivision 2.4.3, that was most recently given to members of the fund;

(q) a statement of the circumstances in which the trustee will pay the member's benefits to an eligible rollover fund, the effect of that payment and the contact details of the eligible rollover fund;

(r) a statement that further information is available on request.

(4) If a variable-rate option has not been in existence for 5 years, the references in subparagraphs (3A)(j)(ii) and (iii) to 5 years are taken to be references to the whole period of existence of the option.

Authorised Version F2025C00501 registered 08/05/2025

(5) The information mentioned in subparagraphs (3A)(j)(ii) and (iii) must not have been first published or issued by the fund more than 15 months before the date the information was given to the person.

(6) In this regulation:

fund includes a capital guaranteed fund.

significant benefit means a financial benefit that the trustee reasonably believes a person in the position of the person mentioned in subregulation (1) would reasonably expect to be told about.

2.11A Information by eligible rollover funds to trustees of transferor funds and to RSA providers

(1) The information that the trustee of an eligible rollover fund must be satisfied has been received by:

(a) the trustee of a transferor fund before a beneficiary of the transferor fund is issued with a superannuation interest under section 243 of the Act; or

(b) the RSA provider before an RSA holder is issued with a superannuation interest under section 89 of the RSA Act;

is the information specified in subregulation (2).

(2) The information is all information that the trustee reasonably believes that a person would reasonably need for the purpose of:

(a) understanding the main features of the relevant sub-plan or, if none, of the fund; and

(b) making an informed judgment about the management and financial condition of the fund and of the relevant sub-plan (if any); and

(c) making an informed judgment about the investment performance of the relevant sub-plan or, if none, of the fund.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.3—Information for new members of certain regulated superannuation funds

2.12 Application

(1) This Division applies:

(a) to a regulated superannuation fund that is not a public offer superannuation fund; and

(b) to a public offer superannuation fund that is not a successor fund, but only in respect of:

(i) standard employer-sponsored members of the fund; and

(ii) in the case of an eligible rollover fund—persons who become members of the fund by being issued with a superannuation interest under section 243 of the Act or section 89 of the RSA Act; and

(c) to a successor fund.

(2) For the purposes of subsection 31(1) of the Act, a requirement of this Division is a standard applicable to the operation of a regulated superannuation fund to which this Division applies.

2.13 Time for compliance

(1) Subject to subregulation (2), the trustee of a fund must give information under this Division to a person as soon as practicable, and in any event within 3 months, after the person becomes a member of the fund.

(2) If a member leaves a fund before the time at which the trustee of the fund would be required to give the member information under this Division, the trustee need not give the information to the member.

2.14 Requirement taken to have been met

(1) If the trustee of a fund is required by this Division to give information to each person who becomes a member of the fund, and the trustee or the trustee of another fund has given that information (whether under this Division or not) to the person before the person became a member, the first-mentioned trustee does not have to give the information to the person again.

(1A) If the trustee of a fund is required by this Division to give information to each person who becomes a member of the fund, and the trustee, or the trustee of another fund, has given the person the information required by Division 2.2, the first-mentioned trustee does not have to give the person the information required by this Division.

(2) The exceptions set out in subregulations (1) and (1A) apply only if the information that was previously given to the person is correct in all material respects when the person becomes a member.

Authorised Version F2025C00501 registered 08/05/2025

2.14A Compliance by trustee of capital guaranteed fund

The trustee of a capital guaranteed fund must comply with either:

(a) regulations 2.15 and 2.16; or

(b) regulation 2.16A.

2.15 General requirement

(1) The trustee of a fund must give to each person who becomes a member of the fund all information that the trustee reasonably believes that a member would reasonably need for the purpose of understanding:

(a) the main features of the relevant sub-plan or, if none, of the fund; and

(b) the management and financial condition of the fund and of the relevant sub-plan (if any); and

(c) the investment performance of the relevant sub-plan or, if none, of the fund.

(2) In this regulation, ***fund*** includes a capital guaranteed fund.

2.16 Specific requirements in all cases

(1) The trustee of a fund (other than an excluded superannuation fund) must give to each person who becomes a member of the fund each of the following items of information:

(a) the contact details of the fund;

(b) a summary of the main features of the relevant sub-plan or, if none, of the fund;

(c) a statement of significant benefits (as defined in subregulation (2)) to which the member becomes, or may become, entitled;

(d) the circumstances in which those benefits would become payable;

(e) the method of working out those benefits;

(f) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints;

(g) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;

(h) a copy:

(i) if the member has joined a sub-plan—of the information required to be given under Subdivision 2.4.3 that was most recently given to members of that sub-plan; or

(ii) in any other case—of the information required to be given under Subdivision 2.4.3 that was most recently given to members of the fund;

(i) in respect of the relevant sub-plan or, if none, of the fund—a statement (in outline terms) of:

(i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to members

Authorised Version F2025C00501 registered 08/05/2025

(including details of the points at which, or occasions on which, they are levied or deducted); and

(ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages—those amounts or percentages; and

(iii) where subparagraph (ii) does not apply—a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined;

(j) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:

(i) details of those circumstances; and

(ii) the contact details of the eligible rollover fund; and

(iii) a statement of the effect of the payment of benefits to the eligible rollover fund;

(k) in the case of a capital guaranteed fund that has chosen to comply with regulation 2.15 and this regulation—a statement:

(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

(iii) that the person may wish to seek information about the rates of return of those superannuation arrangements; and

(iv) that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund.

(2) In this regulation:

fund includes a capital guaranteed fund.

significant benefit means a financial benefit that the trustee reasonably believes a member would reasonably expect to be told about.

2.16A Specific requirement in relation to capital guaranteed funds

(1) The trustee of a capital guaranteed fund must give to each person who becomes a member of the fund each of the following items of information where applicable:

(a) the contact details of the fund;

(b) the name and ACN or ARBN of the trustee;

(c) a statement:

(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

(iii) that the person may wish to seek information about the rates of return of those superannuation arrangements;

Authorised Version F2025C00501 registered 08/05/2025

(d) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;

(e) a brief statement on the benefits that the person may become entitled to on becoming a member of the fund;

(f) a brief statement of who may contribute to the fund;

(g) a brief statement of when benefits are payable;

(h) a brief statement of the taxation of the fund and benefits;

(i) if a fixed-rate option is, or fixed-rate options are, offered by the fund in relation to the whole, or a part, of the benefits—a statement of the prescribed earning rate of each fixed-rate option and the term to which that prescribed earning rate applies;

(j) if a variable-rate option is, or variable-rate options are, offered by the fund in relation to the whole, or a part, of the benefits:

(i) a statement that the earning rate, or earning rates, may increase or decrease over time; and

(ii) the actual or notional net earning rate for the same class of, or similar, options offered by the fund for each year of the previous 5 years; and

(iii) the compound average of the annual actual or notional rate of net earnings for the same class of, or similar, options offered by the fund for each year of the previous 5 years; and

(iv) a statement that past earning rates are not an indicator of future earning rates;

(k) a summary of fees and charges that may be charged directly to the fund;

(l) a brief statement about the effect of the member-protection standards;

(m) if fees and charges are deducted before earnings are credited to the fund—a statement to the effect that earnings are credited net of all expenses;

(n) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints;

(o) details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal;

(p) a copy, or an updated version, of the information required to be given under Subdivision 2.4.3, that was most recently given to members of the fund;

(q) a statement of the circumstances in which the trustee will pay the member's benefits to an eligible rollover fund, the effect of that payment and the contact details of the eligible rollover fund;

(r) a statement that further information is available on request.

(2) If a variable-rate option has not been in existence for 5 years, the references in subparagraphs (1)(j)(ii) and (iii) to 5 years are taken to be references to the whole period of existence of the option.

(3) The information mentioned in subparagraphs (1)(j)(ii) and (iii) must not have been first published or issued by the fund more than 15 months before the date the information is given to the person.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.4—Information to be given for each reporting period

Subdivision 2.4.1—Preliminary

2.17 Interpretation

In this Division:

fund information means information required to be given under Subdivision 2.4.3.

fund reporting period means a reporting period that applies under Subdivision 2.4.3.

member information means information required to be given under Subdivision 2.4.2.

member reporting period means a reporting period that applies under Subdivision 2.4.2.

2.18 Application

(1) This Division applies to:
  (a) a regulated superannuation fund; and
  (b) an approved deposit fund.

(2) This Division applies subject to the following limitations or exceptions:
  (a) Subdivision 2.4.2 is subject to:
    (i) the exception concerning pensioners that is stated in regulation 2.25; and
    (ii) the exception in the case of certain members leaving a fund that is stated in regulation 2.26; and
  (b) Subdivision 2.4.3 is subject to the limitation in relation to excluded funds that is stated in regulation 2.30; and
  (c) in relation to funds under which benefits are determined by life policies, Subdivision 2.4.3 is subject to the limitation that is stated in regulation 2.31.

(3) For the purposes of subsections 31(1) and 32(1) of the Act, a requirement of this Division is a standard applicable to the operation of a fund to which this Division applies.

(4) Nothing in this Division requires an eligible rollover fund to provide to members information relating to a period before 1 July 1995.

2.19 Reporting periods

(1) Member information must be given in respect of consecutive member reporting periods.

Authorised Version F2025C00501 registered 08/05/2025

(2) Fund information must be given in respect of consecutive fund reporting periods.

(3) A fund reporting period or member reporting period must not exceed:
  (a) 12 months; or
  (b) a longer period fixed by ASIC on the application of the entity.

(4) In relation to a particular member, all member information must be given in respect of the same member reporting period.

Example: A fund cannot report, to the same member, the information in paragraph 2.24(1)(a) in respect of the period from 1 January to 30 June and report all other member information in respect of the period from 1 March to 30 September.

(5) In relation to a particular member, all fund information need not be given in respect of the same fund reporting period.

Example: A fund may choose to report:

(a) some "fund information" in respect of a 6-month period; and

(b) further "fund information", and all "member information", in respect of a 9-month period; and

(c) the remaining "fund information" in respect of a 12-month period.

(6) In relation to a particular member, the first member reporting period must begin:
  (a) if the member was a member at the start of the fund's 1994-1995 year of income—either:
    (i) on a date not later than the date of commencement of that year of income; or
    (ii) if the member has been given, in accordance with regulation 13.03, information of the kind referred to in regulation 18G of the Occupational Superannuation Standards Regulations in relation to a period that includes that date of commencement, on the date immediately following the last day of that period; or
  (b) in any other case—on a date not later than the date on which the member became a member.

(7) In relation to a particular member, the first fund reporting period must begin:
  (a) if the member was a member at the start of the fund's 1994-1995 year of income—on the date of commencement of that year of income; or
  (b) in any other case—on a date not later than the date on which the member became a member.

(8) A subsequent reporting period must commence immediately after the end of the preceding reporting period.

2.20 Application in relation to reporting period

In relation to a reporting period:
  (a) Subdivision 2.4.2 applies only in respect of persons who are members of the fund on the last day of the member reporting period; and

Authorised Version F2025C00501 registered 08/05/2025

(b) information required to be given under Subdivision 2.4.3 need only be given to persons who are members of the fund on the day on which the report containing that information is completed.

2.21 Time for compliance

(1) The duties and requirements imposed by Subdivision 2.4.2 apply in respect of each member reporting period of a fund.

(2) The duties and requirements imposed by Subdivision 2.4.3 apply in respect of each fund reporting period of a fund.

(3) The trustee of a fund must discharge each of those duties, and satisfy each of those requirements, as soon as practicable, and in any event within 6 months, after the end of the relevant reporting period.

Subdivision 2.4.2—Member information

2.22 General requirement

The trustee of a fund (other than a capital guaranteed fund) must give to each member all information that the trustee reasonably believes a member reasonably needs for the purpose of understanding his or her benefit entitlements in the fund.

2.23 Specific requirements in all cases

The trustee of a fund (other than an excluded fund or a capital guaranteed fund) must give to each member all of the following items of information:

(a) the contact details of the fund;

(b) the amount of the member's withdrawal benefit at the start of the reporting period;

(c) the amount of the member's withdrawal benefit at the end of the reporting period and the method by which that amount was worked out;

(d) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2;

(e) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 6.1.3;

(f) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4;

(g) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:

(i) details of those circumstances; and

(ii) the contact details of the eligible rollover fund; and

(iii) a statement of the effect of the payment of benefits to the eligible rollover fund.

Authorised Version F2025C00501 registered 08/05/2025

2.24 Specific requirements in particular cases

(1) Subject to subregulation (2), the trustee of a fund (other than an excluded fund or a capital guaranteed fund) must give to each member details of the following matters in respect of the member so far as they are applicable:

(a) the amount of the member's contributions during the reporting period;

(b) the amount of benefits rolled-over or otherwise transferred into the fund during the reporting period;

(c) the amount of withdrawals during the reporting period;

(d) the amounts of fees, charges and other expenses deducted by the fund during the reporting period from amounts held in any accounts in respect of the member;

(e) the amount of any allotment of employer contributions during the reporting period;

(f) the amount of any allotment of net earnings during the reporting period;

(g) the rate of any allotment of net earnings during the reporting period;

(h) the amount of bonuses that have accrued at the end of the reporting period;

(i) the amount of the sum assured;

(j) the amount payable in the event of the member's death:

(i) at the end of the reporting period; or

(ii) on the first day of the next reporting period;

or the method by which that amount is worked out;

(k) details, including the amount or method of working out, of other significant benefits (as defined in subregulation (3)), including, in particular, disability benefits;

(l) if the trustee is aware of contributions that are due and payable during the reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid.

(1A) The trustee of a fund must give to each member the following information in respect of the member, so far as it is applicable:

(a) if the fund is an unfunded defined benefits fund—details of the surcharge debt account kept by the trustee, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:

(i) the balance of the account at the start of the reporting period; and

(ii) the amount debited to the account for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and

(iii) the amount of interest debited, under subsection 16(4) of that Act, to the account during the reporting period; and

(iv) the balance of the account at the end of the reporting period;

Authorised Version F2025C00501 registered 08/05/2025

(b) if the trustee reduced the member's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:
(i) the amount deducted; and
(ii) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference.

(2) A nil amount need not be disclosed.

(3) In this regulation, ***significant benefits*** means financial benefits that the trustee reasonably believes a member would reasonably expect to be told about.

2.24A Specific requirements in relation to capital guaranteed funds

(1) The trustee of a capital guaranteed fund must give to each member all of the following items of information:
(a) the contact details of the fund;
(b) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;
(c) the amount of the member's withdrawal benefit at the start of the reporting period;
(d) the amount of the member's withdrawal benefit at the end of the reporting period and the method by which that amount was worked out;
(e) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2;
(f) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 6.1.3;
(g) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4;
(h) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:
(i) details of those circumstances; and
(ii) the contact details of the eligible rollover fund; and
(iii) a statement of the effect of the payment of benefits to the eligible rollover fund;
(i) a statement:
(i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and
(ii) that there are other superannuation arrangements that may provide a greater return over the long term; and

Authorised Version F2025C00501 registered 08/05/2025

(iii) that the member may wish to seek information about the rates of return of those superannuation arrangements.

(2) Subject to subregulation (3), the trustee of a capital guaranteed fund must give to each member details of the following matters in respect of the member so far as they are applicable:

(a) the amount of the member's contributions during the reporting period;

(b) the amount of benefits rolled-over or otherwise transferred into the fund during the reporting period;

(c) the amount of withdrawals during the reporting period;

(d) the amounts of fees, charges and other expenses deducted by the fund during the reporting period from amounts held in any accounts in respect of the member;

(e) the amount of any allotment of employer contributions during the reporting period;

(f) the amount of any allotment of net earnings during the reporting period;

(g) the rate of any allotment of net earnings during the reporting period;

(h) the amount of bonuses that have accrued at the end of the reporting period;

(i) the amount of the sum assured;

(j) the amount payable in the event of the member's death:

(i) at the end of the reporting period; or

(ii) on the first day of the next reporting period;

or the method by which that amount is worked out;

(k) details, including the amount or method of working out, of other significant benefits (as defined in subregulation (4)), including, in particular, disability benefits;

(l) if the trustee is aware of contributions that are due and payable during the reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid.

(3) A nil amount need not be disclosed.

(4) In this regulation, ***significant benefits*** means financial benefits that the trustee reasonably believes a member would reasonably expect to be told about.

2.24B Information if benefits in capital guaranteed fund reaches $10,000

(1) If, at the end of a reporting period, the amount of the benefits of a member in a capital guaranteed fund is at least $10,000, the trustee of the fund must give written notice of that fact at the time when the trustee gives to the member the items of information referred to in regulation 2.24A for that reporting period.

(2) The notice must include:

(a) a statement that the information contained in the notice is important and that the notice must be read carefully; and

Authorised Version F2025C00501 registered 08/05/2025

(b) a statement that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and

(c) a suggestion that the member may wish to consider:

(i) other superannuation arrangements that may provide a greater return over the long term; and

(ii) seeking advice on alternative investment strategies that may be more suitable.

(3) The notice must be prominent and set in bold type on a separate sheet of paper.

2.25 Exception—pensioners

(1) The trustee of a fund need not give information under this Subdivision to a member:

(a) in relation to any period during which the member is a life pensioner of the fund; or

(b) if the member is a pensioner of the fund and has requested that that information not be provided.

(2) Subregulation (1) does not apply to information under subregulation 2.24(1A).

2.26 Exception—certain cases of members leaving fund

If:

(a) a person ceases to be a member of a fund before information required to be given to the person under this Subdivision, and in respect of a particular reporting period (the ***relevant period***), is given; and

(b) either:

(i) the trustee of the fund gives, or intends to give, information to the person under Division 2.7 in respect of a reporting period that is the same as, or includes the whole of, the relevant period; or

(ii) where the person ceases to be a member of a fund by reason of death—the trustee complies in relation to the person with the relevant requirements of Division 2.7;

the trustee need not give information under this Subdivision, in respect of the relevant period, to or in relation to the person.

2.26A Exception—members subject to compulsory protection of small amounts

(1) If, at the end of a member reporting period, a member of a regulated superannuation fund is a protected member, the trustee need give the member only the following information for that member reporting period:

(a) the contact details of the fund; and

(b) either:

(i) the amount of the member's withdrawal benefit at the end of the member reporting period; or

(ii) the total of the amounts that have been received by the fund in respect of the member; and

Authorised Version F2025C00501 registered 08/05/2025

(c) in so far as applicable, the information mentioned in paragraph 2.24(1A)(a) or (b), as appropriate.

(2) If, in relation to a member of a fund, the trustee of the fund takes advantage of regulation 2.26B, the trustee must not, in relation to that member, take advantage of subregulation (1).

2.26B Exception—members with small amounts that are expected to grow quickly

(1) If, at the end of a member reporting period, the trustee of a fund has a reasonable expectation that a particular protected member will have a withdrawal benefit of at least $1,500 within 12 months after the end of that member reporting period, the trustee need not show, in information provided to the member, the effect of the member-protection standards.

(2) For the purposes of subregulation (1), a trustee is not taken to have a reasonable expectation that a member will have a withdrawal benefit of $1,500 within the period of 12 months referred to in that subregulation if termination of the member's employment with a current employer (not being an employer who or that is an associate, within the meaning of paragraph 70(a) of the Act, of the member) would be likely to result in the member's withdrawal benefit being below $1,500 at the end of that period.

(3) If, at the end of the 12-month period, the member's withdrawal benefit has not reached $1,500, the trustee must show, in information provided to the member for each member reporting period ending on or after the end of the 12-month period, the effect of the member-protection standards.

(4) The trustee of a fund must not take advantage of subregulation (1) in respect of a person more than once unless, after an occasion on which the trustee does so but before the next occasion, the member leaves and rejoins the fund.

Subdivision 2.4.3—Fund information

2.27 General requirement

The trustee of a fund must give to each member of the fund all information that the trustee reasonably believes a member would reasonably need for the purpose of:

(a) understanding the management and financial condition of the fund and of the relevant sub-plan (if any); and

(b) understanding the investment performance of the relevant sub-plan or, if none, of the fund.

2.28 Specific requirements in all cases

The trustee of a fund must give to each member of the fund all of the following items of information:

(a) the contact details of the fund;

Authorised Version F2025C00501 registered 08/05/2025

(b) in respect of the relevant sub-plan or, if none, of the fund—a description of:
  (i) the investment strategy of the fund trustee, having regard to the requirements of paragraph 52(2)(f) of the Act; and
  (ii) the investment objectives;
(c) a statement to the effect that other information is available on request;
(d) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints.

2.29 Specific requirements in particular cases

(1) Subject to subregulations (2) and (3), the trustee of a fund must give to each member of the fund the following items of information and documents, so far as they are applicable:
  (a) in respect of the relevant sub-plan or, if none, of the fund—the names of investment managers appointed by the trustee;
  (b) in the case of a standard employer-sponsored fund that is not a public offer superannuation fund and does not have a trustee approved under subsection 92(10) of the Act:
    (i) if the trustee of the fund is a body corporate, the name of that body corporate and the names of all its directors during the whole or any part of the reporting period and, in respect of each of those directors, details of how and by whom they were appointed;
    (ii) if the trustees of the fund are individuals, the names of the trustees of the fund during the whole or any part of the relevant reporting period and, in respect of each of those trustees, details of how and by whom they were appointed;
  (c) in the case of a fund other than a fund mentioned in paragraph (b):
    (i) the name of each corporate trustee of the fund during the relevant reporting period; and
    (ii) in respect of the relevant policy committee (if any), details of the committee (including the names of the committee members as at the end of that reporting period and, in respect of each of the members, details of how and by whom they were appointed);
  (d) a statement as to whether or not any indemnity insurance has been taken out by the trustee;
  (e) either:
    (i) the audited fund accounts, the auditor's report and, if there is a relevant sub-plan, abridged financial information relating to that sub-plan; or
    (ii) each of the following:
      (A) abridged financial information relating to the relevant sub-plan or, if none, to the fund;
      (B) information as to when the audited fund accounts and the auditor's report will be sent to members or will be available to members on request, as the case may be;

Authorised Version F2025C00501 registered 08/05/2025

(f) in respect of the relevant sub-plan or, if none, of the fund—a statement of assets as at the end of:
  (i) the relevant reporting period; and
  (ii) the immediately preceding reporting period;
  that includes all information that the trustee reasonably believes a member would reasonably need to understand the asset allocation at those times;

(g) details of:
  (i) each investment that has a value in excess of 5% of the total assets of the relevant sub-plan or, if none, of the fund; and
  (ii) each combination of investments that the trustee knows or ought reasonably to know are invested in, directly or indirectly, a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the relevant sub-plan or, if none, of the fund;

(ga) if the derivatives charge ratio of the fund (as defined in subregulation (5)) exceeded 5% at any time during the reporting period:
  (i) the derivatives charge ratio as at the end of the reporting period; and
  (ii) the highest derivatives charge ratio attained during the reporting period; and
  (iii) an explanation of why the derivatives charge ratio exceeded 5%; and
  (iv) an explanation of the meaning of ***derivatives charge ratio*** in, or to the effect of, the following:
  "The derivatives charge ratio is the percentage of the total market value of the assets of the fund (other than cash) that the trustee has charged as security for derivatives investments made by the trustee.".

(h) in respect of the relevant sub-plan or, if none, of the fund:
  (i) the actual or notional rate of net earnings in each of the most recent reporting periods that, in total, constitute a period of at least 5 years; and
  (ii) the compound average actual or notional rate of net earnings for the period of 5 years ending at the end of the reporting period;

  Note: As to funds and subplans in existence for less than 5 years, *see* subregulation (3A).

(i) if the fund is an accumulation fund or an approved deposit fund and the fund maintains reserves—then in respect of the relevant sub-plan or, if none, of the fund, details of movements of reserves during the most recent reporting periods that, in total, constitute at least 3 years; and

(j) if the net earnings of the fund are allotted to members' accounts—in respect of the relevant sub-plan or, if none, of the fund, the manner in which the allotment is made; and

(k) if the fund maintains reserves—in respect of the relevant sub-plan or, if none, of the fund, a description of the management strategy of the fund trustee in relation to the reserves, having regard to the requirements of paragraph 52(2)(g) of the Act;

Authorised Version F2025C00501 registered 08/05/2025

(l) in respect of the relevant sub-plan or, if none, of the fund—a statement (in outline terms) of:

(i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to members (including details of the points at which, or occasions on which, they are levied or deducted); and

(ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages—those amounts or percentages; and

(iii) where subparagraph (ii) does not apply—a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined;

(m) details of any penalties imposed under the Act on the trustee;

(n) if the fund is:

(i) a defined benefit fund; and

(ii) the contributions paid by the employer-sponsor in the reporting period are less than the amount that an actuary has approved as sufficient contributions in that period; and

(iii) the difference is material;

in respect of the relevant sub-plan or, if none, of the fund—a statement to the effect that the matters stated in subparagraphs (ii) and (iii) apply, and statements of:

(iv) the consequences for the fund of the shortfall; and

(v) any action that the trustee has taken, or proposes to take, in relation to the matter;

(o) the ultimate source (including, for example, the fund's reserves, the members' accounts or the employer) from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn.

(2) A nil amount need not be disclosed.

(3) For the purposes of subparagraph (1)(g)(ii), investments in a trust are taken not to be invested in the trustee of the trust.

(3A) If, at the end of a reporting period, a fund or sub-plan has not been in existence for 5 years, the references in paragraph (1)(h) to 5 years are taken to be references to the whole period of existence of the fund or sub-plan, as the case requires.

(4) In this regulation:

abridged financial information, in relation to a reporting period of a fund or a sub-plan, means information derived from the fund's accounts or records that gives a reasonable summary of either:

(a) both:

(i) changes in the financial position of the fund or sub-plan during the reporting period; and

Authorised Version F2025C00501 registered 08/05/2025

(ii) the financial position of the fund or sub-plan at the end of the reporting period; or

(b) both:

(i) changes in the net assets of the fund or sub-plan during the reporting period; and

(ii) the net assets of the fund or the sub-plan at the end of the reporting period.

(5) For the purposes of paragraph (1)(ga), the derivatives charge ratio of a fund is:

$$\frac{\mathbf{X}}{\mathbf{Y}}$$

expressed as a percentage, where:

X is the market value of the assets of the fund (other than cash) that are subject to a charge in relation to a derivatives contract (as defined in subregulation 13.15A(2)); and

Y is the market value of all the assets of the fund.

(6) If paragraph (1)(ga) applies, the trustee must give the information mentioned in that paragraph to APRA as soon as practicable, and in any event within 6 months, after the end of the reporting period to which the information relates.

2.30 Excluded funds—special provision

An excluded fund need give a member only the information mentioned in paragraph 2.29(1)(o).

2.31 Exception—benefits determined by life policies

Paragraphs 2.29 (1) (e), (f) and (g) do not apply to funds from which the benefits paid to each individual member:

(a) are wholly determined by reference to policies of life assurance; or

(b) if paragraph (a) does not apply only because shares in the life insurance company issuing the policies were acquired because the company was demutualised:

(i) would otherwise be wholly determined by reference to policies of life assurance; and

(ii) the shares have been held for no longer than 18 months from the date of acquisition.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.5—Information concerning significant events

2.32 Application

(1) This Division applies to:
  (a) a regulated superannuation fund; and
  (b) an approved deposit fund.

(2) Information under this Division concerning an event is information that the trustee reasonably believes a member would reasonably need:
  (a) where there is a nature or purpose to the event—to understand the nature or purpose; and
  (b) to make an informed judgment about the effect (generally and in respect of the member's current and future entitlements) of the event.

(3) For the purposes of subsections 31(1) and 32(1) of the Act, a requirement of this Division is a standard applicable to the operation of a fund that is a regulated superannuation fund or an approved deposit fund.

2.33 Time for compliance

*Meaning of **event** in subregulations (2) and (3)*

(1) For the purposes of subregulations (2) and (3), ***event*** means:
  (a) an event referred to in regulation 2.35; or
  (b) a change of a kind referred to in subregulation 2.36 (1); or
  (c) a transfer of a member referred to in subregulation 2.36(3); or
  (d) the receipt of a notice of non-compliance referred to in subregulation 2.36(4).

General rule

(2) The time within which the trustee of a fund must give information under this Division about an event to a member or class of members is:
  (a) before the expected occurrence, or as soon as practicable after the occurrence, of the event; and
  (b) in any case, within 3 months after the occurrence of the event.

Where event not adverse, etc.

(3) Despite subregulation (2), the information may be given more than 3 months after the occurrence of the event if:
  (a) the trustee reasonably believes that the event is not adverse to the member's interests and accordingly the member would not be expected to be concerned about the delay in giving the information; and
  (b) the information is given no later than 12 months after the occurrence of the event.

Authorised Version F2025C00501 registered 08/05/2025

*Meaning of **event** in subregulation (5)*

(4) For the purposes of subregulation (5), ***event*** means:

(a) a decision of the trustee; or

(b) the winding-up or termination of the fund;

whichever is applicable.

Where a member would expect to be informed before the event

(5) Where a member would reasonably expect to be informed of an event before it occurs, the trustee must give the information to the member as soon as practicable after it becomes reasonable for the trustee to expect that the event will happen (except that the information need not be given more than 3 months before the expected date of the event).

Examples:

1. On 1 December 1996 it is proposed to wind up the fund with effect from 30 June 1997. Generally the information must be given as soon as practicable after 1 December 1996. However it may be delayed to 31 March 1997.
2. On 1 December 1996 it is proposed to wind up the fund with effect from 31 December 1996. The information must be given without delay.

2.34 Contact details to accompany information

Where the trustee of a fund gives information under this Division the trustee must give with the information a statement of the contact details of the fund.

2.35 General requirement

The trustee of a fund must give information to a member concerning any event in relation to the fund that the trustee reasonably believes the member would reasonably expect to be informed of.

2.36 Specific requirements

(1) If the governing rules of a fund are changed or, because of any other act carried out, or consented to, by the trustee, a change occurs in relation to a fund and the change is of a kind stated in subregulation (2), the trustee of the fund must give information concerning the change to each member affected by the change.

(2) The kinds of changes are those that:

(a) have an adverse effect on a member's right or claim to accrued benefits or the amount of those benefits; or

(b) have an adverse effect on the benefits to which a member may become entitled; or

(c) have an adverse effect for the member on the circumstances in which those benefits would become payable; or

(d) have an adverse effect for the member on the manner in which those benefits would be worked out; or

(e) have an adverse effect on the security of the member's benefits.

Authorised Version F2025C00501 registered 08/05/2025

(3) If:
   (a) a member of a fund is transferred to a different category of membership or to a different fund; or
   (b) the benefits of a member are transferred to an RSA;

the trustee of the first-mentioned fund must give information to the member concerning the transfer.

(4) If the trustee of a fund receives a notice of non-compliance, the trustee must give to each member:
   (a) a statement of the circumstances (including details of the non-compliance) that gave rise to the issue of the notice; and
   (b) a statement of the effect on the fund of the issue of the notice (including details of the effect on the fund's taxation position); and
   (c) details of action that the trustee has taken, or proposes to take, to have the fund become a complying fund; and
   (d) any information concerning the non-compliance that APRA requires to be given for the purposes of this paragraph.

(5) For the purposes of subregulation (4), a notice of non-compliance means a notice issued under section 40 of the Act to the trustee of a fund stating that the fund is not a complying fund.

(6) This regulation does not apply to an excluded fund.

2.36A Specific requirements—benefit to be paid to eligible rollover fund

(1) If the benefits of a member of a fund (***the transferor fund***) will be paid to an eligible rollover fund unless he or she chooses, within a specified period, another entity or an RSA to which those benefits will be paid, the trustee of the transferor fund must give information to the member relating to the payment to the eligible rollover fund that will assist the member to decide between having the benefits paid to that other entity, the RSA or eligible rollover fund, and in particular must give to the member so much of the information described in subregulation (2) as is relevant to the circumstances.

(2) The information is:
   (a) an explanation why the trustee intends to pay the member's benefits to the eligible rollover fund if the member does not make the choice within the period; and
   (b) a statement of the effect of the payment of benefits to the eligible rollover fund; and
   (c) the contact details of the eligible rollover fund; and
   (d) the amount, or, subject to subregulation (3), the approximate amount, of the member's benefits that will be paid from the transferor fund; and
   (e) a statement to the effect that if the member chooses an entity or RSA that refuses to accept the payment of the member's benefit, or the member makes no choice within the specified period, the trustee will pay the member's benefits to the eligible rollover fund.

Authorised Version F2025C00501 registered 08/05/2025

(3) A fund may inform a member under paragraph (2)(d) of the approximate amount of the member's benefits if, at the time the information is to be given, the trustee of the fund cannot determine the exact amount of the member's benefits that will be paid from the fund.

(4) This regulation does not require the trustee of the transferor fund to provide information about RSAs, or entities other than the eligible rollover fund.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.6—Information on request

2.37 Application

(1) This Division applies to a superannuation entity.

(2) For the purposes of subsections 31(1), 32(1) and 33(1) of the Act, a requirement of this Division is a standard applicable to the operation of a superannuation entity.

2.38 Documents may be made available for inspection

It is sufficient compliance with a requirement under this Division to give information, or to give a copy of a document, to a person if:

(a) a document containing the information; or

(b) a copy of the document;

as the case requires, is made available for inspection by the person:

(c) at a suitable place (having adequate facilities for the person to inspect and photocopy the document); and

(d) during normal business hours;

or as otherwise agreed between the trustee of a superannuation entity who is required to give the information to the person, and the person.

2.39 Time for compliance

The trustee of a superannuation entity must comply with a request to give information, or a copy of a document, as soon as practicable, and in any event the trustee must make reasonable efforts to comply with the request within 1 month of receiving the request.

2.40 General requirement

(1) Subject to subregulation (2), the trustee of a superannuation entity must give to a person, on request by the person, information that the person reasonably requires, as follows:

(a) if the person is a concerned person (as defined in subregulation (3))—for the purposes of:

(i) understanding any benefit entitlements that the person may have, has or used to have; and

(ii) understanding the main features of the relevant sub-plan or, if none, of the entity; and

(iii) making an informed judgment about the management and financial condition of the entity and of the relevant sub-plan (if any); and

(iv) making an informed judgment about the investment performance of the relevant sub-plan or, if none, of the entity; and

Authorised Version F2025C00501 registered 08/05/2025

(v) understanding the particular investments of the relevant sub-plan and the entity; or

(b) if the person is an employer-sponsor—for the purposes of:

(i) understanding the kinds of benefits to which the person's employees are entitled or will or may become entitled, and the main features of the relevant sub-plan or, if none, the entity; and

(ii) making an informed judgment about the management and financial condition of the entity and of the relevant sub-plan (if any); and

(iii) making an informed judgment about the investment performance of the relevant sub-plan or, if none, of the entity; and

(iv) a matter related to the SG(A) Act.

(2) This regulation does not require (or, by implication, authorise) the disclosure of:

(a) internal working documents of the entity; or

(b) information or documents that would disclose, or tend to disclose:

(i) personal information of another person if, in the circumstances, the disclosure would be unreasonable; or

(ii) trade secrets or other information having a commercial value that would be reduced or destroyed by the disclosure; or

(c) information or documents in relation to which the trustee of the entity owes to another person a duty of non-disclosure.

(3) In this regulation and regulation 2.41:

concerned person means a person who:

(a) is, or was within the preceding 12 months, a member of the superannuation entity to which the request is made; or

(b) is a beneficiary of the superannuation entity to which the request is made.

2.41 Specific requirements

(1) Subject to subregulation (2), the trustee of a superannuation entity (other than an excluded fund) must give to a person, on request in writing by the person, a copy of any of the following documents (to the extent the trustee has access to the documents) specified in the request:

(a) the governing rules of the superannuation entity;

(b) audited accounts of the superannuation entity, together with (whether or not specifically requested) the auditor's report in relation to the accounts;

(c) the most recent actuarial report (as referred to in regulation 9.30) on the entity, and any subsequent written advice by an actuary to the trustee, to the extent that those documents are relevant to:

(i) the overall financial condition of the entity; or

(ii) the entitlements of the person;

(d) in the case of a regulated superannuation fund or approved deposit fund—a copy of information given under Subdivision 2.4.3 that was most recently given to the members;

Authorised Version F2025C00501 registered 08/05/2025

(e) in the case of a PST—a copy of the information required to be given under paragraph 2.59(b), regulation 2.60 (other than under paragraph 2.60(a)) and regulation 2.61 that was most recently given to the members.

(2) If the person requesting the information is not a concerned person (as defined in subregulation 2.40(3)) or an employer-sponsor, the trustee need not give to the person the documents referred to in paragraphs (1)(a) and (c).

Authorised Version F2025C00501 registered 08/05/2025

Division 2.6A—Information about complaints

2.41A Application

(1) This Division applies in the case where a trustee of a regulated superannuation fund or an approved deposit fund receives a complaint from a person referred to in subsection 101(1A) of the Act on or after 1 July 1997.

(2) For the purposes of subsections 31(1) and 32(1) of the Act, a requirement of this Division is a standard applicable to the operation of a regulated superannuation fund or an approved deposit fund.

2.41B Information about complaints

The trustee must give to the person, at the time when the trustee makes a decision in relation to the complaint, details of the existence and (in outline terms) the functions of the Superannuation Complaints Tribunal.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.7—Information when a member leaves a fund

2.42 Application

(1) This Division applies to:
  (a) a regulated superannuation fund; and
  (b) an approved deposit fund.

(2) This Division is subject to:
  (a) the exception concerning an exit reporting period, in the case of certain members who cease to be members of a fund, that is stated in regulation 2.48; and
  (b) the exception concerning the information to be provided to protected members that is stated in regulation 2.48A.

(3) For the purposes of subsections 31(1) and 32(1) of the Act, a requirement of this Division is a standard applicable to the operation of a fund that is a regulated superannuation fund or an approved deposit fund.

2.43 Time for compliance

(1) The trustee of a fund must give information under this Division to a person as soon as practicable after the trustee becomes aware that that or another person (***the former member***) has ceased to be a member of the fund, and in particular the trustee must make reasonable efforts to give the information within 1 month after becoming aware that the former member has ceased to be a member of the fund.

(2) The trustee of a fund must make all reasonable efforts to give information about a continuation option in good time before the option lapses.

2.44 Exit reporting period

In this Division, ***exit reporting period***, in relation to a person who ceases to be a member of a fund, means the period:
  (a) beginning on the first day of the member reporting period in which the person ceases to be a member of the fund; and
  (b) ending at the end of the day on which the person ceases to be a member of the fund.

2.45 General requirement

If a person ceases to be a member of a fund (other than a capital guaranteed fund), the trustee of the fund must give all information to:
  (a) if the person is alive—the person; or
  (b) if the person is deceased—each person receiving a benefit as a result of the first-mentioned person's death;

Authorised Version F2025C00501 registered 08/05/2025

that the trustee reasonably believes such a person would reasonably need for the purpose of understanding his or her benefit entitlements.

2.46 Specific requirements in all cases

(1) The trustee of a fund (other than an excluded fund) must give to a person who ceases, otherwise than by death, to be a member of the fund, the following information:

(a) the contact details of the fund;

(b) the amount of the person's withdrawal benefit at the start of the exit reporting period;

(c) the amount of the person's benefit at the end of the exit reporting period and the method by which that amount was worked out;

(d) the amount (if any) of the member's benefit at the end of the exit reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2;

(da) the amount (if any) of the member's benefit at the end of the exit reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 6.1.3;

(db) the amount (if any) of the member's benefit at the end of the exit reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4;

(e) in the case of a death benefit that ceases or reduces, or will cease or reduce, because the person has left the fund:

(i) either:

(A) the amount of the death benefit immediately before the person left the fund or at the end of the last member reporting period; or

(B) the method of working out the death benefit; and

(ii) whether a continuation option is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person;

(f) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints.

(2) If a person ceases by death to be a member of a fund (other than an excluded fund), the trustee of the fund must give to each person receiving a benefit from the fund as a result of the death of the person:

(a) a statement setting out details (in summary form) of arrangements that the fund has to deal with inquiries or complaints; or

(b) a statement that those kinds of details are available on request.

2.47 Specific requirements in particular cases

(1) The trustee of a fund (other than an excluded fund) must give to each person who ceases, otherwise than by death, to be a member of the fund details of the following matters in respect of the member so far as they are applicable:

Authorised Version F2025C00501 registered 08/05/2025

(a) the amount of the person's contributions during the exit reporting period;
(b) the amount of benefits rolled-over or otherwise transferred into the fund during the exit reporting period;
(c) the amount of withdrawals during the exit reporting period;
(d) the amounts of fees, charges and other expenses deducted by the fund during the exit reporting period from amounts held in any accounts in respect of the member;
(e) the amount of any allotment of employer contributions during the exit reporting period;
(f) the amount of any allotment of net earnings during the exit reporting period;
(g) the rate of any allotment of net earnings during the exit reporting period;
(h) the amount of bonuses that have accrued at the end of the exit reporting period;
(i) the amount of the sum assured;
(j) if the trustee is aware of contributions that are due and payable during the reporting period but have not been paid to the fund, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid.

(1A) The trustee of a fund must also disclose to a person who ceases, otherwise than by death, to be a member of the fund:
(a) any amount deducted, from the member's benefits, in connection with payment of a superannuation contributions surcharge, or an advance instalment of surcharge, during the exit reporting period; and
(b) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference; and
(c) if the fund is an unfunded defined benefits fund—details of the surcharge debt account kept by the trustee, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:
(i) the balance of the account at the start of the exit reporting period; and
(ii) the amount debited to the account during the exit reporting period for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and
(iii) the amount of interest debited, under subsection 16(4) of that Act, to the account during the exit reporting period; and
(iv) the balance of the account at the end of the exit reporting period.

(2) A nil amount need not be disclosed.

Authorised Version F2025C00501 registered 08/05/2025

2.48 Exceptions to *exit reporting period* provisions

(1) Subject to subregulation (2), if a person ceases to be a member of a fund:

(a) after the end of a completed member reporting period (the ***completed period***); and

(b) before member information is issued for that period;

the information required by this Division to be given to or in relation to the person may be given in respect of the period consisting of:

(c) the completed period; and

(d) the period from the end of that period to the end of the day on which the person ceased to be a member of the fund;

instead of in respect of the person's exit reporting period.

(2) If the period mentioned in paragraph (1)(d) exceeds 6 months in a particular case, subregulation (1) does not apply in respect of that case.

(3) The trustee of a fund need not give information under this Division to a member who is transferring to another fund or to a member whose benefits are being transferred into an RSA if:

(a) the member has received sufficient information under subregulation 2.36(3) to enable the member to understand the effect of the transfer; and

(b) the trustee reasonably believes that the member does not need the information because the member has received, or will receive, from:

(i) the trustee of the fund to which the member is being transferred, information under Subdivision 2.4.2 in respect of the member's exit reporting period; or

(ii) the RSA institution to which the member's benefits are being transferred, information under Division 2.3 of the RSA Regulations in respect of the member's exit reporting period.

2.48A Exception—members subject to compulsory protection of small amounts

If a protected member of a fund ceases to be a member of the fund, the trustee need give the member only the following information for the exit reporting period:

(a) the contact details of the fund;

(b) the amount of the member's withdrawal benefit;

(c) the amount of any deduction, from the member's benefits, in connection with payment of a superannuation contributions surcharge, or an advance instalment of surcharge, during the exit reporting period;

(d) if there is a difference between the amount deducted and the amount assessed under subsection 15(1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15(2) of that Act—a statement explaining the difference;

Authorised Version F2025C00501 registered 08/05/2025

(e) if the fund is an unfunded defined benefits fund—details of the surcharge debt account kept by the trustee, under subsection 16(2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:

(i) the balance of the account at the start of the exit reporting period; and

(ii) the amount debited to the account during the exit reporting period for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and

(iii) the amount of interest debited, under subsection 16(4) of that Act, to the account during the exit reporting period; and

(iv) the balance of the account at the end of the exit reporting period.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.7A—Information to be given to other entities on transfer of lost members

2.48B Application of Division

(1) This Division applies in the case of payment of the benefits of a lost member from a regulated superannuation fund or an approved deposit fund to another regulated superannuation fund or approved deposit fund on or after 30 June 1996.

(2) For the purposes of subsections 31(1) and 32(1) of the Act, a requirement of this Division is a standard applicable to the operation of a fund that is a regulated superannuation fund or an approved deposit fund.

2.48C Information to be given on transfer of lost members

The trustee of the transferor fund must give to the trustee of the transferee fund the following information and statements in relation to each lost member of the transferor fund whose benefits are to be paid to the transferee fund:

(a) a statement that the member is a lost member;

(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;

(c) all information in the possession of the trustee of the transferor fund that could reasonably help the trustee of the transferee fund to locate or identify the lost member, other than information of a kind that the lost member has specifically requested the trustee of the transferor fund not to disclose.

Authorised Version F2025C00501 registered 08/05/2025

Division 2.8—Pooled superannuation trusts

Subdivision 2.8.1—Preliminary

2.49 Application

This Division applies to a PST.

2.50 Operating standards

For the purposes of subsection 33(1) of the Act, a requirement of this Division, other than Subdivision 2.8.2, is a standard applicable to the operation of a PST.

2.51 Statement of particulars must accompany information

Where the trustee of a PST gives information in accordance with this Division, it must give, with the information, a statement of the contact details of the PST.

Subdivision 2.8.2—Information for prospective unit-holders

2.52 Subdivision 3A of Part 19 of the Act

The provisions of this Subdivision are made:

(a) under subsection 159(1) of the Act; and

(b) for the purposes of sections 157 and 158 of the Act.

2.53 Information by a trustee of a PST for prospective unit-holders

The information that the trustee of a PST must be satisfied has been received by a person before the trustee issues an interest in the PST to the person is all information the trustee reasonably believes a person reasonably needs for the purpose of:

(a) understanding the main features of the PST; and

(b) making an informed judgment about the management, investment performance and financial condition of the PST.

Subdivision 2.8.3—Information in respect of reporting periods

2.54 Interpretation

In this Subdivision:

PST information means information required to be given under paragraph 2.59(b), regulation 2.60 (other than paragraph 2.60(a)) and regulation 2.61.

PST reporting period means a reporting period that applies to PST information.

Authorised Version F2025C00501 registered 08/05/2025

unit-holder information means information required to be given under paragraphs 2.59(a) and regulation 2.60(a).

unit-holder reporting period means a reporting period that applies to unit-holder information.

2.55 Reporting periods

(1) Unit-holder information must be given in respect of consecutive unit-holder reporting periods.

(2) PST information must be given in respect of consecutive PST reporting periods.

(3) A reporting period that is a unit-holder reporting period or a PST reporting period must not exceed 12 months or, if ASIC on the application of an entity fixes a longer period for the PST in a particular case, that longer period.

(4) In relation to a particular unit-holder, all unit-holder information must be given in respect of the same unit-holder reporting period.

Note: For an example, *see* subregulation 2.19(4).

(5) In relation to a particular unit-holder, all PST information need not be given in respect of the same PST reporting period.

Note: For a comparable example, *see* to subregulation 2.19(5).

(6) In relation to a particular unit-holder, the first unit-holder reporting period must begin:
  (a) if the unit-holder was a unit-holder at the start of the PST's 1994-1995 year of income, during that year of income; or
  (b) in any other case—on a date not later than the date on which the unit-holder became a unit-holder.

(7) In relation to a particular unit-holder, the first PST reporting period must begin:
  (a) if the unit-holder was a unit-holder at the start of the PST's 1994-1995 year of income, during that year of income; or
  (b) in any other case—on a date not later than the date on which the unit-holder became a unit-holder.

(8) A subsequent reporting period must commence immediately after the end of the preceding reporting period.

2.56 Application in relation to reporting period

In relation to a reporting period:
  (a) unit-holder information need only be given in respect of persons who are unit-holders of the PST on the last day of the unit-holder reporting period; and
  (b) PST information need only be given to persons who are unit-holders of the PST on the day on which the report containing that information is completed.

Authorised Version F2025C00501 registered 08/05/2025

2.57 Time for Compliance

(1) Paragraphs 2.59(a), 2.60(a) apply in respect of each unit-holder reporting period.

Note: See subregulation 2.55(1).

(2) Paragraph 2.59(b), regulation 2.60 (other than paragraph 2.60(a)) and regulation 2.61 apply in respect of each PST reporting period.

Note: See subregulation 2.55(2).

(3) The trustee of a PST must comply with a requirement of this regulation as soon as practicable, and in any event within 6 months, after the end of the relevant reporting period.

2.58 Exemption from giving information

If:

(a) a person ceases to be a unit-holder of a PST before unit-holder information required to be given to that person in respect of a particular unit-holder reporting period (the ***relevant period***) is given; and

(b) the trustee of the PST gives, or intends to give, information to that person under Subdivision 2.8.5 in respect of a reporting period that is the same as, or includes the whole of, the relevant period;

the trustee need not give that unit-holder information, in respect of the relevant period, to or in relation to the person.

2.59 General requirement

The trustee of a PST must give to each unit-holder all information the trustee reasonably believes a unit-holder reasonably needs for the purpose of:

(a) understanding the unit-holder's interest in the PST; and

(b) making an informed judgment about the management, investment performance and financial condition of the PST.

2.60 Specific requirements in all cases

The trustee of a PST must give to each unit-holder all information on the following matters:

(a) in respect of the particular unit-holder:

(i) the unit-holder's opening and closing balances for the relevant reporting period; and

(ii) a reconciliation of those balances;

(b) in respect of the PST—a description of the investment strategy of the PST trustee, having regard to:

(i) the requirements of paragraph 52(2)(f) of the Act; and

(ii) the investment objectives of the PST;

(c) a statement to the effect that other information is available on request.

Authorised Version F2025C00501 registered 08/05/2025

2.61 Specific requirements in particular cases

(1) Subject to subregulations (2) and (3), the trustee of a PST must give to each unit-holder the following items of information and documents, so far as they are applicable:

(a) in respect of the PST—the names of investment managers appointed by the trustee;

(b) the name of each approved trustee of the PST during the relevant reporting period;

(c) either:

(i) the audited accounts of the PST and the auditor's report; or

(ii) each of the following:

(A) abridged financial information (as defined in subregulation (4)) relating to the PST;

(B) information as to when the audited accounts of the PST and the auditor's report will be sent to unit-holders or will be available to unit-holders on request, as the case may be;

(d) in respect of the PST—a statement of assets as at the end of:

(i) the relevant reporting period; and

(ii) the immediately preceding reporting period;

that includes sufficient information to enable unit-holders to understand the asset allocation at those times;

(e) details of:

(i) each investment that has a value in excess of 5% of the total assets of the PST; and

(ii) details of each combination of investments that the trustee knows or ought reasonably to know are invested, directly or indirectly, in a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the PST;

(f) in respect of the PST—the actual or notional rate of net earnings of the PST in the most recent reporting periods that, in total, constitute a period of at least 3 years;

(g) a statement (in outline terms) of:

(i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to unit-holders (including details of the points at which, or occasions on which, they are levied or deducted); and

(ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages—those amounts or percentages; and

(iii) where subparagraph (ii) does not apply—the general manner in which the fees, charges, expenses and administrative or other operational costs are determined;

(h) details of any penalties imposed under the Act on the trustee.

(2) A nil amount need not be disclosed.

Authorised Version F2025C00501 registered 08/05/2025

(3) For the purposes of subparagraph (1)(e)(ii), investments in a trust are taken not to be invested in the trustee of the trust.

(4) In this regulation:

abridged financial information, in relation to a reporting period of a PST, means information derived from the PST's accounts that gives a reasonable summary of:

(a) changes in the PST's financial position during the reporting period; and

(b) the PST's financial position at the end of the reporting period.

Subdivision 2.8.4—Significant events

2.62 Time for compliance

*Meaning of **event** in subregulations (2) and (3)*

(1) For the purposes of subregulations (2) and (3), ***event*** means:

(a) an event referred to in subregulation 2.63(1); or

(b) the receipt of a notice of non-compliance referred to in regulation 2.64;

whichever is applicable.

Significant event information—general rule

(2) The time within which the trustee of a PST must give information under this Subdivision about an event to a unit-holder or class of unit-holders is:

(a) before the expected occurrence, or as soon as practicable after the occurrence, of the event; or

(b) in any case, within 3 months after the occurrence of the event.

Significant event information—event not adverse

(3) Despite subregulation (2), the information may be given more than 3 months after the occurrence of the event if:

(a) the trustee reasonably believes that the event is not adverse to the unit-holder's interests and accordingly the unit-holder would not be expected to be concerned about the delay in giving the information; and

(b) the information is given no later than 12 months after the occurrence of the event.

*Meaning of **event** in subregulation (5)*

(4) For the purposes of subregulation (5), ***event*** means:

(a) a decision of the trustee; or

(b) the winding-up or termination of the PST;

whichever is applicable.

Authorised Version F2025C00501 registered 08/05/2025

Significant event information—unit-holder expects to be informed before event

(5) Where a unit-holder would reasonably expect to be informed of an event before it occurs, the trustee of a PST must give the information to the unit-holder as soon as practicable after it becomes reasonable for the trustee to expect that the event will happen (except that the information need not be given more than 3 months before the expected date of the event).

2.63 Information concerning significant events

(1) The trustee of a PST must give to each unit-holder information concerning any event in relation to the PST that the trustee reasonably believes the unit-holder would reasonably expect to be informed of.

Note: For examples, *see* under regulation 2.33.

(2) Information under this regulation concerning an event is information that the trustee reasonably believes a unit-holder would reasonably need:

(a) where there is a nature or purpose to the event—to understand the nature or purpose; and

(b) to make an informed judgment about the effect (generally and in respect of the unit-holder's current and future entitlements) of the event.

2.64 Information about notice of non-compliance

If the trustee of a PST receives a notice of non-compliance, the trustee must give to each unit-holder:

(a) a statement of the circumstances (including details of the non-compliance) that gave rise to the issue of the notice; and

(b) a statement of the effect on the PST of the issue of the notice (including details of the effect on the PST's taxation position); and

(c) details of action that the trustee has taken, or proposes to take, to have the PST become a PST for the purposes of Division 2 of Part 5 of the Act; and

(d) any information concerning the non-compliance that APRA requires to be given for the purposes of this paragraph.

Note: For the purposes of this regulation, a notice of non-compliance is a notice issued under section 40 of the Act stating that the entity is not a PST.

Subdivision 2.8.5—Information on leaving

2.65 Information when a person ceases to be a unit-holder

The trustee of a PST must give information under regulation 2.66 to a person as soon as practicable after the trustee becomes aware that the person has ceased to be a unit-holder of the PST, and in particular the trustee must make reasonable efforts to give the information within 1 month after becoming aware that the person has ceased to be a unit-holder of the PST.

Authorised Version F2025C00501 registered 08/05/2025

2.66 Persons ceasing to be unit-holders

(1) Subject to regulation 2.67, the trustee of a PST must give to a person who ceases to be a unit-holder all information the trustee reasonably believes a person reasonably needs for the purpose of understanding their interest in the PST on the day on which the person ceased to be a unit-holder.

(2) In particular, the trustee of a PST must give the person:
  (a) information concerning the person's opening and closing balances for the period:
    (i) beginning on the first day of the unit-holder reporting period in which the person ceases to be a unit-holder of the PST; and
    (ii) ending at the end of the day on which the person ceases to be a unit-holder of the PST; and
  (b) a reconciliation of those balances.

2.67 Exceptions to reporting requirement where person ceases to be unit-holder

(1) Subject to subregulation (2), if a person ceases to be a unit-holder of a PST:
  (a) after the end of a completed unit-holder reporting period (the ***completed period***); and
  (b) before a unit-holder report is issued for that period;

the information required by regulation 2.66 to be given to or in relation to the person may be given in respect of the period consisting of:
  (c) the completed period; and
  (d) the period from the end of that period to the end of the day on which the person ceased to be a unit-holder of the PST;

instead of in respect of the period stated in paragraph 2.66(2)(a).

(2) If the period mentioned in paragraph (1)(d) exceeds 6 months in a particular case, subregulation (1) does not apply in respect of that case.

Authorised Version F2025C00501 registered 08/05/2025

Part 3—Matters prescribed or specified in relation to public offer entities

3.01 Public offer superannuation fund—member of a prescribed class

For the purposes of sub-subparagraph 18(1)(a)(ii)(B) of the Act and paragraph 18A(2)(e) of the Act, a prescribed class is a class of persons, each of whom is:

(a) a former standard employer-sponsored member of the fund concerned who, since ceasing to be a standard employer-sponsored member of the fund, has remained a member of the fund at all times; or

(b) a spouse, or former spouse, of a standard employer-sponsored member of the fund concerned in relation to whom the fund has accepted eligible spouse contributions from the standard employer-sponsored member; or

(c) both:

(i) a spouse, or former spouse, of a person who is a former standard employer-sponsored member (***the other person***) of the fund concerned; and

(ii) a person in relation to whom the fund concerned accepted eligible spouse contributions from the other person while the other person was a member of the fund; or

(d) both:

(i) a spouse, or former spouse, of a standard employer-sponsored member (***the other person***) of a fund that has the same standard employer-sponsor as the fund concerned; and

(ii) a person in relation to whom the fund concerned has accepted eligible spouse contributions from the other person; or

(e) both:

(i) a spouse, or former spouse, of a person who is a former standard employer-sponsored member (***the other person***) of a fund (***the other fund***) that, at all times relevant to subparagraph (ii), had the same standard employer-sponsor as the fund concerned; and

(ii) a person in relation to whom the fund concerned accepted eligible spouse contributions from the other person while the other person was a member of the other fund.

3.02 Deciding an application for approval

For the purposes of paragraph 23(2)(c) of the Act, the prescribed amount of an application fee is $2,000.

3.03 Deciding an application for approval

For the purposes of subparagraphs 26(1)(b)(i) and (ii) and subsection 26(1A) of the Act, the amount of $5,000,000 is prescribed.

Authorised Version F2025C00501 registered 08/05/2025

3.04 Section 54 of the Act—prescribed percentages

For the purposes of section 54 of the Act (prerequisites to variation of repayment period), the following percentages are prescribed:

(a) in the case of paragraph (1)(c) of the section—25%; and

(b) in the case of paragraph (1)(d) of the section—at least 75%.

3.04A Removal of trustee of public offer entity—s. 60A(2) of the Act

For the purposes of subsection 60A (2) of the Act, the following kinds of removal are specified:

(a) a removal that will have the immediate effect that the fund complies with the basic equal representation rules set out in section 89 of the Act;

(b) a removal that satisfies all of the following conditions:

(i) the questions of whether the trustee should be removed, and who should replace the trustee if the removal is agreed to, have been voted on at a meeting of beneficiaries;

(ii) the beneficiaries who vote (in person or by proxy) on each question mentioned in subparagraph (i) at the meeting referred to in that subparagraph hold interests that are in total at least 25% of the total value of all beneficiaries' interests in the fund;

(iii) at least 75% by number of the beneficiaries who vote (in person or by proxy) at the meeting on whether to remove the trustee vote in favour of removing the trustee;

(iv) at least 75% by number of the beneficiaries who vote (in person or by proxy) at the meeting on who the new trustee should be vote in favour of a particular person as trustee;

(v) that person will become the trustee immediately after the removal takes effect.

3.05 Policy committees—sections 91, 92 and 93 of the Act

Pre-1 July 1995—funds with 200 or more members (paragraph 91(3)(b) of the Act)

(1) For the purposes of paragraph 91(3)(b) of the Act, subject to subregulation (4), a public offer superannuation fund to which section 91 of the Act applies is subject to the following rule, namely, that the trustee of the fund must take all reasonable steps to ensure that, if there are at least 200 of its members (a ***group***), each of whom:

(a) is a standard employer-sponsored member; and

(b) has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group;

there is at least 1 policy committee established for that group.

Authorised Version F2025C00501 registered 08/05/2025

Post-30 June 1995—funds with more than 4, but fewer than 50, members (paragraph 92(3)(b) of the Act)

(2) For the purposes of paragraph 92(3)(b) of the Act, subject to subregulation (4), a public offer superannuation fund to which section 92 of the Act applies is subject to the following rule, namely, that the trustee of the fund must take all reasonable steps to ensure that if:

(a) there are at least 5 of its members (a ***group***) each of whom:

(i) is a standard employer-sponsored member; and

(ii) has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group; and

(b) a written request is made to the trustee on behalf of at least 5 members of the group to establish a policy committee;

there is at least 1 policy committee established for that group.

Post-30 June 1995—funds with more than 49 members (paragraph 93(3)(b) of the Act)

(3) For the purposes of paragraph 93(3)(b) of the Act, subject to subregulation (4), a public offer superannuation fund to which section 93 of the Act applies is subject to the following rules, namely:

(a) the trustee of the fund must take all reasonable steps to ensure that, if there are more than 49 of its members (a ***group***), each of whom:

(i) is a standard employer-sponsored member; and

(ii) has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group;

there is at least 1 policy committee established for that group; and

(b) the trustee of the fund must take all reasonable steps to ensure that, if:

(i) there are at least 5 but fewer than 50 of its members (a ***group***), each of whom:

(A) is a standard employer-sponsored member; and

(B) has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group; and

(ii) a written request is made to the trustee on behalf of at least 5 members of that group to establish a policy committee;

there is at least 1 policy committee established for that group.

Rules do not apply to certain funds

(4) If a public offer superannuation fund complies with the basic equal representation rules stated in section 89 of the Act, the fund is not subject to the rules set out in subregulations (1), (2) and (3).

Authorised Version F2025C00501 registered 08/05/2025

Equal representation of employers and members on policy committees—effect of vacancy

(5) If a vacancy occurs in the membership of a policy committee of a public offer superannuation fund the policy committee is taken to consist of equal numbers of employer representatives and member representatives during the period of the vacancy, in accordance with paragraph 91(3)(c), 92(3)(c) or 93(3)(c) of the Act (whichever is applicable) if:

(a) immediately before the vacancy occurred, the policy committee consisted of equal numbers of employer representatives and member representatives; and

(b) the vacancy is filled within 90 days after it occurred; and

(c) immediately after the vacancy is filled, the policy committee consists of equal numbers of employer representatives and member representatives.

3.06 Policy committees—functions (paragraphs 91(3)(b), 92(3)(b) and 93(3)(b) of the Act)

(1) For the purposes of paragraphs 91(3)(b), 92(3)(b) and 93(3)(b) of the Act, a public offer superannuation fund to which section 91, 92 or 93 of the Act applies is subject to the following rule, namely, that the functions that a policy committee of a fund may undertake include the following:

(a) providing an avenue:

(i) for members of the fund to inquire about the investment strategy and performance of the fund; and

(ii) for the trustee of the fund to obtain the views of members of the fund concerning that strategy and performance;

(b) providing an avenue for members of the fund to inquire about the fund's operation or performance;

(c) providing an avenue for the trustee of the fund to obtain the views of members of the fund concerning the fund's operation or performance;

(d) providing an avenue for the trustee of the fund to obtain the views of members of the fund on their information needs;

(e) assisting the trustee of the fund in dealing with complaints or inquiries about the operation or management of the fund.

(2) Subregulation (1) is not to be taken as limiting by implication the functions and responsibilities of the trustee.

3.07 Definition of policy committee in section 10 of the Act—matters specified for purposes of paragraph (a)

Issues relating to the fund that a member of the fund, or the employer-sponsor of a member of the fund, has raised with the committee as a matter of concern, are specified for the purposes of paragraph (a) of the definition of policy committee in section 10 of the Act.

Authorised Version F2025C00501 registered 08/05/2025

3.08 Policy committees—duties of trustee

(1) In relation to each policy committee of a public offer superannuation fund, the trustee of the fund must:

(a) ensure, so far as practicable, that the committee meets at least once in any 12-month period; and

(b) provide facilities that are reasonably necessary to enable the committee to meet and to function effectively.

(2) A meeting may be held wholly or in part by means of a telephone conference connection among the committee members and, if a representative of the trustee is to attend, the representative.

(3) The trustee must arrange for a representative of the trustee to attend each meeting of the committee that the committee requests the trustee to do so.

(4) The trustee may recoup from the fund:

(a) the costs of providing facilities for the committee to meet; and

(b) the costs incurred by the trustee in attending a meeting of the committee; and

(c) the costs incurred by the trustee in providing information to the committee.

Note: The amount of costs recouped is determined in accordance with regulation 5.02

3.09 Dissolution of policy committees

(1) A policy committee of a public offer superannuation fund may dissolve itself, and if it does so the trustee of the fund is taken to have complied with the trustee's duties under regulation 3.05.

(2) If a policy committee dissolves itself and at least 5 members of the fund, being members in respect of whom the committee functioned, request the trustee of the fund in writing to form a replacement committee, the trustee must take all reasonable steps to do so.

(3) The provisions of regulations 3.06, 3.07 and 3.08, and this regulation, apply to a replacement committee.

3.09A Circumstances in which superannuation interest may be issued without application (Act, s 153(1)(d))

For the purposes of paragraph 153(1)(d) of the Act, the circumstance is specified that the interest is issued by the trustee of a successor fund in relation to a transfer of benefits to the fund.

3.09B Circumstances in which a person may become a standard employer-sponsor (Act, s 153(2)(b))

For the purposes of paragraph 153(2)(b) of the Act, the circumstance is specified that:

Authorised Version F2025C00501 registered 08/05/2025

(a) the person who becomes a standard employer-sponsor without having made an eligible application was a standard employer-sponsor of a fund (***the original fund***); and

(b) the benefits of members in the original fund are transferred to a successor fund; and

(c) the person was a standard employer-sponsor of the original fund immediately before those benefits are so transferred; and

(d) the person is a standard employer-sponsor of the successor fund immediately after those benefits are so transferred.

3.10 Commission and brokerage

(1) For the purposes of subsection 154(1) of the Act, the requirements set out in this regulation apply in relation to a payment by the trustee of a public offer entity of commission or brokerage of a kind mentioned in that subsection.

(2) The trustee of a public offer entity may make a payment of commission or brokerage to a person in consideration of the person:

(a) applying or agreeing to apply for the issue of an interest in the entity; or

(b) procuring or agreeing to procure applications for the issue of an interest in the entity;

if, and only if:

(c) the payment is not prohibited by the entity's trust deed; and

(d) where an interest is issued, the applicant for the issue of the interest has, before the issue occurred, been notified in writing of the amount or rate of the proposed payment of commission or brokerage.

(3) The trustee of a public offer entity must not make a payment of commission or brokerage to a person in respect of issuing an interest in the entity unless the person is:

(a) the holder of a dealers licence granted under Part 7.3 of the Corporations Law; or

(b) the holder of a proper authority within the meaning of the Corporations Law; or

(c) an exempt dealer within the meaning of the Corporations Law; or

(d) any of the following:

(i) the holder of an investment advisers licence granted under Part 7.3 of the Corporations Law;

(ii) an accountant or solicitor whose principal business or profession is not the giving of advice about securities;

(iii) an employee of an accountant or solicitor whose principal business or profession is not the giving of advice about securities; or

(iv) a company providing accountancy or legal services whose principal business is not the giving of advice about securities;

(v) a director or employee of a company of that kind;

if the person has told the trustee in writing that the total amount of the commission or brokerage will be rebated to the applicant for the issue; or

Authorised Version F2025C00501 registered 08/05/2025

(e) a registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984*; or

(f) a life insurance company.

(4) A reference in subregulation (3) to a solicitor or accountant includes a reference to a firm of solicitors or accountants, or to a partner in such a firm, as the case requires.

(5) The trustee of an entity must keep an account of amounts of commission and brokerage paid by the entity.

3.11 Statements by experts—keeping of written consents

(1) For the purposes of subsection 163(2) of the Act the period for which the trustee of a public offer entity must keep a consent or copy is 10 years from the date on which the entity receives the consent.

(2) A copy of a consent may be kept:

(a) in its physical form; or

(b) in an electronic form that is capable of being reproduced in paper form.

3.12 Requirements concerning application money held on trust

For the purposes of section 169 of the Act, the trustee of a public offer entity must:

(a) pay money referred to in the section into a trust account (that need not be interest bearing) in the name of the applicant from whom the entity received the money; and

(b) retain the money in a trust account of that kind until:

(i) the relevant superannuation interest is issued to the applicant; or

(ii) the money is refunded to the applicant.

3.13 When cooling-off does not apply (Act, s.170(e))

For the purposes of paragraph 170(e) of the Act (which deals with the circumstances in which the cooling-off period does not apply), the circumstance is specified that the interest is issued by the trustee of a successor fund in relation to the transfer of benefits to that fund.

Authorised Version F2025C00501 registered 08/05/2025

Part 4—Management and trusteeship of superannuation entities

Division 4.1—Prescribed matters

4.01 Covenants in governing rules of a superannuation entity—prescribed information and documents

For the purposes of paragraph 52(2)(h) of the Act, the information and documents that are available to a concerned person under Division 2.6 are prescribed.

4.02 Covenants in governing rules of a superannuation entity—beneficiary investment choice

(1) For the purposes of paragraph 52(4)(b) of the Act, the circumstances in which a direction of the kind referred to in that paragraph (other than a subsequent direction of that kind) may be given are:
  (a) in the case of a direction by a specified beneficiary who is, or a class of specified beneficiaries each of whom is, a standard employer-sponsored member—the circumstances stated in subregulations (2) and (3); and
  (b) in any other case—the circumstances stated in subregulation (2).

(2) For the purposes of paragraphs (1)(a) and (b), the following circumstances are stated, namely that:
  (a) the trustee gives to the beneficiary, or to each member of the class of beneficiaries, a choice of 2 or more investment strategies from which the beneficiary, or class of beneficiaries, may choose a strategy or combination of strategies; and
  (b) the beneficiary, or each member of the class of beneficiaries, is given:
    (i) the investment objectives of each of the strategies mentioned in paragraph (a); and
    (ii) all information the trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of those strategies; and
  (c) the beneficiary, or each member of the class of beneficiaries, is fully informed of the range of directions that can be given and the circumstances in which they can be changed; and
  (d) the direction is given after compliance with the above paragraphs, and the direction specifies:
    (i) which of the strategies or which combination of strategies referred to in paragraph (a) is to be followed in relation to investments of the beneficiary's, or class of beneficiaries', interest in the fund; and
    (ii) where applicable, matters related to the choice referred to in that paragraph.

Authorised Version F2025C00501 registered 08/05/2025

Example: A strategy could allow the beneficiary, or class of beneficiaries, a choice in exposure to certain classes of asset. The beneficiary may choose 60%in fixed interest loans and 40% in shares and the choice of the level of exposure to the class of assets would be a ***matter*** mentioned in subparagraph (ii).

(3) For the purposes of paragraph (1)(a), the following circumstance is stated, namely that the trustee clearly identifies to the beneficiary, or to each member of the class of beneficiaries, when giving to him, her or them a choice of 2 or more investment strategies in accordance with paragraph (2)(a), the strategy the trustee will adopt if no direction is given.

(4) Subregulation (3) does not apply in relation to a beneficiary or a member of a class of beneficiaries if it is a condition of membership for the beneficiary to choose a strategy or combination of strategies.

(5) For the purposes of paragraph 52(4)(b) of the Act, the circumstances in which a direction of the kind referred to in that paragraph, if it is a subsequent direction of that kind, may be given are that:

(a) the beneficiary, or each member of the class of beneficiaries, is given all information the trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, the subsequent direction; and

(b) the subsequent direction is given after compliance with paragraph (a), and relates to the strategy to be followed in relation to the investment of the interest in the fund of the beneficiary or class of beneficiaries.

4.03 Trustee of employer-sponsored fund prescribed direction by employer-sponsor or associate of employer-sponsor

(1) For the purposes of paragraph 58(2)(e) of the Act, the circumstances in which the governing rules of a superannuation entity other than an excluded fund may permit an employer-sponsor or an associate of an employer-sponsor to give a direction to the trustee of an employer-sponsored fund are:

(a) where, after the implementation of the direction:

(i) the fund (if a defined benefit fund) would not become technically insolvent within the meaning of subregulation 9.06(3); or

(ii) the fund (if an accumulation fund) would not become technically insolvent within the meaning of subregulation 9.35(3); and

(b) where the direction would not require the trustee to contravene the Act (other than section 55) or these Regulations; and

(c) where the direction qualifies under subregulation (2).

(2) A direction qualifies if:

(a) the contributions of the employer-sponsor to the fund include contributions that are not mandated employer contributions (within the meaning of Part 5) and the direction relates solely to either or both of the following:

(i) those non-mandated employer contributions; or

(ii) benefits related to those non-mandated employer contributions; or

Authorised Version F2025C00501 registered 08/05/2025

(b) whether or not paragraph (a) applies—the direction relates solely to one or more of the following:
(i) the admission of new members to the fund; or
(ii) the category of members into which a new member or existing member is to be placed; or
(iii) allowing a person to become an employer-sponsor of the fund; or
(iv) the termination of the fund; or
(v) the appointment of a trustee to an entity that does not have a trustee.

4.04 Governing rules of a superannuation entity—prescribed exercise of discretion by non-trustee

(1) For the purposes of subparagraph 59(1)(b)(iii) of the Act, the circumstances in which a discretion under the governing rules of a superannuation entity other than an excluded fund may be exercised by a person other than the trustee are:
(a) where, after the exercise of the discretion:
(i) the fund (if a defined benefit fund) would not become technically insolvent within the meaning of subregulation 9.06(3); or
(ii) the fund (if an accumulation fund) would not become technically insolvent within the meaning of subregulation 9.35(3); and
(b) where the discretion could have been exercised by the trustee without contravening the Act (other than section 55) or these Regulations; and
(c) where the discretion qualifies under subregulation (2).

(2) A discretion qualifies if:
(a) the contributions of the employer-sponsor to the fund include contributions that are not mandated employer contributions (within the meaning of Part 5) and the discretion relates solely to either or both of the following:
(i) those non-mandated employer contributions; or
(ii) benefits related to those non-mandated employer contributions; or
(b) whether or not paragraph (a) applies—the discretion relates solely to one or more of the following:
(i) the admission of new members to the fund; or
(ii) the category of members into which a new member or existing member is to be placed; or
(iii) allowing a person to become an employer-sponsor of the fund; or
(iv) the termination of the fund; or
(v) the appointment of a trustee to an entity that does not have a trustee.

4.05 Governing rules of a superannuation entity—prescribed circumstances of amendment

(1) For the purposes of subparagraph 60(1)(b)(iii) of the Act, the circumstances in which the governing rules of a superannuation entity other than an excluded fund may be amended are:
(a) where, after the making of the amendment:

Authorised Version F2025C00501 registered 08/05/2025

(i) the fund (if a defined benefit fund) would not become technically insolvent within the meaning of subregulation 9.06(3); or

(ii) the fund (if an accumulation fund) would not become technically insolvent within the meaning of subregulation 9.35(3); and

(b) where the amendment could have been made by the trustee without contravening the Act (other than section 55) or these Regulations; and

(c) where the amendment qualifies under subregulation (2).

(2) An amendment qualifies if:

(a) the contributions of the employer-sponsor to the fund include contributions that are not mandated employer contributions (within the meaning of Part 5) and the amendment relates solely to either or both of the following:

(i) those non-mandated employer contributions; or

(ii) benefits related to those non-mandated employer contributions; or

(b) whether or not paragraph (a) applies—the amendment relates solely to one or more of the following:

(i) the admission of new members to the fund; or

(ii) the category of members into which a new member or existing member is to be placed; or

(iii) allowing a person to become an employer-sponsor of the fund; or

(iv) the termination of the fund; or

(v) the appointment of a trustee to an entity that does not have a trustee.

4.06 Removal of member representatives—prescribed circumstances

(1) For the purposes of sub-subparagraph 107(2)(a)(ii)(G) of the Act, the circumstances stated in subregulation (2) are prescribed as circumstances in which member representatives referred to in subparagraph 107(2)(a)(ii) of the Act can be removed other than by the same procedure by which they were appointed.

(2) The circumstances referred to in subregulation (1) are:

(a) if the member representative resigns from the position of trustee, director of the trustee or representative on a policy committee; or

(b) if the member representative's tenure of that position expires; or

(c) if the member representative ceases to be a member of the fund; or

(d) if the member representative ceases to satisfy a condition that the member representative was required to satisfy to be eligible for appointment.

4.07 Removal of independent trustee or independent member—prescribed circumstances

(1) For the purposes of subparagraph 108(2)(a)(v) of the Act, the circumstances stated in subregulation (2) are prescribed as circumstances in which an additional independent trustee or additional independent director (the ***office-holder***) referred to in paragraph 108(2)(a) of the Act can be removed other than by the same procedure by which they were appointed.

Authorised Version F2025C00501 registered 08/05/2025

(2) The circumstances referred to in subregulation (1) are:

(a) if the office-holder resigns from office; or

(b) if the office-holder's tenure of office expires; or

(c) if the office-holder ceases to be:

(i) in the case of an additional independent trustee—an independent trustee; or

(ii) in the case of an additional independent director—an independent director; or

(d) if the office-holder ceases to satisfy a condition that the office-holder was required to satisfy to be eligible for appointment.

Authorised Version F2025C00501 registered 08/05/2025

Division 4.2—Operating standards

4.08 Operating standard—voting rule where equal representation applies

(1) For the purposes of subsection 31(1) of the Act, the standard stated in subregulation (3) is applicable to the operation of standard employer-sponsored funds that must comply:

(a) under subsection 91(4) or 93(4) of the Act—with the basic equal representation rules; or

(b) under subsection 90(3) of the Act—with either:

(i) the basic equal representation rules; or

(ii) the alternative agreed representation rule set out in subsection 90(4) of the Act; or

(c) under subsection 92(4) of the Act—with either:

(i) the basic equal representation rules; or

(ii) the alternative agreed representation rule set out in subsection 92(5) of the Act.

(2) Despite subregulation (1), the standard stated in subregulation (3) is not applicable:

(a) to the operation of standard employer-sponsored funds that comply with the alternative agreed representation rule set out in subsection 90(4) or 92(5) of the Act; or

(b) to a decision of a delegate of the individual trustees or of the board of directors of the corporate trustee of the fund if the delegation was approved by at least two-thirds of the total number of the trustees or directors.

(3) A decision of:

(a) the individual trustees of a fund; or

(b) the board of directors of the corporate trustee of a fund;

must be taken not to have been made, or to be of no effect, if fewer than two-thirds of the total number of the trustees or directors, as the case requires, voted for it.

4.09 Operating standard—investment strategy

(1) For the purposes of subsections 31(1), 32(1) and 33(1) of the Act, the standard stated in subregulation (2) is applicable to the operation of superannuation entities.

(2) The trustee of the entity must formulate and give effect to an investment strategy that has regard to all the circumstances of the entity, including in particular:

(a) the risk involved in making, holding and realising, and the likely return from, the entity's investments, having regard to its objectives and expected cash flow requirements;

Authorised Version F2025C00501 registered 08/05/2025

(b) the composition of the entity's investments as a whole, including the extent to which they are diverse or involve exposure of the entity to risks from inadequate diversification;
(c) the liquidity of the entity's investments, having regard to its expected cash flow requirements;
(d) the ability of the entity to discharge its existing and prospective liabilities.

(3) An investment strategy is taken to be in accordance with subregulation (2) even if it provides for a specified beneficiary or class of beneficiaries to give directions to the trustee where the directions:
(a) relate to the strategy to be followed by the trustee in relation to the investment of a particular asset or assets of the entity; and
(b) are given in the circumstances covered by regulation 4.02.

4.10 Operating standard—investment by non-complying superannuation funds

For the purposes of subsection 31(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds that, if APRA gives a notice to the trustee of an entity stating that the entity is not a complying superannuation fund, the trustee must take all reasonable steps to immediately dispose of any units held by the trustee in a PST, unless APRA otherwise directs.

4.11 Operating standard—investment by non-complying approved deposit funds

For the purposes of subsection 32(1) of the Act, it is a standard applicable to the operation of approved deposit funds that, if APRA gives a notice to the trustee of an entity stating that the entity is not a complying approved deposit fund, the trustee must take all reasonable steps to immediately dispose of any units held by the trustee in a PST, unless APRA otherwise directs.

4.12 Operating standard—acceptance by regulated superannuation and approved deposit funds of rollovers and transfers

(1) For the purposes of subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds and approved deposit funds that the trustee of a fund (***the receiving trustee***) must not accept the rollover or transfer of a benefit from another regulated superannuation fund or approved deposit fund, or from an RSA, (***the transferring entity***) if:
(a) the receiving trustee has reasonable grounds to believe that the benefit being rolled over or transferred is being rolled over or transferred on the basis of a belief held by the trustee or RSA provider of the transferring entity (as the case requires) that the receiving trustee has received the member's or RSA holder's consent to the rollover or transfer; and
(b) the receiving trustee has not received that consent.

(2) In this regulation:

consent means:
(a) written consent; or

Authorised Version F2025C00501 registered 08/05/2025

(b) any other form of consent determined by APRA as sufficient in the circumstances.

4.13 Operating standard—lending to members of an approved deposit fund

(1) For the purposes of subsection 32(1) of the Act, the standards stated in subregulations (2) and (3) are standards applicable to the operation of approved deposit funds.

(2) The trustee of a fund must not:
  (a) lend money of the fund to:
    (i) a member of the fund; or
    (ii) a relative of a member of the fund; or
  (b) give any other financial assistance using the resources of the fund to:
    (i) a member of the fund; or
    (ii) a relative of a member of the fund.

(3) The trustee of a fund must take all reasonable steps to ensure that the investment manager does not:
  (a) lend money of the fund to:
    (i) a member of the fund; or
    (ii) a relative of a member of the fund; or
  (b) give any other financial assistance using the resources of the fund to:
    (i) a member of the fund; or
    (ii) a relative of a member of the fund.

(4) In this regulation:

relative has the same meaning as in the Income Tax Assessment Act.

Authorised Version F2025C00501 registered 08/05/2025

Part 5—Benefit protection standards

Division 5.1—Preliminary

5.01 Interpretation

(1) In this Part, unless the contrary intention appears:

accumulated deposit, in relation to a member of an approved deposit fund as at a particular time, means the total of the following amounts:

(a) amounts deposited in the fund for the member down to that time; and

(b) investment earnings on those amounts down to that time;

less:

(c) the costs applicable to those amounts down to that time.

administration costs includes all fees and charges charged against a member's benefits (whether or not charged against the contributions by or in respect of the member), other than:

(a) in the case of a member who was a member of the fund on 30 June 1995, the exit fee (if any) applicable to the member's benefits at that date; and

(b) the cost (if any) of providing to the member:

(i) an insured death benefit; or

(ii) an insured permanent or temporary incapacity benefit; and

(c) taxation costs.

Note: Examples of ***taxation costs***: contributions tax, superannuation contributions surcharge.

cashed means cashed in accordance with Division 6.3.

costs, in relation to a member's benefits in a regulated superannuation fund or an approved deposit fund as at any time, means the total costs determined under regulation 5.02 in relation to those benefits and charged to those benefits in accordance with that regulation down to that time.

deferred annuity means an annuity:

(a) that is not payable on purchase; and

(b) whose terms ensure:

(i) that payment of benefits under the annuity:

(A) is not commenced earlier than the time when Part 6 permits or requires the benefits to be paid from an approved deposit fund; and

(B) is to commence as soon as practicable after the annuitant attains (or, if the annuitant has died, would have attained) age 65; and

(ii) that, except as permitted in relation to approved deposit funds by the Act or these Regulations, the provider of the annuity does not recognise, or in any way encourage or sanction:

Authorised Version F2025C00501 registered 08/05/2025

(A) an assignment of an interest under the annuity; or
(B) the giving of a charge over, or in relation to the annuity.

investment earnings, in relation to a member's benefits (or a members' benefits of a particular kind) in a regulated superannuation fund or an approved deposit fund as at any time, means the total of the amounts credited, less the total of the amounts debited, to the member's account by way of investment return down to that time in respect of those benefits.

investment return, in relation to a member's benefits (or a member's benefits of a particular kind) in a regulated superannuation fund or an approved deposit fund over a particular period means:

(a) in the case of an approved deposit fund or an accumulation fund in which the trustee does not maintain reserves—the proportion of the return to the fund on investments over that period that is attributable to those benefits; or
(b) in the case of an approved deposit fund or an accumulation fund in which the trustee maintains reserves—the return determined by the trustee in accordance with regulation 5.03 for that period; or
(c) in the case of a defined benefit fund:
    (i) the proportion of the return to the fund on investments over that period that is attributable to those benefits; or
    (ii) the return on the benefits over that period that is fair and reasonable to all members of the fund, being a return based either on the actual return earned on the investments of the fund or on a commercially available rate of interest; or
    (iii) the return on the benefits that is derived by increasing the benefits in proportion with the increase in the salary of the member over that period.

mandated employer contributions, in relation to a member of a regulated superannuation fund, means contributions by, or on behalf of, an employer that are equal to the sum of:

(a) the contributions made by, or on behalf of, the employer to the fund in relation to the member, that:
    (i) reduce the employer's potential liability for the superannuation guarantee charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*; or
    (ii) are payments of shortfall components; and
(b) the contributions (other than contributions of the kind specified in paragraph (a)) made by, or on behalf of, the employer to the fund in relation to the member in or towards satisfaction of the employer's obligation to make contributions for the member, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority.

mandated employer-financed benefits, in relation to a member of a regulated superannuation fund as at a particular time, means benefits equal to the sum of:

Authorised Version F2025C00501 registered 08/05/2025

(a) the amount of the mandated employer contributions (if any) made to the fund in relation to the member down to that time; and
(b) the amount of the mandated employer-financed benefits (if any) paid into the fund in relation to the member down to that time; and
(c) the amount of the investment earnings on those contributions and benefits down to that time;

less the costs applicable to the amounts down to that time.

member contributions, in relation to a member of a regulated superannuation fund, means contributions by, or on behalf of, the member to the fund, but does not include employer contributions made in respect of the member.

member-financed benefits, in relation to a member of a regulated superannuation fund as at a particular time, means benefits equal to the sum of:

(a) the amount of the member contributions (if any) made to the fund in relation to the member down to that time; and
(b) the amount of the member-financed benefits (if any) paid into the fund in relation to the member down to that time; and
(c) the amount of the investment earnings on those contributions and benefits down to that time;

less the costs applicable to those amounts down to that time.

OSS Laws means:

(a) the *Occupational Superannuation Standards Act 1987* as in force immediately before the commencement of section 5 of the *Occupational Superannuation Standards Amendment Act 1993*; and
(b) the Occupational Superannuation Standards Regulations.

rolled over means paid as an eligible termination payment (other than by way of being transferred) within the superannuation system.

superannuation system means the system comprising:

(a) regulated superannuation funds; and
(b) approved deposit funds; and
(c) ASIC as the recipient of unclaimed money paid to ASIC under subsection 225(5) of the Act; and
(d) deferred annuities; and
(e) exempt public sector superannuation schemes; and
(f) the Commissioner of Taxation in the Commissioner of Taxation's role as the recipient of unclaimed money that is paid to the Commissioner of Taxation under subsection 83(1) of the RSA Act; and
(g) a State or Territory, or a State or Territory Authority, in its role as the recipient of unclaimed money under subsection 84(1) of the RSA Act; and
(h) RSAs; and
(i) annuities.

transferred, in relation to a member's benefits in a fund (the ***transferor fund***), means paid from the transferor fund:

Authorised Version F2025C00501 registered 08/05/2025

(a) to another fund; or

(b) to an RSA provided by an RSA institution;

otherwise than upon the satisfaction by the member of a condition of release (within the meaning of Part 6) in respect of all those benefits.

(2) For the purposes of this Part, a payment from the Superannuation Holding Accounts Reserve is taken to be a mandated employer contribution.

(3) For the purposes of this Part, a reference to the member-protection standards having only lost-member operation in relation to a person is a reference to the member-protection standards operating to protect the benefits of that person only if the person becomes a lost member of a fund and not if he or she becomes a protected member of a fund.

5.01A Operating standards—determination of costs and investment return

For the purposes of subsections 31 (1) and 32(1) of the Act:

(a) the standard set out in subregulations 5.02(1) and (3), 5.02B(2), 5.02C(2) and 5.03(2) is applicable to the operation of regulated superannuation funds and approved deposit funds; and

(b) the standard set out in subregulation 5.03(1) is applicable to the operation of:

(i) accumulation funds; and

(ii) approved deposit funds;

that maintain reserves.

5.01B Trustee may provide greater protection than this Part requires

The trustee of a regulated superannuation fund or approved deposit fund has the power, despite anything in the governing rules of the fund, to protect the benefits of members:

(a) to a greater degree than is required by this Part; or

(b) from an earlier date than is required by this Part;

if the trustee does so in a way that is consistent with this Part.

Note: For example, a trustee might choose to protect the benefits of all members with withdrawal benefits less than $1,500, rather than all protected members (i.e., broadly, members with withdrawal benefits less than $1,000) as this Part requires. ***Protected member*** is defined in regulation 1.03.

5.02 Determination of costs

(1) The trustee of a regulated superannuation fund or an approved deposit fund must determine the costs to be charged from time to time against a member's benefits in the fund.

(2) In determining the costs to be charged against a member's benefits, the trustee may include:

(a) the direct costs of establishing, operating and terminating the fund; and

Authorised Version F2025C00501 registered 08/05/2025

(b) any administrative, insurance and taxation costs relating to the establishment, operation and termination of the fund.

(3) Subject to the member-protection standards and regulation 5.01B, in determining the costs to be charged against a member's benefits, the trustee must ensure that the costs of the fund (including the costs (if any) incurred by the fund as a result of the operation of Division 5.4) are distributed in a fair and reasonable manner as between:

(a) all the members of the fund; and

(b) the various kinds of benefits of each member of the fund.

5.02A Meaning of *fair and reasonable*

(1) For the purposes of subregulation 5.02(3), a distribution of costs in relation to a fund is not fair and reasonable if, in respect of a period that is, in relation to the fund, a good investment period, the trustee of the fund applies administration costs (being administration costs that would, but for the member-protection standards, be applied to erode the minimum benefits of members of the fund to whom the member-protection standards apply) in a way that erodes the benefits (other than the minimum benefits) of those members.

(2) For the purposes of subregulation (1), a period is a good investment period in relation to a fund if the total administration costs that would be charged to members of the fund but for regulation 5.17 is not greater than the total investment return of the fund that would be credited to members of the fund in respect of the period but for that regulation.

5.02B Priority in deducting surcharge or instalment

(1) This regulation applies if a trustee has decided to reduce a member's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge.

(2) In reducing the member's benefits, the trustee must:

(a) if possible—deduct an amount equal to the whole of the amount of the reduction from the preserved benefits; and

(b) if the required deduction cannot be met under paragraph (a)—deduct the balance from the restricted non-preserved benefits; and

(c) if the required deduction cannot be met under paragraphs (a) and (b)—deduct the balance from the unrestricted non-preserved benefits.

5.02C Refund of costs

(1) The trustee of a regulated superannuation fund or approved deposit fund may refund, to a member's benefits in the fund, costs charged against the member's benefits.

(2) In determining the amount of refund to be credited, the trustee must ensure that the total amount to be refunded is distributed in a fair and reasonable manner to all the members of the fund against whom the costs were charged.

Authorised Version F2025C00501 registered 08/05/2025

5.03 Investment returns

(1) The trustee of an accumulation fund or an approved deposit fund that maintains reserves must determine the investment return to be credited or debited from time to time to a member's benefit (or benefits of a particular kind) in the fund, having regard to:

(a) the return to the fund on investments; and

(b) the extent to which the costs of the fund exceed (or fall below) the aggregate of the costs charged to member's benefits under regulation 5.02; and

(c) the level of the reserves of the entity.

(2) Subject to the member-protection standards, regulation 5.01B and Division 6.1, the trustee of a regulated superannuation fund or an approved deposit fund must determine the investment return to be credited or debited to a member's benefits (or benefits of a particular kind) in a way that is fair and reasonable as between:

(a) all the members of the fund; and

(b) the various kinds of benefits of each member of the fund.

Authorised Version F2025C00501 registered 08/05/2025

Division 5.2—Minimum benefits

5.04 Minimum benefits—regulated superannuation funds

(1) Subject to regulations 5.05 and 5.06, a member's minimum benefits in a regulated superannuation fund are as set out in this regulation.

(2) If the fund is an accumulation fund, the member's minimum benefits are:
  (a) the member's member-financed benefits; and
  (b) the member's mandated employer-financed benefits.

(3) If the fund is a defined benefit fund, the member's minimum benefits are as follows:
  (a) if the member belongs to a class of employees in relation to which a relevant benefit certificate applies, the amount of the member's minimum requisite benefit; or
  (b) in any other case:
    (i) the member's member-financed benefits; and
    (ii) the member's mandated employer-financed benefits.

5.05 Mandated employer contributions—regulated superannuation funds

(1) Subject to this regulation, contributions to a regulated superannuation fund are taken to be mandated employer contributions.

(2) If:
  (a) at least 1 year has elapsed since the fund received the contributions; and
  (b) the trustee:
    (i) is satisfied that the contributions are not in fact mandated employer contributions; and
    (ii) decides not to continue to treat the contributions as mandated employer contributions;

subregulation (1) ceases to apply to the contributions.

(3) If:
  (a) less than 1 year has elapsed since the fund received the contributions; and
  (b) the trustee is satisfied that the contributions are not in fact mandated employer contributions;

subregulation (1) ceases to apply to the contributions.

(4) The trustee has power to make a decision of the kind mentioned in subparagraph 2(b)(ii) despite anything in the governing rules of the fund.

EXAMPLE OF THE APPLICATION OF THIS REGULATION:

A trustee of a fund may receive a non-mandated employer contribution from an employer-sponsor of the fund that the trustee does not know is a non-mandated employer contribution (i.e. a contribution not made in satisfaction of the employer-sponsor's superannuation guarantee or award obligation).

Authorised Version F2025C00501 registered 08/05/2025

Upon acceptance, the contribution will be taken to be a mandated employer contribution and therefore subject to the minimum benefits standards.

From this point, one of three circumstances may apply:

(a) the trustee may become aware in the first year after the contribution was received that the contribution is a non-mandated employer contribution, and, if this is the case, the trustee must treat the contribution as a non-mandated employer contribution; or

(b) the trustee may become aware more than a year after the contribution was received that the contribution is a non-mandated employer contribution, and, if this is the case, the trustee may continue to treat the contribution as a mandated employer contribution instead of making corrections to reflect the change; or

(c) the trustee may never become aware that the contribution is a non-mandated employer contribution, and, if this is the case, the contribution will always be taken to be a mandated employer contribution.

5.06 Certain benefits rolled over or transferred to regulated superannuation funds taken to be minimum benefits

(1) Subject to this regulation, benefits rolled over or transferred to a regulated superannuation fund are taken to be minimum benefits in the regulated superannuation fund.

(2) If:

(a) at least 1 year has elapsed since the fund received the benefits; and

(b) the trustee:

(i) is satisfied that the benefits are not in fact minimum benefits; and

(ii) decides not to continue to treat the benefits as minimum benefits;

subregulation (1) ceases to apply to the benefits.

(3) If:

(a) less than 1 year has elapsed since the fund received the benefits; and

(b) the trustee is satisfied that the benefits are not in fact minimum benefits;

subregulation (1) ceases to apply to the benefits.

(4) If benefits that have been rolled over or transferred to a regulated superannuation fund are taken under this regulation to be minimum benefits, the amount of the minimum benefits as at any time is the sum of:

(a) the benefits rolled over or transferred to the fund; and

(b) the investment earnings on those benefits down to that time;

less the costs applicable to those benefits down to that time.

(5) The trustee has power to make a decision of the kind mentioned in subparagraph (2)(b)(ii) despite anything in the governing rules of the fund.

(6) In this regulation:

benefits means benefits other than benefits rolled over or transferred to a regulated superannuation fund from an RSA.

Authorised Version F2025C00501 registered 08/05/2025

5.06A Benefits rolled over or transferred from an RSA to regulated superannuation funds taken to be minimum benefits

Benefits rolled over or transferred to a regulated superannuation fund from an RSA are taken to be minimum benefits in the regulated superannuation fund.

5.07 Minimum benefits—approved deposit funds

A member's minimum benefits in an approved deposit fund are the amount of the member's accumulated deposit in that fund.

Authorised Version F2025C00501 registered 08/05/2025

Division 5.3—Treatment of minimum benefits

5.08 How minimum benefits are to be treated

For the purposes of subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds and approved deposit funds that the trustee of a fund must ensure that a member's minimum benefits in the fund are maintained in the fund until the benefits are:

(a) cashed as benefits of the member, other than for the purpose of the member's temporary incapacity; or

(b) rolled over or transferred as benefits of the member.

Authorised Version F2025C00501 registered 08/05/2025

Division 5.4—Restrictions on exit fees on the rollover or transfer of benefits in certain cases

5.09 Application of Division

(1) This Division applies to the rollover or transfer of the benefit of a member of a regulated superannuation fund (other than an excluded superannuation fund) if:

(a) the amount rolled over or transferred is less than $1,000; and

(b) subject to subregulation (1A), the benefit is rolled over or transferred from the fund at the instigation of the trustee of the fund, whether or not the member chooses the entity to which the benefit is rolled over or transferred; and

(c) the benefit contains, or has contained, mandated employer-financed benefits.

(1A) For the purposes of paragraph (1)(b), a benefit is not taken to be rolled over or transferred from a fund at the instigation of the trustee of the fund if:

(a) the rollover or transfer takes place in accordance with the governing rules of the fund; and

(b) the rollover or transfer was required by those rules as in force on 22 March 1995.

(2) A benefit to which paragraphs (1)(a) and (b) apply is taken to contain or have contained mandated employer-financed benefits unless the trustee knows otherwise.

(3) This Division has no effect after 30 June 1996.

5.10 Operating standard—restriction on exit fees

(1) For the purposes of subsection 31(1) of the Act, the restrictions set out in subregulations (2) and (3) are operating standards applicable to the operation of regulated superannuation funds.

(2) The trustee of a fund must not charge, in respect of a rollover or transfer to which this Division applies, a fee or charge that the trustee would not have charged if the rollover or transfer had not occurred.

(3) The trustee of a fund must not charge a fee or charge that is intended to circumvent the effect of subregulation (2).

5.11 Inconsistency between this Division and the member-protection standards

If a provision of this Division is inconsistent with the member-protection standards, the provision of this Division prevails.

Authorised Version F2025C00501 registered 08/05/2025

Division 5.5—Member-protection standards

5.12 Interpretation

In this Division:

exit fee means a fee charged by a trustee of a fund in relation to a payment of benefits in the fund, being a fee that the trustee would not have charged if the payment had not been made.

member reporting period, in relation to a fund, means:

(a) a member reporting period that applies under Subdivision 2.4.2; or

(b) an exit reporting period within the meaning of regulation 2.44.

5.13 Operating standards—member protection

For the purposes of subsections 31(1) and 32(1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds and approved deposit funds.

5.14 Member-protection standards not to apply to certain funds

(1) In this regulation:

unitised fund means a fund for which the investment return is reflected in the price of units in the fund rather than being credited to or debited against the accounts of the members.

(2) The member-protection standards do not apply to a unitised fund if:

(a) a single price is applicable both to the buying and selling of units in the fund and all the administration costs of the fund are reflected in that price; or

(b) separate prices are applicable, respectively, to the buying and selling of units in the fund and:

(i) the price differential, also known as the buy/sell cost spread, is solely attributable to outgoings comprising:

(A) brokerage costs; and

(B) fees and charges charged against a member's benefits that are excluded from the definition of ***administration costs*** under paragraphs (a), (b) and (c) of that definition in subregulation 5.01 (1); and

(ii) the brokerage costs referred to in sub-subparagraph (i) (A), if any, are applied proportionally in relation to all units in the fund; and

(iii) all the administration costs of the fund, except for any brokerage costs applied in accordance with sub-subparagraph (i) (A) and subparagraph (ii), are reflected in both the buy price and the sell price of the units; or

Authorised Version F2025C00501 registered 08/05/2025

(c) the administration costs of the fund are not wholly reflected in the price, or prices, of units in the fund but the benefits of its members are protected in a way that is consistent with the member-protection standards.

(3) The member protection standards do not apply to a fund that is not a unitised fund if all of the administration costs of the fund are applied to each member in direct proportion to:

(a) the investment return credited to, or debited against, the member; or

(b) the member's benefits.

5.15 Member-protection standards not to apply to certain protected members

If:

(a) a member of a fund is a protected member at the end of a member reporting period; and

(b) the trustee of the fund has a reasonable expectation (in accordance with regulation 2.26B) that the member will have a withdrawal benefit of at least $1,500 within 12 months after the end of that member reporting period; and

(c) his or her withdrawal benefits reach $1,500 within 12 months after the end of that member reporting period;

he or she is taken not to have been subject to the member-protection standards from the beginning of that member reporting period until the end of that period of 12 months.

Note: See regulation 2.26B in relation to protected members whose benefits are reasonably expected to reach $1,500 within the period of 12 months after the end of a member reporting period.

5.15A Limitation of application of member-protection standards to certain personal superannuation members

If an existing personal superannuation member (within the meaning of Division 5.6) of a regulated superannuation fund has elected under that Division not to be treated as a protected member, the member-protection standards have only lost-member operation in respect of that member while he or she remains a member of the fund.

5.15B Member-protection standards taken not to have applied to certain members

(1) If:

(a) before 1 July 1995, the trustee of a regulated superannuation fund has formed the intention:

(i) to apply, on behalf of a member of the fund, to an eligible rollover fund for the issue to the member of a superannuation interest in the latter fund; or

(ii) not to protect the benefits of a member; and

Authorised Version F2025C00501 registered 08/05/2025

(b) the trustee keeps a record of having formed that intention, being a record that identifies the member; and

(c) the benefits of the member are paid out of the fund before 1 October 1995; and

(d) the trustee has not charged an exit fee in respect of the payment of those benefits out of the fund;

the member-protection standards are taken not to have applied to the member in respect of his or her membership of the fund during the period ending on the date on which the last of the member's benefits are paid out of the fund.

(2) In subregulation (1), a reference to payment of benefits out of a fund includes:

(a) rolling over or transferring the benefits; and

(b) cashing the benefits; and

(c) any combination of rolling over, transferring and cashing the benefits.

5.15C Member-protection standards not to apply to pensions

The member-protection standards do not apply to any part of a member's benefits which has commenced to be taken in the form of a pension.

5.15D Member-protection standards not to apply to traditional life insurance policies

The member-protection standards do not apply to a part of a member's benefits that is wholly determined by a life insurance policy within the meaning of the *Life Insurance Act 1995* if:

(a) the policy includes an investment component; and

(b) the premium is not dissected (whether by reference to the investment component or otherwise); and

(c) the sum insured, together with bonuses (if any), is payable only upon:

(i) the death of the life insured; or

(ii) the occurrence of the earlier of the following events:

(A) the death of the life insured; or

(B) the attainment by the life insured of the age specified in the policy.

5.16 Application of member-protection standards to sub-fund

(1) Subject to subregulation (2), the trustee of a fund may treat a sub-fund within the fund as a fund for the purposes of the member-protection standards if the sub-fund satisfies the following conditions (otherwise than for the purposes of winding up):

(a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries; and

(b) each beneficiary of the sub-fund has an interest only in the assets of the sub-fund and not in the other assets of the fund; and

Authorised Version F2025C00501 registered 08/05/2025

(c) there is no transfer of assets, benefits or money between the sub-fund and another sub-fund without a transfer of a corresponding beneficial interest; and

(d) the insurance and administration costs of the sub-fund are attributable only to the sub-fund.

(2) The trustee may not treat a sub-fund as a fund if the purpose of doing so is to circumvent the member-protection standards.

5.17 Member-protection standards

(1) This regulation applies in relation to a member of a fund:

(a) who, on or after 1 July 1995, is a protected member; or

(b) if, on or after 30 June 1996:

(i) the member is reportable as a lost member under regulation 11.08; and

(ii) 90 days have elapsed since the member became reportable under that regulation; and

(iii) the member remains a lost member.

(2) Subject to subregulation (4), the sum charged as administration costs in respect of a relevant member reporting period against the minimum benefit component of the benefits of a member to whom this regulation applies must not exceed the investment return credited to, or debited against, the member's minimum benefits for that period.

(3) For the purposes of subregulation (2) and subject to subregulations (4) and (5), a member reporting period is a relevant member reporting period if:

(a) in the case of a protected member:

(i) at the end of the period, and subject to any adjustment affecting the member's benefits (net of any exit fee) made by the trustee in respect of the period, the member is a protected member; and

(ii) the period ends after 30 June 1995; or

(b) in the case of a lost member:

(i) if the member becomes reportable for the purposes of regulation 11.08 on joining the fund—the member is lost during any part of the member reporting period; or

(ii) if the member becomes reportable for the purposes of that regulation at a time other than the time he or she joins the fund and the period is:

(A) the first member reporting period beginning after the member becomes reportable for the purposes of that regulation; or

(B) a subsequent member reporting period during a part of which the member remains a lost member.

(4) For the purposes of subregulation (2) and paragraph (3)(a), if a member reporting period begins before and ends after 1 July 1995, a trustee may treat only the part of that period beginning on 1 July 1995 as being a relevant member reporting period.

Authorised Version F2025C00501 registered 08/05/2025

(5) For the purposes of subregulation (2) and paragraph (3)(b), if a member ceases to be a lost member during a member reporting period, a trustee may treat only the part of that period ending when the member ceases to be a lost member as being a relevant member reporting period.

(5A) If, under Division 5.6, a member elects to waive member protection, the last relevant member reporting period in relation to that member is taken to end at the end of the day before the day on which, under regulation 5.22, the member-protection standards have only lost-member operation in respect of the member.

(6) Subregulation (2) does not apply to a member (except for a member of a fund that is a capital guaranteed fund within the meaning of subregulation 2.01(1)) if, in a member reporting period:

(a) the total of the administration costs that would be charged to members of a fund but for this regulation is greater than the total investment return that would be credited to or debited against members of the fund but for this regulation in respect of that period; and

(b) the apportionment of those costs between members is carried out in a fair and equitable manner.

(8) For the purposes of this regulation, an exit fee other than an exit fee of an amount equal to the exit fee applicable to the member's benefit at 30 June 1995 is taken to be charged against the relevant member's minimum benefit.

(9) For the purposes of paragraph (6)(b), an apportionment of costs is taken to be fair and equitable only if:

(a) each member of the fund is charged no more than:

(i) the amount that the member would be charged if all administration costs charged against member's benefits were distributed in direct proportion to:

(A) the investment return credited to, or debited against, the member's benefits; or

(B) the member's benefits; or

(ii) the investment return credited to the member's benefits, plus $10; or

(b) each protected member and lost member of the fund is charged no more than an amount equal to the investment return credited to the member's benefits, plus $10.

(10) For the purposes of this regulation, a member's benefits are taken to be composed wholly of mandated employer-financed benefits except for:

(a) the portion (if any) of the benefits that:

(i) arose in relation to contributions made before 1 July 1995; and

(ii) the trustee reasonably believes are not mandated employer-financed benefits; and

(b) the portion (if any) of the benefits that:

(i) arose in relation to contributions made on or after 1 July 1995; and

(ii) the trustee knows are not mandated employer-financed benefits.

Authorised Version F2025C00501 registered 08/05/2025

(11) Despite anything in this regulation, a trustee of a fund may protect the benefits of a member from an earlier date than this regulation requires.

5.18 Costs not to be deferred

If the trustee of a fund would charge costs to a member in respect of a member reporting period but for regulation 5.17, the trustee must not charge those costs to the member in a future member reporting period, whether in combination with other costs or not.

Authorised Version F2025C00501 registered 08/05/2025

Division 5.6—Existing personal superannuation members

5.19 Interpretation

In this Division:

existing personal superannuation member means a member of a regulated superannuation fund who:

(a) joined the fund before 1 July 1995; and

(b) at the time he or she joined the fund, was not a person in respect of whom there was in effect a contribution arrangement of the kind referred to in subsection 16(5) of the Act (which deals with the definition of ***standard employer-sponsored member***).

5.20 Operating standards—existing personal superannuation members

For the purposes of subsection 31(1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds.

5.21 Trustee may offer election to existing personal superannuation members

(1) The trustee of a regulated superannuation fund that has existing personal superannuation members may offer in writing to each of those members the right to elect never to be treated by the fund as if he or she were a protected member.

(2) If the trustee offers a member the right to elect never to be treated as a protected member, the trustee:

(a) must also offer the member the right to elect to have the member's benefits paid to an entity of the member's choice; and

(b) may also offer the member the right to elect to have the member's benefits paid in any other way.

Note: The trustee also has the power, under Part 24 of the Act, to pay benefits to an eligible rollover fund.

(3) The trustee may specify an entity (in this regulation called ***the default entity***) that will be taken to be the member's choice of entity if:

(a) a member elects to have benefits paid to another entity but does not specify the entity; or

(b) a member elects to have benefits paid to another entity but that other entity refuses to accept the benefits.

(4) The default entity must be:

(a) an entity to which the member-protection standards relating to the protection of protected members apply; or

(b) an eligible rollover fund.

Authorised Version F2025C00501 registered 08/05/2025

(5) A member to whom a trustee offers the right to make an election under subregulations (1) and (2) is not obliged to elect in favour of any of the courses set out in that subregulation.

(6) For the purposes of this Division, if:

(a) a member specifies an entity to which his or her benefits are to be paid, but that entity refuses to accept the payment; or

(b) the member elects to have his or her benefits paid to another entity, but does not specify the entity;

the member is taken to have elected to have his or her benefits paid to the default entity.

(7) If a trustee offers members of the fund the right to make an election, the trustee must provide each member to whom the election is offered with the following information:

(a) the contact details (within the meaning of Part 2) of the default entity, if any;

(b) a statement that:

(i) states that a member is not obliged to make an election in favour of any of the courses offered; and

(ii) sets out the effect of not making an election; and

(iii) sets out the effect of making an election in favour of each of the courses offered; and

(iv) sets out the circumstances in which the member will be taken to have elected to have his or her benefits paid to the default entity;

(c) the amount, or, subject to subregulation (8), the approximate amount, of the member's benefits in the fund.

(8) A fund may inform a member under paragraph (7)(c) of the approximate amount of the member's benefits if, at the time the information is to be given, the trustee of the fund cannot determine the exact amount of the member's benefits in the fund.

5.22 What happens if the member waives member protection?

(1) If under regulation 5.21 a member of a fund elects to waive member protection, the member-protection standards have only lost-member operation in relation to the member:

(a) if the waiver takes place before 1 October 1995—from 1 July 1995; or

(b) in any other case—from the date of the waiver.

Note: See subregulation 5.17(5A) in regard to the end of the last relevant member reporting period in this case.

(2) If under regulation 5.21 a member of a fund elects to waive member protection, the waiver ceases to have effect when the member ceases to be a member of the fund.

Authorised Version F2025C00501 registered 08/05/2025

5.23 What happens if the member elects to have benefits paid out of the fund?

If a member of a fund elects to have his or her benefits paid out of the fund under this Division, and the payment takes place before 1 October 1995, the member-protection standards are taken never to have applied in relation to the member's membership of the fund.

5.24 What happens if the trustee pays benefits paid out of the fund?

If:

(a) the trustee of a fund has written to a member offering the right to elect under regulation 5.21; and

(b) the member does not elect to waive member protection; and

(c) the trustee pays benefits of the member out of the fund;

the trustee must not charge an exit fee in respect of the payment.

Authorised Version F2025C00501 registered 08/05/2025

Part 6—Payment standards

Division 6.1—Introductory

Subdivision 6.1.1—General interpretation

6.01 Interpretation

(1) Subject to subregulation (2), expressions used in this Part that are defined for the purposes of Part 5 have the same meanings respectively as in that Part.

(2) In this Part and in Schedule 1, unless the contrary intention appears:

changeover day, in relation to a type B member of a fund, means the changeover day that was fixed for the class of members of the fund in which the member is included.

commencement day means:

(a) in relation to a regulated superannuation fund, the later of:
  (i) the first day of the 1994-95 year of income of the fund; or
  (ii) the day on which the trustee or trustees of the fund make an election under section 19 of the Act; and

(b) in relation to an approved deposit fund:
  (i) if the first day of the 1994-95 year of income of the fund is on or after 1 July 1994—the first day of that year of income; or
  (ii) if the first day of that year of income is before 1 July 1994—the earlier of:
    (A) 1 July 1994; or
    (B) the day on which the fund became an approved deposit fund.

Commonwealth income support payment means:

(a) an income support supplement, service pension or social security pension as defined in subsection 23(1) of the *Social Security Act 1991*; or

(b) a social security benefit as defined in that subsection, other than:
  (i) an austudy payment; or
  (ii) a youth allowance paid to a person who is undertaking full-time study; or

(c) a drought relief payment under the *Farm Household Support Act 1992* as in force immediately before the commencement of the *Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997*; or

(d) an exceptional circumstances relief payment under the *Farm Household Support Act 1992*; or

(e) a payment of salary or wages made under the employment scheme of the Commonwealth that is known as the Community Development Employment Projects Scheme.

Authorised Version F2025C00501 registered 08/05/2025

compassionate ground, in relation to the release of a member's preserved benefits, or restricted non-preserved benefits, in a superannuation entity, means a ground listed in subregulation 6.19A(1).

condition of release means a condition of release specified in Column 2 of Schedule 1, and a member of a fund is taken to have satisfied a condition of release if the event specified in that condition has occurred in relation to the member.

indexed, in relation to a benefit, means indexed in accordance with section 159SG of the Tax Act modified so that subsection (1) reads as follows:

"(1) The benefit as indexed for each year of income is:

(a) in relation to the year of income in which occurs the day on which a benefit was required to have been calculated or was received by the fund—the amount of the benefit that was calculated or received; or

(b) in relation to a later year of income—the amount calculated by multiplying the benefit for the immediately preceding year of income by the indexation factor worked out in accordance with subsection (2) for the later year of income.".

lump sum, in this Part but not in Schedule 1, includes an asset.

non-commutable income stream means a benefit that:

(a) cannot be commuted; and

(b) is paid at least monthly; and

(c) does not have a residual capital value; and

(d) is such that the total amount paid each month is fixed or varies only:

(i) for the purpose of complying with the Act and these Regulations; and

(ii) during any period of 12 months by a rate not exceeding either:

(A) 5% per annum; or

(B) the rate of increase in the last Consumer Price Index (All Capital Cities) for a quarter to be published by the Australian Statistician before the end of that period of 12 months compared with the Consumer Price Index (All Capital Cities) published for the same quarter in the preceding year.

permanent incapacity, in relation to a member who has ceased to be gainfully employed, means ill-health (whether physical or mental), where the trustee is reasonably satisfied that the member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

preservation age means:

(a) for a person born before 1 July 1960—55 years; or

(b) for a person born during the year 1 July 1960 to 30 June 1961—56 years; or

(c) for a person born during the year 1 July 1961 to 30 June 1962—57 years; or

Authorised Version F2025C00501 registered 08/05/2025

(d) for a person born during the year 1 July 1962 to 30 June 1963—58 years; or

(e) for a person born during the year 1 July 1963 to 30 June 1964—59 years; or

(f) for a person born after 30 June 1964—60 years.

restricted non-preserved contributions means undeducted contributions (within the meaning of subregulation (6)) of a member other than contributions that were preserved in satisfaction of requirements of the Tax Act, the OSS Laws the Superannuation Industry (Supervision) (Transitional Provisions) Regulations, the RSA Regulations or these Regulations leading to income tax concessions.

retirement has the meaning given by subregulation (7).

severe financial hardship has the meaning given by subregulation (5).

temporary incapacity, in relation to a member who has ceased to be gainfully employed (including a member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the member to be gainfully employed), means ill-health (whether physical or mental) that caused the member to cease to be gainfully employed but does not constitute permanent incapacity.

transitional period, in relation to a superannuation fund, means the period beginning at the beginning of the fund's 1994-1995 year of income and ending:

(a) in the case of a public sector superannuation scheme—at the end of the day when the scheme became an exempt public sector superannuation scheme; or

(b) in any other case—at the end of the day when the trustee of the fund lodges an election under section 19 of the Act.

type A member means a member of a regulated superannuation fund included in a class of members for which no changeover day, fixed under these Regulations as in force before 30 June 1998, was reached before 30 June 1998 in relation to that fund.

type B member means a member of a regulated superannuation fund included in a class of members for which a changeover day, fixed under these Regulations as in force before 30 June 1998, was reached before 30 June 1998 in relation to that fund.

(5) For the purposes of Schedule 1, a person is taken to be in severe financial hardship if:

(a) the trustee of a superannuation entity is satisfied:

(i) based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that:

(A) the person has received Commonwealth income support payments for a continuous period of 26 weeks; and

Authorised Version F2025C00501 registered 08/05/2025

(B) the person was in receipt of payments of that kind on the date of the written evidence; and

(ii) that the person is unable to meet reasonable and immediate family living expenses; or

(b) the person has reached the age that is the person's preservation age plus 39 weeks and the trustee of a superannuation entity is satisfied:

(i) based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments—that the person received Commonwealth income support payments for a cumulative period of 39 weeks after the person reached the person's preservation age; and

(ii) that the person was not gainfully employed on a full-time, or part-time, basis on the date of the application for cashing of his or her preserved benefits, or restricted non-preserved benefits, in the entity.

(5A) The written evidence provided for by paragraph (5)(a) is of no effect if it is dated more than 21 days before the date of the person's application to the trustee for cashing of his or her preserved benefits or restricted non-preserved benefits.

(6) Amounts to the credit of a member (except eligible spouse contributions) in a fund are undeducted contributions if:

(a) in relation to amounts which formed the whole or part of an eligible termination payment—those amounts are undeducted contributions within the meaning given by subsection 27A(1) and (7) of the Tax Act for the purposes of Subdivision AA of Division 2 of Part III of that Act; or

(b) in relation to any other amounts—those amounts comprise:

(i) member contributions made after 30 June 1983 in order to obtain superannuation benefits (within the meaning of the Tax Act); and

(ii) in respect of which no deduction is allowable or has been allowed to the member under the Tax Act.

(7) For the purposes of Schedule 1, the retirement of a person is taken to occur:

(a) in the case of a person who has reached a preservation age that is less than 60—if:

(i) an arrangement under which the member was gainfully employed has come to an end; and

(ii) the trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis; or

(b) in the case of a person who has attained age 60—an arrangement under which the member was gainfully employed has come to an end on or after the member attained that age.

(8) A reference in this Part to "preserved benefits", "restricted non-preserved benefits", "restricted non-preserved contributions", "unrestricted non-preserved benefits" and "post-65 employer-financed benefits" includes benefits, or contributions (as the case may be), rolled over, or transferred, from an RSA.

Authorised Version F2025C00501 registered 08/05/2025

Subdivision 6.1.2—Preserved benefits

6.02 Preserved benefits in regulated superannuation funds—before 1 July 1999

Type A members before 1 July 1999; type B members before changeover day

(1) Subject to regulations 6.06 and 6.12 and to Subdivision 6.1.5, the amount of preserved benefits in a regulated superannuation fund:

(a) for a type A member at any time during the period commencing on the commencement day and ending immediately before 1 July 1999; or

(b) for a type B member at any time during the period commencing on the commencement day and ending immediately before the changeover day;

is the amount required to be preserved under the OSS laws as applied in accordance with subregulation (2).

(2) For subregulation (1), despite the repeal of sections of the *Occupational Superannuation Standards Act 1987* by the *Occupational Superannuation Standards Amendment Act 1993*, the OSS laws are taken to have continued in force, subject to the modifications set out in Schedule 2, in relation to regulated superannuation funds as if the references in the OSS laws (as so modified) to superannuation funds were references to regulated superannuation funds within the meaning of these Regulations.

Type B members on and after changeover day

(3) Subject to regulation 6.12 and to Subdivision 6.1.5, the amount of a type B member's preserved benefits in a regulated superannuation fund at any time on or after the changeover day and before 1 July 1999 is the amount of the member's total benefits in the fund less the sum of:

(a) the amount of the member's restricted non-preserved benefits in the fund as defined by regulation 6.07; and

(b) the amount of the member's unrestricted non-preserved benefits in the fund as defined by regulation 6.10.

6.03 Preserved benefits in regulated superannuation funds—on and after 1 July 1999

Subject to regulation 6.12 and to Subdivision 6.1.5, the amount of a member's preserved benefits in a regulated superannuation fund at any time on or after 1 July 1999 is the amount of the member's total benefits in the fund less the sum of:

(a) the amount of the member's restricted non-preserved benefits in the fund as defined by regulation 6.08; and

(b) the amount of the member's unrestricted non-preserved benefits in the fund as defined by regulation 6.10.

Authorised Version F2025C00501 registered 08/05/2025

6.05 Preserved benefits in approved deposit funds

The amount of a member's preserved benefits in an approved deposit fund on or after the commencement day is the amount of the member's total benefits in the fund less the amount of the member's unrestricted non-preserved benefits in the fund as defined by regulation 6.11.

6.06 Effect of rollover or transfer on preserved benefits

Subject to regulation 6.12 and to Subdivision 6.1.5, a member's benefits in a regulated superannuation fund or an approved deposit fund (***the transferee fund***) that were preserved benefits in the source from which they were received continue to be preserved benefits in the transferee fund.

Subdivision 6.1.3—Restricted non-preserved benefits

Note: Approved deposit funds do not have restricted non-preserved benefits.

6.07 Restricted non-preserved benefits in regulated superannuation funds—before 1 July 1999

Type A members before 1 July 1999; type B members before changeover day

(1) Subject to regulations 6.09 and 6.12 and to Subdivision 6.1.5, the amount of restricted non-preserved benefits in a regulated superannuation fund:

(a) for a type A member at any time during the period commencing on the commencement day and ending immediately before 1 July 1999; or

(b) for a type B member at any time during the period commencing on the commencement day and ending immediately before the changeover day;

is the amount of the member's total benefits in the fund, less the sum of:

(c) the amount of the member's preserved benefits in the fund as defined by regulation 6.02; and

(d) the amount of the member's unrestricted non-preserved benefits in the fund as defined by regulation 6.10.

Type B members on and after changeover day

(2) Subject to regulation 6.12 and to Subdivision 6.1.5, the amount of a type B member's restricted non-preserved benefits in a regulated superannuation fund at any time on or after the changeover day and before 1 July 1999 is the greatest of the following amounts:

(a) the total of:

(i) the indexed amount of the member's restricted non-preserved benefits (as defined by subregulation (1)) in the fund that would be payable to the member on the changeover day if the member resigned from employment on that day; and

(ii) the indexed amount of the member's restricted non-preserved benefits received by the fund from another regulated superannuation fund, an

Authorised Version F2025C00501 registered 08/05/2025

RSA or an exempt public sector superannuation scheme on or after the changeover day that are subject to indexation in the fund;

(b) the total of:

(i) the indexed amount of the member's restricted non-preserved benefits (as defined by subregulation (1)) in the fund on the changeover day that would be payable to the member if the member were retrenched from employment that day; and

(ii) the indexed amount of the member's restricted non-preserved benefits received by the fund from another regulated superannuation fund, an RSA or an exempt public sector superannuation scheme on or after the changeover day that are subject to indexation in that other fund, RSA or scheme;

(c) the amount of the member's restricted non-preserved contributions in the fund.

(3) Subject to regulation 6.12 and to Subdivision 6.1.5, a type B member's benefits in a regulated superannuation fund (the transferee fund) that:

(a) were rolled over or transferred from another regulated superannuation fund, an RSA or an exempt public sector superannuation scheme; and

(b) were indexed amounts of restricted non-preserved benefits in that other fund, RSA or scheme;

continue to be subject to indexation in the transferee fund.

(4) Subject to regulation 6.12 and to Subdivision 6.1.5, a type B member's benefits in a regulated superannuation fund (the transferee fund) that:

(a) were rolled over or transferred from another regulated superannuation fund, an RSA or an exempt public sector superannuation scheme; and

(b) were restricted non-preserved contributions in that other fund, RSA or scheme;

continue to be restricted non-preserved contributions in the transferee fund.

(5) The references in this regulation to indexation apply subject to regulation 6.14.

6.08 Restricted non-preserved benefits in regulated superannuation funds—on and after 1 July 1999

(1) Subject to regulations 6.09 and 6.12 and to Subdivision 6.1.5, the amount of a member's restricted non-preserved benefits in a regulated superannuation fund at any time on or after 1 July 1999 is the sum of the following amounts:

(a) either:

(i) for a type A member who is a defined benefit member and for whom the trustee of the regulated superannuation fund chooses to apply this subparagraph—the greater of the amounts of restricted non-preserved benefits in the fund, worked out under subregulation 6.07 (1), that would be payable to the member on 1 July 1999 if, on 1 July 1999, the member:

(A) resigned from employment; or

(B) was retrenched from employment; or

Authorised Version F2025C00501 registered 08/05/2025

(ii) for a member to whom subparagraph (i) does not apply—the member's restricted non-preserved benefits in the fund on 30 June 1999, worked out under regulation 6.07; and

(b) the member's restricted non-preserved benefits received by the fund from another regulated superannuation fund, an RSA or an exempt public sector superannuation scheme on and after 1 July 1999.

(2) However, if:

(a) on or after 1 July 1999, a deduction is allowed for the member under section 82AAT of the *Income Tax Assessment Act 1936* for a member contribution made before 1 July 1999; and

(b) the benefits arising from the contribution were previously allocated to restricted non-preserved benefits;

the benefits are taken to be preserved benefits.

6.09 Effect of rollover or transfer on restricted non-preserved benefits

Subject to regulation 6.12 and to Subdivision 6.1.5, a member's benefits in a regulated superannuation fund that were restricted non-preserved benefits in the source from which they were received continue to be restricted non-preserved benefits.

Subdivision 6.1.4—Unrestricted non-preserved benefits

6.10 Unrestricted non-preserved benefits—regulated superannuation funds

(1) Subject to Subdivision 6.1.5, the amount of a member's unrestricted non-preserved benefits in a regulated superannuation fund is the sum of:

(a) the amount of benefits of the member that have become unrestricted non-preserved benefits in the fund in accordance with regulation 6.12; and

(b) the amounts specified in subregulation (2) that the fund receives in respect of the member on or after the commencement day; and

(c) the amount of unrestricted non-preserved benefits received by the fund in respect of the member on or after the commencement day; and

(d) the amount of any investment earnings for the period before 1 July 1999 on the amounts mentioned in paragraphs (a), (b) and (c).

(2) The amounts mentioned in paragraph (1)(b) are amounts (other than an amount that is a capital gains tax exempt component) that:

(a) will be taken by section 27D of the Tax Act to have been expended out of eligible termination payments within the meaning of that section; and

(b) have been received from sources other than:

(i) superannuation funds; or

(ii) approved deposit funds within the meaning of:

(A) the Act; or

(B) the *Occupational Superannuation Standards Act 1987* as in force immediately before the commencement of section 5 of

Authorised Version F2025C00501 registered 08/05/2025

the *Occupational Superannuation Standards Amendment Act 1993*; or

(iii) deferred annuities within the meaning of:

(A) this Part; or

(B) the Occupational Superannuation Standards Regulations; or

(iv) RSAs.

(3) However, if:

(a) on or after 1 July 1999, a deduction is allowed for the member under section 82AAT of the Income Tax Assessment Act 1936 for a member contribution made before 1 July 1999; and

(b) the benefits arising from the contribution were previously allocated to restricted non-preserved benefits that became unrestricted non-preserved benefits under subregulation 6.12 (2);

the benefits are taken to be preserved benefits.

6.11 Unrestricted non-preserved benefits—approved deposit funds

(1) Subject to Subdivision 6.1.5, the amount of a member's unrestricted non-preserved benefits in an approved deposit fund is the sum of:

(a) the amount of the member's benefits in the fund at the end of the day immediately before the commencement day less the amount of the member's benefits in the fund that were required to be preserved by regulation 21 of the Occupational Superannuation Standards Regulations; and

(b) the amount of benefits of the member that have become unrestricted non-preserved benefits in the fund in accordance with regulation 6.12; and

(c) the amounts specified in subregulation (2) that the fund receives in respect of the member on or after the commencement day; and

(d) the amount of unrestricted non-preserved benefits received by the fund in respect of the member on or after the commencement day; and

(e) the amount of any investment earnings for the period before 1 July 1999 on the amounts mentioned in paragraphs (a), (b), (c) and (d).

(2) The amounts mentioned in paragraph (1)(c) are amounts (other than an amount that is a capital gains tax exempt component) that:

(a) will be taken by section 27D of the Tax Act to have been expended out of eligible termination payments within the meaning of that section; and

(b) have been received from sources other than:

(i) superannuation funds; or

(ii) approved deposit funds within the meaning of:

(A) the Act; or

(B) the *Occupational Superannuation Standards Act 1987* as in force immediately before the commencement of section 5 of the *Occupational Superannuation Standards Amendment Act 1993*; or

(iii) deferred annuities within the meaning of:

Authorised Version F2025C00501 registered 08/05/2025

(A) this Part; or

(B) the Occupational Superannuation Standards Regulations; or

(iv) RSAs.

6.12 Movement of benefits between categories by satisfaction of conditions of release

(1) If:

(a) a member of a regulated superannuation fund or an approved deposit fund satisfies a condition of release; and

(b) the relevant cashing restriction in respect of preserved benefits is "Nil";

the member's preserved benefits in the fund at that time cease to be preserved benefits and become unrestricted non-preserved benefits.

(2) If:

(a) a member of a regulated superannuation fund satisfies a condition of release; and

(b) the relevant cashing restriction in respect of restricted non-preserved benefits is "Nil";

the member's restricted non-preserved benefits in the fund at that time cease to be restricted non-preserved benefits and become unrestricted non-preserved benefits.

(3) This regulation has effect subject to Subdivision 6.1.5.

6.13 Effect of rollover or transfer on unrestricted non-preserved benefits

Subject to Subdivision 6.1.5, a member's benefits in a regulated superannuation fund or an approved deposit fund (***the transferee fund***) that were unrestricted non-preserved benefits in the source from which they were received continue to be unrestricted non-preserved benefits in the transferee fund.

Subdivision 6.1.5—Miscellaneous

6.14 Indexation

(1) Benefits that are referred to in this Division as indexed may be aggregated for the purpose of that indexation.

(2) This regulation has no effect after 30 June 1999.

6.15 Contributions and benefits taken to be preserved benefits

Contributions made, or benefits rolled over or transferred, to a regulated superannuation fund or an approved deposit fund are taken to be preserved benefits for the purposes of this Division unless and until the trustee is satisfied that they are not preserved benefits.

Authorised Version F2025C00501 registered 08/05/2025

6.15A Certain benefits taken to be unrestricted non-preserved benefits

Benefits in a fund are unrestricted non-preserved benefits if:

(a) during the transitional period of the fund, there arose in relation to the benefits a circumstance that would have resulted in the satisfaction of a condition of release and a "Nil" cashing restriction if these Regulations applied; or

(b) both:

(i) the benefits were rolled over or transferred to the fund from:

(A) a superannuation fund (***Fund A***) during its transitional period; or

(B) a regulated superannuation fund or an approved deposit fund to which the benefits were rolled over or transferred from a superannuation fund (***Fund B***) during its transitional period; and

(ii) the trustee is reasonably satisfied that:

(A) during the transitional period of Fund A or Fund B, there arose in relation to the benefits a circumstance that would have resulted in the satisfaction of a condition of release and a "Nil" cashing restriction if these Regulations applied; or

(B) before the benefits were rolled over or transferred to Fund A or Fund B from a regulated superannuation fund or an approved deposit fund, the relevant cashing restriction set out in Schedule 1 in respect of the benefits was "Nil".

6.16 Redistribution of member benefits within a fund in certain circumstances by operation of governing rules or action of trustee

(1) For the purpose of subregulation (2), the following are categories of benefits:

(a) preserved benefits, as defined in Subdivision 6.1.2;

(b) restricted non-preserved benefits, as defined in Subdivision 6.1.3;

(c) unrestricted non-preserved benefits, as defined in Subdivision 6.1.4.

(2) For the purposes of this Part, the governing rules of a fund, or the trustee of a fund, may alter the category of any of a member's benefits in the fund but not so as to:

(a) decrease the amount of the member's preserved benefits in the fund; or

(b) increase the amount of the member's unrestricted non-preserved benefits in the fund.

6.16A When non-preserved benefits may be reduced

(1) This regulation applies if, on or after 1 July 1999, the amount of a negative investment return for a period after 30 June 1999 to be debited against a member's benefits is more than the amount of the member's preserved benefits.

(2) The negative investment return must be debited in the following order:

(a) first, against the member's preserved benefits; and

Authorised Version F2025C00501 registered 08/05/2025

(b) second, against the member's restricted non-preserved benefits; and
(c) third (if required), against the member's unrestricted non-preserved benefits.

Authorised Version F2025C00501 registered 08/05/2025

Division 6.2—Payment of benefits

6.17 Restriction on payment

(1) For the purposes of subsections 31(1) and 32(1) of the Act, the standard set out in subregulation (2) is applicable to the operation of regulated superannuation funds and approved deposit funds.

(2) A member's benefits in a fund:

(a) may only be paid by;

(i) being cashed in accordance with Division 6.3; or

(ii) being rolled over or transferred in accordance with Division 6.4 or 6.4A; and

(b) must not be paid except when, and to the extent, that the fund is required or permitted under this Part to pay them; and

(c) must be paid when, and to the extent that, the fund is required under this Part to pay them.

Authorised Version F2025C00501 registered 08/05/2025

Division 6.3—Cashing of benefits

Subdivision 6.3.1—Regulated superannuation funds

6.18 Voluntary cashing of preserved benefits in regulated superannuation funds

(1) A member's preserved benefits in a regulated superannuation fund may be cashed on or after the satisfaction by the member of a condition of release.

(2) The amount of preserved benefits that may be cashed in accordance with subregulation (1) must not exceed the sum of:
  (a) the amount of preserved benefits of the member that had accrued at the time when the member satisfied the condition of release; and
  (b) before 1 July 1999—the amount of any investment earnings accruing on those benefits from the time when the member satisfied the condition of release.

(3) Subject to subregulation (4), the form in which preserved benefits may be cashed under this regulation is:
  (a) the form (if any) specified in the cashing restriction for preserved benefits set out in Schedule 1 in relation to the relevant condition of release; or
  (b) if that cashing restriction is "Nil"—any one or more of the following forms:
    (i) a lump sum or 2 or more lump sums;
    (ii) a pension or 2 or more pensions;
    (iii) the purchase of an annuity or 2 or more annuities.

(4) A lump sum mentioned in subparagraph (3)(b)(i) must be payable not later than the time for the payment of a lump sum mentioned in paragraph 6.21(2)(a).

6.19 Voluntary cashing of restricted non-preserved benefits in regulated superannuation funds

(1) A member's restricted non-preserved benefits in a regulated superannuation fund may be cashed on or after the satisfaction by the member of a condition of release.

(2) The amount of restricted non-preserved benefits that may be cashed in accordance with subregulation (1) must not exceed the amount of:
  (a) the restricted non-preserved benefits of the member that had accrued at the time when the member satisfied the condition of release; and
  (b) before 1 July 1999—any investment earnings accruing on those benefits from the time when the member satisfied the condition of release.

(3) Subject to subregulation (4), the form in which restricted non-preserved benefits may be cashed under this regulation is:

Authorised Version F2025C00501 registered 08/05/2025

(a) the form (if any) specified in the cashing restriction for restricted non-preserved benefits set out in Schedule 1 in relation to the relevant condition of release; or

(b) if that cashing restriction is "Nil"—any one or more of the following forms:

(i) a lump sum or 2 or more lump sums;

(ii) a pension or 2 or more pensions;

(iii) the purchase of an annuity or 2 or more annuities.

(4) A lump sum mentioned in subparagraph (3)(b)(i) must be payable not later than the time for the payment of a lump sum mentioned in paragraph 6.21(2)(a).

6.19A Release of benefits on compassionate grounds

(1) A person may apply to APRA for a determination that an amount of the person's preserved benefits, or restricted non-preserved benefits, in a superannuation entity may be released on the ground that it is required:

(a) to pay for medical treatment or medical transport for the person or a dependant; or

(b) to enable the person to make a payment on a loan, to prevent:

(i) foreclosure of a mortgage on the person's principal place of residence; or

(ii) exercise by the mortgagee of an express, or statutory, power of sale over the person's principal place of residence; or

(c) to modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a dependant, arising from severe disability; or

(d) to pay for expenses associated with the person's palliative care, in the case of impending death; or

(e) to pay for expenses associated with a dependant's:

(i) palliative care, in the case of impending death; or

(ii) death; or

(iii) funeral; or

(iv) burial; or

(f) to meet expenses in other cases where the release is consistent with a ground mentioned in paragraphs (a) to (e), as APRA determines.

(2) APRA must determine, in writing, that the person has satisfied, for the purposes of subregulation 6.18(1) or 6.19(1), a condition of release on a compassionate ground if APRA is satisfied that:

(a) the release is required on a ground mentioned in subregulation (1); and

(b) the person does not have the financial capacity to meet an expense arising from that ground.

(3) APRA cannot be satisfied that money is required for medical treatment unless 2 registered medical practitioners (at least one of whom must be a specialist) certify that:

Authorised Version F2025C00501 registered 08/05/2025

(a) the medical treatment is necessary to:
  (i) treat a life threatening illness or injury; or
  (ii) alleviate acute, or chronic, pain; or
  (iii) alleviate an acute, or chronic, mental disturbance; and
(b) the treatment is not readily available to the person, or the dependant, through the public health system.

(4) APRA cannot be satisfied that money is required for medical transport unless the medical treatment for which the medical transport is required has been certified, under subregulation (3), as necessary for a reason mentioned in paragraph (3)(a).

(5) APRA cannot be satisfied that money is required on the ground mentioned in paragraph (1)(b) unless the person gives to APRA a written statement from the mortgagee that:
(a) payment of an amount is overdue; and
(b) if the person fails to pay the amount, the mortgagee will:
  (i) foreclose the mortgage on the person's principal place of residence; or
  (ii) exercise its express, or statutory, power of sale over the person's principal place of residence.

(6) A statement under subregulation (5) must include the following information:
(a) the amount that is equal to 3 months' repayments under the mortgage; and
(b) the amount that is 12 months' interest on the outstanding balance of the loan at the time the statement is made.

(7) In this regulation:

medical transport means transport, for medical attention, by land, water or air.

6.20 Voluntary cashing of unrestricted non-preserved benefits in regulated superannuation funds

(1) A member's unrestricted non-preserved benefits in a regulated superannuation fund may be cashed at any time.

(2) The amount of unrestricted non-preserved benefits that may be cashed in accordance with subregulation (1) is the whole or part of the member's unrestricted non-preserved benefits in the fund.

(3) Subject to subregulation (4), the form in which unrestricted non-preserved benefits may be cashed under this regulation is any one or more of the following forms:
(a) a lump sum or 2 or more lump sums;
(b) a pension or 2 or more pensions;
(c) the purchase of an annuity or 2 or more annuities.

(4) A lump sum mentioned in paragraph (3)(a) must be payable not later than the time for the payment of a lump sum mentioned in paragraph 6.21(2)(a).

Authorised Version F2025C00501 registered 08/05/2025

6.21 Compulsory cashing of benefits in regulated superannuation funds

(1) Subject to subregulation (3), a member's benefits in a regulated superannuation fund (other than the member's post-65 employer-financed benefits) must be cashed as soon as practicable after the occurrence of any of the following events:

(a) the member:

(i) has attained age 65 but not age 70; and

(ii) is not gainfully employed on either a full-time or part-time basis;

(b) the member:

(i) has attained age 70; and

(ii) is not gainfully employed on a full-time basis;

(c) the member dies.

(1A) Subject to subregulation (3), a member's post-65 employer-financed benefits in a regulated superannuation fund must be cashed as soon as practicable after the occurrence of any of the following events:

(a) where:

(i) the member has reached age 65 but not age 70; and

(ii) the member is not gainfully employed on either a full-time or part-time basis; and

(iii) mandated employer contributions have ceased to be made, and are not liable to be made, in respect of the member to:

(A) the fund; or

(B) another regulated superannuation fund; or

(C) an RSA;

(b) where:

(i) the member has attained age 70; and

(ii) the member is not gainfully employed on a full-time basis; and

(iii) mandated employer contributions have ceased to be made, and are not liable to be made, in respect of the member to:

(A) the fund; or

(B) another regulated superannuation fund; or

(C) an RSA;

(c) where the member dies.

(2) The form in which benefits may be cashed under this regulation is any one or more of the following forms:

(a) in respect of each person to whom benefits are cashed:

(i) a single lump sum; or

(ii) an interim lump sum (not exceeding the amount of the benefits ascertained at the date of an event mentioned in subregulation (1) or (1A)) and a final lump sum (not exceeding the balance of the benefits as finally ascertained in relation to the event).

(b) a pension or 2 or more pensions;

Authorised Version F2025C00501 registered 08/05/2025

(c) the purchase of an annuity or 2 or more annuities.

(3) For the purposes of subregulations (1) and (1A), it is sufficient if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing.

(3A) For subregulations (1) and (1A), after the member turns 65 years:

(a) the trustee of the fund must make reasonable attempts to keep itself informed about the member's ongoing employment status; and

(b) if the trustee of the fund cannot find out the member's ongoing employment status, the member is taken not to be gainfully employed.

(4) Benefits in a regulated superannuation fund that were post-65 employer-financed benefits in the source from which they were received continue to be post-65 employer-financed benefits in that fund.

(5) In this regulation:

post-65 employer-financed benefits, in relation to a member of a regulated superannuation fund as at a particular date, means the sum of:

(a) the amount of the mandated employer contributions made to the fund in respect of the member in respect of the period commencing when the member reached age 65 and ending on that date; and

(b) the amount of the mandated employer contributions made to another regulated superannuation fund or to an RSA in respect of the member in respect of that period, if the benefits arising in respect of those contributions were transferred or rolled over to the fund during that period; and

(c) the amount of the investment earnings on those amounts during that period;

less the costs applicable to those amounts during that period.

6.22 Limitation on cashing of benefits in regulated superannuation funds in favour of persons other than members or their legal personal representatives

(1) Subject to regulation 6.22B, a member's benefits in a regulated superannuation fund must not be cashed in favour of a person other than the member or the member's legal personal representative unless:

(a) the member has died; and

(b) the conditions of subregulation (2) or (3) are satisfied.

(2) The conditions of this subregulation are satisfied if the benefits are cashed in favour of either or both of the following:

(a) the member's legal personal representative;

(b) one or more of the member's dependants.

(3) The conditions of this subregulation are satisfied if:

(a) the trustee has not, after making reasonable enquiries, found either a legal personal representative, or a dependant, of the member; and

Authorised Version F2025C00501 registered 08/05/2025

(b) the person in whose favour benefits are cashed is an individual.

6.22A Priority in cashing benefits in certain cases—regulated superannuation funds

(1) This regulation applies to a trustee of a regulated superannuation fund if:
  (a) a member of the fund has satisfied a condition of release; and
  (b) there is a cashing restriction (other than a "nil" restriction) in respect of that condition.

(2) In cashing benefits in accordance with the restriction, the trustee must give priority to benefits in the following order:
  (a) first—to unrestricted non-preserved benefits;
  (b) second—to restricted non-preserved benefits;
  (c) third—to preserved benefits.

6.22B When benefits in regulated superannuation funds may be cashed in favour of persons except members

A member's benefits in a regulated superannuation fund may be cashed in favour of a person other than the member if:
  (a) the cashing is expressly permitted by APRA in a written approval for the purposes of subparagraph 62(1)(b)(v) of the Act; and
  (b) the benefits are cashed only to the extent of that approval.

Subdivision 6.3.2—Approved deposit funds

6.23 Voluntary cashing of preserved benefits in approved deposit funds

(1) Subject to regulation 6.27, a member's preserved benefits in an approved deposit fund may be cashed on or after the satisfaction by the member of a condition of release.

(2) The amount of preserved benefits that may be cashed in accordance with subregulation (1) must not exceed the amount of:
  (a) the preserved benefits of the member that had accrued at the time when the member satisfied the condition of release; and
  (b) before 1 July 1999—any investment earnings accruing on those benefits from the time when the member satisfied the condition of release.

(3) Subject to subregulation (4), the form in which preserved benefits may be cashed under this regulation is:
  (a) the form (if any) specified in the cashing restriction for preserved benefits set out in Schedule 1 in relation to the relevant condition of release; or
  (b) if that cashing restriction is "Nil"—a lump sum or 2 or more lump sums.

(4) A lump sum mentioned in paragraph (3)(b) must be payable not later than the time for the payment of a lump sum mentioned in subregulation 6.25(2).

Authorised Version F2025C00501 registered 08/05/2025

6.24 Voluntary cashing of unrestricted non-preserved benefits in approved deposit funds

(1) Subject to regulation 6.27, a member's unrestricted non-preserved benefits in an approved deposit fund may be cashed at any time.

(2) The amount of unrestricted non-preserved benefits that may be cashed in accordance with subregulation (1) is the whole or part of the member's unrestricted non-preserved benefits in the fund.

(3) Subject to subregulation (4), the form in which unrestricted non-preserved benefits may be cashed under this regulation is a lump sum or 2 or more lump sums.

(4) A lump sum mentioned in subregulation (3) must be payable not later than the time for the payment of a lump sum mentioned in subregulation 6.25(2).

6.25 Compulsory cashing of benefits in approved deposit funds

(1) Subject to subregulation (3), a member's benefits in an approved deposit fund fund must be cashed as soon as practicable after the occurrence of any of the following events:
  (a) the member attains age 65;
  (b) the member dies.

(2) The form in which benefits may be cashed under this regulation is, in respect of each person to whom benefits are cashed:
  (a) a single lump sum; or
  (b) an interim lump sum (not exceeding the amount of the benefits ascertained at the date of an event mentioned in subregulation (1)) and a final lump sum (not exceeding the balance of the benefits as finally ascertained in relation to the event).

(3) For the purposes of subregulation (1), it is sufficient if, instead of being cashed, the benefits are rolled over as soon as practicable:
  (a) in the case of a member who is gainfully employed on a full-time or part-time basis—to a regulated superannuation fund or to an RSA, or for immediate cashing; or
  (b) in any other case—for immediate cashing.

6.26 Limitation on cashing of benefits in approved deposit funds in favour of persons other than members or their legal personal representatives

A member's benefits in an approved deposit fund must not be cashed in favour of a person other than the member or the member's legal personal representative unless:
  (a) the member has died; and
  (b) either:

Authorised Version F2025C00501 registered 08/05/2025

(i) the benefits are cashed in favour of the member's legal personal representative; or

(ii) the trustee has not, after making reasonable enquiries, found a legal personal representative of the member; and

(c) either:

(i) the person in whose favour benefits are cashed is a dependant of the member; or

(ii) if, after making reasonable enquiries, the trustee has not found a dependant of the member, the person in whose favour benefits are cashed is an individual.

6.27 Limitation on cashing benefits in approved deposit funds of less than $500

The trustee of an approved deposit fund must not cash an amount of a member's benefits in the fund that is less than $500 except to close the member's account.

6.27A Priority in cashing benefits in certain cases—approved deposit funds

(1) This regulation applies to a trustee of an approved deposit fund if:

(a) a member of the fund has satisfied a condition of release; and

(b) there is a cashing restriction (other than a "nil" restriction) in respect of that condition.

(2) In cashing benefits in accordance with the restriction, the trustee must give priority to benefits in the following order:

(a) first—to unrestricted non-preserved benefits;

(b) second—to preserved benefits.

Authorised Version F2025C00501 registered 08/05/2025

Division 6.4—Rollover and transfer of benefits in regulated superannuation funds and approved deposit funds

NOTE: *See* also Parts 22 and 24 of the Act.

6.27B Definition

In this Division:

consent means:

(a) written consent; or

(b) any other form of consent determined by APRA as sufficient in the circumstances.

6.28 Rollover—regulated superannuation funds and approved deposit funds

Except as otherwise provided by the Act or these Regulations, a member's benefits in a regulated superannuation fund or an approved deposit fund must not be rolled over from the fund unless:

(a) the member has given to the trustee the member's consent to the rollover; or

(b) the trustee of the fund believes, on reasonable grounds, that:

(i) the trustee of the regulated superannuation fund or the approved deposit fund; or

(ii) the RSA institution providing the RSA;

into which the benefits are to be rolled over has received, from the member, consent to the rollover.

6.29 Transfer—funds

Except as otherwise provided by the Act or these Regulations, a member's benefits in a fund must not be transferred from the fund unless:

(a) the member has given to the trustee the member's consent to the transfer; or

(b) the trustee of the fund believes, on reasonable grounds, that:

(i) the trustee of the fund; or

(ii) the RSA institution providing the RSA;

into which the benefits are to be transferred, has received, from the member, consent to the transfer; or

(c) the transfer is to a successor fund.

Authorised Version F2025C00501 registered 08/05/2025

Division 6.4A—Certain beneficiaries at 30 June 1995

6.29A Interpretation

A reference in this Division to a member (being a member of a fund) to whom regulation 2.05 applies is a reference to a member of the fund to whom the trustee of the fund need not give information under regulation 2.05.

6.29B Trustee of fund may apply on beneficiary's behalf to eligible rollover fund—certain beneficiaries of funds on 30 June 1995

(1) This regulation applies to a person who:

(a) is a beneficiary of a regulated superannuation fund or an approved deposit fund; and

(b) was a beneficiary of that fund on 30 June 1995;

other than a beneficiary who would be, if he or she were a member of the fund, a member to whom regulation 2.05 applies.

(2) Before the trustee of the fund may apply on behalf of the person to an eligible rollover fund for the issue to the person of a superannuation interest in the eligible rollover fund:

(a) the trustee of a fund must give to the person the opportunity of nominating an entity to which the person's benefits are to be paid, and must allow the person at least 28 days to do so; and

(b) either:

(i) the entity nominated by the person must have refused to accept the payment; or

(ii) the person must not have nominated an entity within the period allowed by the trustee.

Authorised Version F2025C00501 registered 08/05/2025

Division 6.5—Additional standards for eligible rollover funds

6.30 Obligations of trustees

(1) The trustee of an eligible rollover fund must comply, as soon as practicable, with a request by a member:

(a) to pay benefits of the member in the fund; or

(b) for payment of any benefit to be in the form of a lump sum.

Authorised Version F2025C00501 registered 08/05/2025

Part 7—Contribution and benefit accrual standards (regulated superannuation funds)

7.01 Interpretation

(1) In this Part, a reference to the accrual of benefits in a fund does not include:
  (a) allocations of investment earnings or charging of costs; or
  (b) benefits rolled over or transferred into the fund.

(2) Expressions used in this Part that are defined for the purposes of Part 5 have the same meanings respectively as in that Part.

7.02 Application

This Part applies only to regulated superannuation funds.

7.03 Restriction on accepting contributions or granting benefit accruals

(1) For the purposes of subsection 31(1) of the Act, the requirement in subregulation (2) is a standard applicable to the operation of a regulated superannuation fund to which this Part applies.

(2) Except in accordance with this Part, a regulated superannuation fund must not:
  (a) accept contributions; or
  (b) grant an accrual of benefits.

7.04 Acceptance of contributions—regulated superannuation funds

(1) Subject to subregulation (2), a regulated superannuation fund may accept contributions that are made in respect of a member who is under age 65 only if:
  (a) the contributions are mandated employer contributions; or
  (b) the contributions are not mandated employer contributions and the member:
    (i) has, at any time in the period of 2 years immediately preceding the date of acceptance, engaged in full-time or part-time gainful employment; or
    (ii) ceased full-time or part-time gainful employment because of ill-health (whether physical or mental) that, at the date of acceptance, prevents the member from engaging in employment of the kind that the member engaged in at the onset of the ill-health; or
    (iii) is on authorised leave from his or her employer, and:
      (A) the leave is for the purposes of raising children of whom the member is a parent, or for whom he or she has assumed the responsibility of a parent; and

Authorised Version F2025C00501 registered 08/05/2025

(B) he or she has been on that leave for less than 7 years consecutively; and

(C) he or she has a statutory or contractual right to resume employment at the end of the leave; and

(D) either:

(I) he or she was a member of the fund immediately before going on the leave; or

(II) the fund is a fund of which the employer is a standard employer-sponsor; or

(c) the contributions are eligible spouse contributions.

(1A) In subparagraph (1)(b)(iii):

authorised leave, in relation to a member of a fund, means leave that is:

(a) approved by the member's employer; or

(b) authorised by:

(i) a law of the Commonwealth, a State or a Territory; or

(ii) an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the Commonwealth, a State or a Territory.

(1B) Subject to subregulation (2), a regulated superannuation fund may accept contributions that are made in respect of a member who has reached age 65 but not age 70 only if:

(a) the contributions are mandated employer contributions; or

(b) the member is gainfully employed on a part-time or full-time basis.

(1C) Subject to subregulation (2), a regulated superannuation fund may accept contributions that are made in respect of a member who has reached age 70 only if the contributions are mandated employer contributions.

(2) A regulated superannuation fund may accept contributions in respect of a member if the trustee is reasonably satisfied that the contribution is in respect of a period during which, under subregulation (1), (1B) or (1C), the fund may accept the contribution in respect of that member, even though the contribution is actually made after that period.

7.05 Accrual of benefits—defined benefit funds

(1) Subject to subregulation (2), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who is under age 65 only if:

(a) the member has, at any time in the period of 2 years immediately preceding the grant of accrual, engaged in full-time or part-time gainful employment; or

(ba) the member is on authorised leave from his or her employer and:

(i) the leave is for the purposes of raising children of whom he or she is a parent, or for whom he or she has assumed the responsibility of a parent; and

Authorised Version F2025C00501 registered 08/05/2025

(ii) he or she has been on that leave for less than 7 years consecutively; and

(iii) he or she has a statutory or contractual right to resume employment at the end of the leave; and

(iv) either:

(A) he or she was a member of the fund immediately before going on the leave; or

(B) the fund is a fund of which the employer is a standard employer-sponsor; or

(b) the member ceased full-time or part-time gainful employment because of ill-health (whether physical or mental) that, at the date of the grant of accrual, prevents the member from engaging in employment of the kind in which the member engaged at the onset of the ill-health; or

(c) the accrual is attributable to mandated employer contributions; or

(d) the accrual is attributable to eligible spouse contributions.

(1A) In paragraph (1)(ba):

authorised leave, in relation to a member of a fund, means leave that is:

(a) approved by the member's employer; or

(b) authorised by:

(i) a law of the Commonwealth, a State or a Territory; or

(ii) an agreement certified, or an award made, by a tribunal or body having the authority to do so under a law of the Commonwealth, a State or a Territory.

(1B) Subject to subregulation (2), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who has reached age 65 but not age 70 only if:

(a) the accrual is attributable to mandated employer contributions; or

(b) the member is gainfully employed on a part-time or full-time basis.

(1C) Subject to subregulation (2), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who has reached age 70 only if the accrual is attributable to mandated employer contributions.

(2) A defined benefit fund may grant an accrual of benefits in respect of a member if the trustee is reasonably satisfied that the accrual is in respect of a period during which, under subregulation (1), (1B) or (1C), the fund may grant an accrual of benefits in respect of that member, even though the grant occurs after that period.

Authorised Version F2025C00501 registered 08/05/2025

Part 8—Financial reporting

8.01 Accounts—statement of financial position and financial statement

(1) For the purposes of paragraphs 112(1)(a) and (b) of the Act (preparation of a statement of financial position and an operating statement), this regulation specifies cases where those paragraphs do not apply.

Defined benefit funds and accumulation funds that prepare certain statements

(2) Those paragraphs do not apply in the case of:

(a) a defined benefit fund in respect of a year of income of the fund; or

(b) an accumulation fund in respect of the 1994-1995 year of income of the fund;

if the trustee of the fund prepares:

(c) a statement of net assets of the entity; and

(d) a statement of changes in net assets of the entity;

in respect of that year of income.

Superannuation funds where benefits are determined by reference to a life assurance policy

(3) Those paragraphs do not apply in the case of a regulated superannuation fund in respect of a year of income of the fund if, at the end of the year, the fund is a fund from which the benefits paid to each individual member of the fund:

(a) are wholly determined by reference to policies of life assurance; or

(b) if paragraph (a) does not apply only because shares in the life insurance company issuing the policies were acquired because the company was demutualised:

(i) would otherwise be wholly determined by reference to policies of life assurance; and

(ii) the shares have been held for no longer than 18 months from the date of acquisition.

8.01A Statement of cash flows

For the purposes of paragraph 112(1)(ba) of the Act (preparation of a statement of cash flows), subsection 112(1) of the Act does not apply to:

(a) a superannuation entity of the kind referred to in paragraph 8.01(2)(a) in the circumstances referred to in subregulation 8.01(2); or

(b) a superannuation entity of the kind referred to in subregulation 8.01(3) in the circumstances referred to in that subregulation; or

(c) an excluded fund.

Authorised Version F2025C00501 registered 08/05/2025

8.02 Accounts and statements that must be prepared

(1) This regulation is made for the purposes of paragraph 112(1)(c) of the Act.

(2) Where, because of subregulation 8.01(3), paragraphs 112(1)(a) and (b) of the Act do not apply in respect of a regulated superannuation fund in respect of a year of income, the accounts and statements mentioned in subregulation (3) are specified in respect of the fund in respect of that year of income.

(3) Those accounts and statements are:

(a) a statement that policies of the kinds mentioned in subregulation 8.01(3) are in place at the end of the year of income; and

(b) a statement as to whether those policies have been fully maintained as directed by the relevant insurers; and

(c) a statement of the identities of those insurers; and

(d) the amounts contributed by employers and members in respect of the year of income; and

(e) where not all of those amounts have been paid as premiums on the policies—the amount of premiums paid on the policies in respect of the year of income; and

(f) the expenses incurred by the fund in respect of the year of income, other than amounts covered by premiums.

8.03 Period within which audit report must be given

For the purposes of subsection 113 (1) of the Act, the period within which a report mentioned in that subsection must be given after the year of income to which it relates is:

(a) if the report is in respect of an excluded fund—9 months; or

(b) if the report is in respect of a public offer entity other than an excluded fund—4 months; or

(c) if the report is in respect of any other superannuation entity—6 months.

Authorised Version F2025C00501 registered 08/05/2025

Part 9—Financial management of funds

Division 9.1—Introductory

9.01 Interpretation

In this Part:

funding and solvency certificate means a certificate required under regulation 9.09.

Authorised Version F2025C00501 registered 08/05/2025

Division 9.2—Financial position of funds

9.02 Application

This Division applies only to superannuation entities other than:

(a) funds that are part of one of the following schemes:
  (i) the scheme established by the *Superannuation Act 1976*;
  (ii) the scheme established under the provisions of the *Superannuation Act 1990*;
  (iii) the Military Superannuation and Benefits Scheme; and
(b) funds that are part of an exempt public sector superannuation scheme.

9.03 Subsection 130(1) of the Act etc—obligations of actuaries and auditors

(1) In forming an opinion for the purposes of paragraph 130(1)(a) of the Act or subregulation 9.31(3) whether the financial position of a defined benefit fund may be about to become unsatisfactory, a person must consider whether, at the end of the 3–year period immediately following the date at which the person's calculations are done, the value of the assets of the fund is likely (based on the expectations referred to in subregulation (2)) to be inadequate to meet the value of such of the liabilities of the fund as relate to the benefits vested in the members of the fund.

(2) For the purposes of subregulation (1), the likelihood of the value of assets being inadequate must be based;
  (a) if the person considering the matter is an actuary—on the actuary's reasonable expectations; and
  (b) if the person considering the matter is an auditor—on the reasonable expectation of an actuary on whose advice the auditor has relied in relation to the matter.

(3) Nothing in subregulations (1) and (2) is to be taken to affect the meaning of paragraph 130(1)(a) of the Act.

(4) For the purposes of paragraph 130(1)(b) of the Act, if an actuary in the course of performing a function for an entity under the Act or these regulations obtains sufficient information to enable the actuary to assess the financial position of the entity, the actuary is taken to have performed an actuarial function under the Act or these regulations in relation to the entity.

(5) For the purposes of paragraph 130(1)(b) of the Act, if an auditor in the course of performing a function for an entity under the Act or these regulations obtains sufficient information to enable the auditor to assess the financial position of the entity, the auditor is taken to have performed an audit function under the Act or these regulations in relation to the entity.

Authorised Version F2025C00501 registered 08/05/2025

9.04 Subsection 130(7) of the Act—unsatisfactory financial position

For the purposes of subsection 130(7) of the Act and subregulation 9.31(3), the financial position of an entity is treated as unsatisfactory if, in the opinion of a person performing an actuarial or audit function in relation to the entity:

(a) in the case of an entity that is a defined benefit fund—the value of the assets of the fund is inadequate to cover the value of the liabilities of the fund in respect of benefits vested in the members of the fund; and

(b) in the case of an entity that is an accumulation fund—either:

(i) the assets of the fund are inadequate to cover the aggregate benefit accounts of members of the fund; or

(ii) the value of the assets of the fund is inadequate to cover the value of the liabilities of the fund in respect of benefits accrued to members of the fund; and

(c) in the case of an entity that is an approved deposit fund—the assets of the fund are inadequate to cover the obligations of the fund in respect of members of the fund; and

(d) in the case of an entity that is a PST—the assets of the trust are inadequate to cover the obligations of the trust in respect of holders of units in the trust.

Authorised Version F2025C00501 registered 08/05/2025

Division 9.3—Funding and solvency of defined benefit funds

9.05 Application

This Division applies only to defined benefit funds other than:

(a) funds that are part of one of the following schemes:
  (i) the scheme established by the *Superannuation Act 1976*;
  (ii) the scheme established under the provisions of the *Superannuation Act 1990*;
  (iii) the Military Superannuation and Benefits Scheme; and
(b) funds that are part of an exempt public sector superannuation scheme; and
(c) funds that have never been used to reduce or remove the superannuation guarantee charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*.

9.06 Interpretation

(1) In this Division:

certified minimum contributions, in relation to a fund, means the minimum contributions certified, in accordance with subregulation 9.10(1) or 9.18(9), in a funding and solvency certificate.

declared date, in relation to a defined benefit fund that is technically insolvent, means the date on which an actuary declares in writing in accordance with paragraph 9.16(1)(a) that the fund is technically insolvent.

effective date, in relation to a funding and solvency certificate, means the date specified in the certificate as the date on which the certificate takes effect.

expiry date, in relation to a funding and solvency certificate, means the date specified in the certificate as the date on which the certificate expires.

minimum benefit index, in relation to a defined benefit fund, means the index calculated in accordance with regulation 9.15.

notifiable event, in relation to a defined benefit fund, means:

(a) an amendment of the governing rules of the fund in a way that affects the level, or method of calculation, of the benefits of the fund; or
(b) an event identified by an actuary, in accordance with paragraph 9.10(1)(c) or 9.18(9)(b), in a funding and solvency certificate relating to the fund.

period of technical insolvency, in relation to a defined benefit fund, means the period starting on the declared date and ending:

(a) in the case where the responsible actuary is able to certify the solvency of the fund within 5 years of the declared date—on the effective date of the funding and solvency certificate in which the actuary so certifies; and
(b) in any other case—on the date 5 years after the declared date.

Authorised Version F2025C00501 registered 08/05/2025

responsible actuary, in relation to a defined benefit fund, means an actuary who, under subregulation 9.19(3), has accepted responsibility for the fund during its period of technical insolvency.

special funding and solvency certificate means a funding and solvency certificate referred to in subregulation 9.18(2).

(2) In this Division, a reference to the solvency of a fund is to be read as a reference to the minimum benefit index of the fund being certified in accordance with this Division as not less than 1.

(3) In this Division, a reference to the technical insolvency of the fund is to be read as a reference to the minimum benefit index of the fund not being able to be certified in accordance with this Division as not less than 1.

9.07 Prescription of standards

For the purposes of subsection 31(1) of the Act, the standards contained in regulations 9.08, 9.09 and 9.17 are prescribed as standards applicable to the operation of defined benefit funds to which this Division applies.

9.08 Funding standard

(1) In respect of each year of income of a defined benefit fund to which this Division applies, an employer-sponsor of the fund must pay contributions to the fund in accordance with this regulation.

(2) The contributions paid must be not less than the certified minimum contributions relating to the fund.

(3) Subject to subregulation (4), the contributions must be paid in accordance with any specification made by the actuary under paragraph 9.10(1)(g).

(4) If, under paragraph 9.10(1)(g), an actuary has specified the instalments by which the certified minimum contributions must be paid, each instalment of the contribution must be paid not later than 28 days after the date indicated by the actuary as the date on which the instalment must be paid.

(5) If the actuary has not, under paragraph 9.10(1)(g), specified payment by instalments, the contributions must be paid not later than 28 July following the end of the year of income in respect of which the contributions are payable.

9.09 Funding and solvency certificates—operating standard

(1) The trustee of a defined benefit fund to which this Division applies must, in accordance with this Division, obtain from an actuary a funding and solvency certificate in relation to the fund.

(2) The trustee of the fund must, as soon as practicable, give a copy of a certificate obtained under this regulation to each employer-sponsor who has contributed or is contributing to the fund.

Authorised Version F2025C00501 registered 08/05/2025

9.10 Contents of funding and solvency certificates

(1) Subject to regulation 9.18 (relating to periods of technical insolvency), in the funding and solvency certificate required under regulation 9.09 in relation to a defined benefit fund, an actuary must:

(a) in accordance with regulation 9.11, 9.13(5) or 9.14(4), specify the date on which the certificate takes effect; and

(b) if subregulation 9.11(4) applies—make a statement in accordance with that subregulation; and

(c) identify any event relating to the fund that, if the event occurs during the period when the certificate is in force, should, in the opinion of the actuary, require the certificate to cease to have effect and a new certificate to be obtained; and

(d) in accordance with subregulation (2), specify the date on which the certificate expires; and

(e) certify the solvency of the fund as at the effective date of the certificate; and

(f) certify the minimum contributions reasonably expected by the actuary to be required in respect of any member or class of members to secure the solvency of the fund on the expiry date of the certificate; and

(g) if the certified minimum contributions should, in the actuary's opinion, be paid by instalments—specify the number and amount of the instalments that must be paid and the frequency with which they must be paid; and

(h) sign and date the certificate.

(2) The date specified under paragraph (1)(d) as the date on which the certificate expires must be a date that is:

(a) not less than 12 months; and

(b) not more than 5 years;

after the effective date of the certificate.

9.11 Effective date of funding and solvency certificates

(1) The first funding and solvency certificate obtained in respect of a defined benefit fund to which this Division applies must take effect on:

(a) in the case of a fund in operation on 30 June 1994 in respect of which an actuarial investigation was carried out under paragraph 17(1)(a) of the Occupational Superannuation Standards Regulations on or after 1 July 1991—whichever of the following dates is selected by the actuary:

(i) the date of the last such actuarial investigation prior to 1 July 1994;

(ii) 1 July 1994; and

(b) in the case of a fund in operation on 30 June 1994 to which paragraph (a) does not apply—1 July 1994; and

(c) in any other case—the date on which the fund is established.

(2) Subject to subregulations 9.13(5), 9.14(4) and 9.18(8), the effective date of a funding and solvency certificate may be a date earlier than the date on which the

Authorised Version F2025C00501 registered 08/05/2025

actuary signs the certificate but must not be more than 12 months earlier than that date, except in the case of a first funding and solvency certificate to which subregulation (3) applies.

(3) If a first funding and solvency certificate takes effect in accordance with subparagraph (1)(a)(i) and the actuary signs the certificate not later than 30 June 1995, the effective date of the certificate may be more than 12 months earlier than the date on which the actuary signs the certificate.

(4) If the effective date of a funding and solvency certificate is earlier than the date on which the actuary signs the certificate, the actuary must only sign the certificate if the actuary is not aware, and makes a statement in the certificate that he or she is not aware, of any occurrence between the effective date and the date of signing that would affect the contents of the certificate.

9.12 Period of effect of funding and solvency certificates

(1) Subject to regulation 9.18, a funding and solvency certificate takes effect from and including the effective date to and including whichever of the following first occurs:
  (a) the expiry date; or
  (b) the date on which the certificate ceases to have effect under subregulation (2).

(2) A funding and solvency certificate relating to a defined benefit fund ceases to have effect if:
  (a) amounts from the fund are released to an employer-sponsor of the fund under section 117 of the Act; or
  (b) another funding and solvency certificate takes effect in respect of the fund; or
  (c) a notifiable event occurs in relation to the fund; or
  (d) an employer-sponsor of the fund fails to pay the contributions relating to the fund in accordance with subregulation 9.08; or
  (e) subparagraphs (2)(a), (b), (c) and (d) do not apply and the actuary, in the performance of his or her actuarial functions under the Act or these Regulations, forms the opinion that the certificate is no longer appropriate and withdraws the certificate by giving written notice of withdrawal to the trustee.

9.13 Effect of notifiable events on funding and solvency certificates

(1) In this regulation, ***lapsed certificate*** means a funding and solvency certificate that, under subregulation (2), has ceased to have effect because of the occurrence of a notifiable event.

(2) If a notifiable event occurs in relation to a defined benefit fund to which this Division applies:

Authorised Version F2025C00501 registered 08/05/2025

(a) the existing funding and solvency certificate in relation to the fund ceases to have effect at the end of the date on which the notifiable event occurs; and

(b) the trustee of the fund must obtain a new funding and solvency certificate in accordance with this regulation.

(3) The new funding and solvency certificate must be obtained not later than 3 months after the date on which the notifiable event occurs.

(4) The new funding and solvency certificate must be of a kind specified by an actuary at the request of the trustee, being whichever of the following kinds is considered by the actuary to be most appropriate, taking into account the nature of the notifiable event and its effect on the fund:

(a) a new funding and solvency certificate having the same contents as the lapsed certificate;

(b) a new funding and solvency certificate containing such modifications of the lapsed certificate as are specified by the actuary;

(c) a new funding and solvency certificate unrelated to the lapsed certificate and relying upon new calculations to be made by the actuary.

(5) The date on which a new funding and solvency certificate obtained under subregulation (2), because of the occurrence of a notifiable event, takes effect must be the date immediately following the date on which the notifiable event occurs.

(6) The expiry date of the new funding and solvency certificate may be different from the expiry date of the lapsed certificate.

9.14 Further funding and solvency certificates to be obtained

(1) In this regulation:

effective funding and solvency certificate means a funding and solvency certificate that has taken effect and has not expired or otherwise ceased to have effect.

term, in relation to a funding and solvency certificate, means the period starting on the effective date of the certificate and ending on the expiry date of the certificate.

(2) Subject to regulations 9.13 and 9.18 and subregulation (3), the trustee of a defined benefit fund that has an effective funding and solvency certificate relating to the fund must obtain a further funding and solvency certificate relating to the fund that is signed:

(a) in the case of a certificate having a term of 4 years or less—on or before the date on which 75% of the term expires; and

(b) in the case of a certificate having a term of more than 4 years—not less than 12 months before the end of the term.

Authorised Version F2025C00501 registered 08/05/2025

(3) If, under paragraphs 9.12(2)(a), (d) or (e), a funding and solvency certificate in relation to a fund ceases to have effect:

(a) before the expiry date specified in the certificate; and

(b) before a further funding and solvency certificate has been obtained under subregulation (2);

the trustee of the fund must obtain a further funding and solvency certificate not later than 3 months after the date on which the first-mentioned funding and solvency certificate ceased to have effect.

(4) The date on which a further funding and solvency certificate referred to in subregulation (3) takes effect must be the date immediately following the date on which the previous funding and solvency certificate ceased to have effect.

9.15 Minimum benefit index

(1) The minimum benefit index in respect of a defined benefit fund is the index calculated in accordance with the following formula:

$$\frac{\mathbf{NRV - BEF}}{\mathbf{FMRB}}$$

(2) In this regulation:

adjusted minimum benefit index, in relation to a defined benefit fund, means:

(a) if the index calculated as at the initial date in accordance with the following formula:

$$\frac{\mathbf{NRV - BEF}}{\mathbf{MRB}}$$

is less than 1—that index; and

(b) in any other case—an index of 1.

BEF, in relation to a defined benefit fund, means the value of the benefit entitlements of former members of the fund.

benefit entitlements of former members, in relation to a defined benefit fund, means the beneficial interests in the fund of beneficiaries (including pension beneficiaries and deferred beneficiaries) who are not standard employer-sponsored members of the fund.

FMRB means the funded minimum requisite benefit.

funded minimum requisite benefit, in relation to a defined benefit fund, means the amount that is the sum of:

(a) the value of the pre-initial date component of the MRB multiplied by the adjusted minimum benefit index; and

(b) the value of the post-initial date component of the MRB.

initial date means whichever is the earlier of the following dates:

Authorised Version F2025C00501 registered 08/05/2025

(a) the date on which the first funding and solvency certificate in relation to the defined benefit fund takes effect in accordance with subregulation 9.11(1);
(b) 1 July 1994.

MRB means the total amount of the minimum requisite benefits of all current members of the fund.

net realisable value of the assets, in relation to a fund, means the amount calculated by deducting the estimated cost of disposing of the assets of the fund from the market value of those assets.

NRV, in relation to a defined benefit fund, means the net realisable value of the assets of the fund.

9.16 Non-compliance with solvency requirement—technical insolvency

(1) If an actuary, in the course of carrying out actuarial functions in relation to a defined benefit fund, other than a fund that is technically insolvent, discovers that he or she is unable to certify the solvency of the fund as required under these regulations, the actuary must, as soon as practicable:
(a) declare, in writing signed by the actuary, that the fund is technically insolvent on the date on which the declaration is made; and
(b) deliver to the trustee a copy of the declaration of technical insolvency.

(2) A defined benefit fund is, for the purposes of these Regulations, taken to be technically insolvent on and from the declared date.

9.17 Technical insolvency—operating standard

The trustee of a defined benefit fund that is taken to be technically insolvent for the purposes of these Regulations must either:
(a) initiate a program in accordance with this Division that is designed by an actuary to return the fund to a position that would enable the actuary to certify the solvency of the fund in a funding and solvency certificate in accordance with regulation 9.10 not later than 5 years after the date on which the technical insolvency commenced; or
(b) initiate winding-up proceedings in accordance with Division 9.4.

9.18 Technical insolvency program—special funding and solvency certificate

(1) In this regulation, ***concluding date***, in relation to a funding and solvency certificate of a defined benefit fund, means whichever of the following first occurs:
(a) the expiry date; or
(b) the date on which the certificate ceases to have effect under subregulation 9.12(2).

Authorised Version F2025C00501 registered 08/05/2025

(2) If a defined benefit fund is technically insolvent, the funding and solvency certificate that the trustee is required to obtain under regulation 9.09 must be a special funding and solvency certificate that complies with this regulation.

(3) A special funding and solvency certificate takes effect from and including the effective date to and including the concluding date.

(4) A special funding and solvency certificate (the ***first special funding and solvency certificate***) must be obtained as soon as practicable after the date on which a defined benefit fund becomes technically insolvent and not later than 3 months after that date.

(5) The date on which the first special funding and solvency certificate obtained under subregulation (2) takes effect must be a date that is not more than 9 months earlier than the declared date.

(6) At least one further special funding and solvency certificate must be obtained in each subsequent period of 12 months following the concluding date of the first special funding and solvency certificate until the end of the period of technical insolvency.

(7) Each further special funding and solvency certificate required under subregulation (6) must be obtained not later than 3 months after the concluding date of the previous special funding and solvency certificate.

(8) The date on which a further special funding and solvency certificate required under subregulation (6) takes effect must be the date immediately following the concluding date of the previous special funding and solvency certificate.

(9) In a special funding and solvency certificate relating to a defined benefit fund, an actuary must:

(a) specify the date on which the certificate takes effect, in accordance with subregulation (5) and (8); and

(b) identify any event relating to the fund that, if the event occurs during the period when the certificate is in force, should, in the opinion of the actuary, require the certificate to cease to have effect and a new certificate to be obtained; and

(c) specify the date on which the certificate expires, in accordance with subregulation (10); and

(d) certify the minimum contributions reasonably expected by the actuary to be required to secure the solvency of the fund at the end of the period of technical insolvency; and

(e) certify the improvement (if any) in the level of the minimum benefit index from its level at the effective date of the immediately preceding funding and solvency certificate relating to the fund.

(10) The date specified under paragraph (9)(c) as the date on which the certificate expires must be a date that is 12 months after the effective date of the certificate.

Authorised Version F2025C00501 registered 08/05/2025

9.19 Technical insolvency programs—procedure

(1) This regulation sets out the procedure to be followed in relation to a defined benefit fund to which this Division applies during any period of technical insolvency of the fund.

(2) An employer-sponsor of the fund must continue to pay contributions that are not less than the certified minimum contributions as required under regulation 9.08.

(3) The trustee of the fund must secure the services of an actuary for the fund who accepts responsibility for the actuarial management of the fund during the period of technical insolvency, including responsibility for the provision of special funding and solvency certificates and any approvals required under subregulation (4).

(4) The trustee must not make any payment from the fund unless, in respect of a payment:
  (a) the responsible actuary gives written approval for that particular payment to be made; or
  (b) the amount of the payment is determined in accordance with a scheme for payment approved in writing by the responsible actuary.

(5) If, during a period of technical insolvency of a fund, the responsible actuary for the fund is no longer willing or able to accept responsibility for the fund, the actuary must, if practicable, inform APRA and the trustee that this is the case, giving the actuary's reasons.

(6) As soon as a trustee of a fund becomes aware that the responsible actuary for the fund is no longer willing or able to accept responsibility for the fund, the trustee must secure the services of another responsible actuary in accordance with subregulation (3) and must inform APRA of the change in the fund's responsible actuary.

Authorised Version F2025C00501 registered 08/05/2025

Division 9.4—Winding-up of defined benefit funds

9.20 Application

This Division applies only to defined benefit funds other than:

(a) funds that are part of one of the following schemes:
  (i) the scheme established by the *Superannuation Act 1976*;
  (ii) the scheme established under the provisions of the *Superannuation Act 1990*;
  (iii) the Military Superannuation and Benefits Scheme; and
(b) funds that are part of an exempt public sector superannuation scheme; and
(c) funds that have never been used to reduce or remove the superannuation guarantee charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*.

9.21 Interpretation

(1) In this Division:

benefit entitlements of former members has the same meaning as in subregulation 9.15(2).

funded minimum requisite benefit has the same meaning as in subregulation 9.15(2).

minimum benefit index at the winding-up date, in relation to a defined benefit fund, means an index calculated in accordance with regulation 9.15 except that the net realisable value of the assets is, for the purposes of the calculation, taken to be the net realisable value of the assets at the winding-up date as defined by this Division.

net realisable value of the assets at the winding-up date, in relation to a defined benefit fund, means the amount calculated by deducting the sum of:

(a) the actual cost of disposing of the assets of the fund; and
(b) the administration, and other, costs associated with the winding-up proceedings being carried out in relation to the fund in accordance with this Division;

from the amount received on realisation of the assets of the fund.

period of technical insolvency has the same meaning as in Division 9.3.

responsible actuary, in relation to a defined benefit fund, means an actuary who, under subregulation 9.19(3), accepted responsibility for the fund during its period of technical insolvency.

winding-up date, in relation to a defined benefit fund, means the date at which the trustee determines the allocations to be made, under the winding-up proceedings, to members of the fund in respect of their benefit entitlements.

Authorised Version F2025C00501 registered 08/05/2025

(2) In this Division, a reference to the solvency of a fund is to be read as a reference to the fund's minimum benefit index, as that term is defined in Division 9.3, being certified in accordance with that Division as not less than 1.

(3) In this Division, a reference to the technical insolvency of the fund is to be read as a reference to the fund's minimum benefit index, as that term is defined in Division 9.3, not being able to be certified in accordance with that Division as not less than 1.

9.22 Prescription of standards

For the purposes of subsection 31(1) of the Act, the standards contained in regulations 9.23, 9.24 and 9.25 are prescribed as standards applicable to the operation of defined benefit funds to which this Division applies.

9.23 Winding-up of defined benefit funds

(1) Subject to subregulation (4), the trustee of a defined benefit fund that is technically insolvent must initiate winding-up proceedings in accordance with this Division if:

(a) the fund fails to comply with regulations 9.17, 9.18 or 9.19 during the period of technical insolvency; or

(b) the actuary is unable to certify the solvency of the fund at the end of that period;

and regulation 9.24 does not apply.

(2) Winding-up proceedings initiated under subregulation (1) must be carried out in accordance with this Division.

(3) Subject to subregulation (4), if a trustee of a defined benefit fund to which this Division applies initiates winding-up proceedings in relation to the fund otherwise than under subregulation (1), the winding-up proceedings must be carried out in accordance with this Division.

(4) This regulation does not apply to a defined benefit fund in respect of which APRA formulates a scheme for the winding-up of the fund.

9.24 Alternative programs approved by APRA

(1) If, as an alternative to commencing winding-up proceedings, the responsible actuary of a defined benefit fund recommends in writing to the trustee of the fund a specified course of action, the trustee, if he or she wishes to accept the actuary's recommendations, must, within 21 days after receiving the recommendations, forward a copy of the recommendations to APRA, together with a request that APRA approve the recommendations.

(2) If APRA approves the actuary's recommendations, and notifies the trustee in writing of the approval, the trustee must follow the specified course of action as recommended.

Authorised Version F2025C00501 registered 08/05/2025

9.25 Winding-up proceedings—priorities

(1) If, under regulation 9.23, winding-up proceedings in relation to a defined benefit fund are to be carried out in accordance with this Division, priority must be given to the liabilities of the fund in accordance with this regulation.

(2) The first charge on the assets of the fund must be the liability in respect of the administration and other costs associated with the winding-up proceedings.

(3) In determining the priorities to be given to the remaining liabilities of the fund, the trustee must ensure compliance with subregulations (4) and (5).

(4) If the fund's minimum benefit index at the winding-up date is equal to or greater than 1, the benefit entitlement allocated to each individual member of the fund at the winding-up date must be an amount that is not less than the sum of such part of:

(a) the funded minimum requisite benefit; and

(b) the benefit entitlements of former members;

as is attributable to that individual member.

(5) If the fund's minimum benefit index at the winding-up date is less than 1, the benefit entitlement allocated to each individual member of the fund at the winding-up date must not be either:

(a) greater than the amount referred to in subregulation (4) in respect of that individual member; or

(b) less than an amount calculated by multiplying the amount referred to in subregulation (4) in respect of that individual member by the fund's minimum benefit index at the winding-up date.

Authorised Version F2025C00501 registered 08/05/2025

Division 9.5—Actuarial standards relating to defined benefit funds

9.26 Application

This Division applies only to defined benefit funds.

9.27 Interpretation

In this Division:

accrued benefits, in relation to a member of a defined benefit fund, means the benefits to which the member has an absolute or potential entitlement at the valuation date on account of the length of time the member has been a member of the fund at that date.

fully funded, in relation to a fund, means funded in advance in accordance with actuarial advice at a level that is reasonably expected by the actuary to be adequate to provide for present and prospective liabilities in respect of benefits relating to the fund.

new fund means:

(a) any defined benefit fund established on or after 1 July 1994; or

(b) any fund converted on or after 1 July 1994 to a defined benefit fund;

in respect of which no previous actuarial report has been made.

valuation date, in relation to a defined benefit fund, means the date as at which an investigation required under regulation 9.29 was carried out in relation to the fund.

9.28 Prescription of standards

For the purposes of subsection 31(1) of the Act, the standards contained in regulations 9.29 and 9.30 are prescribed as standards applicable to the operation of defined benefit funds.

9.29 Actuarial investigation standard

A trustee of a defined benefit fund must require an actuarial investigation to be made in relation to the fund:

(a) in the case of a defined benefit fund in operation on 30 June 1994—as at a date not later than 3 years after:

(i) the date as at which the last actuarial investigation was made; or

(ii) if no actuarial investigation was made—the date of establishment of the fund, or conversion of the fund to a defined benefit fund; and

(b) in the case of a new fund—as at the date of establishment or conversion of the fund;

and, in all cases, after the first actuarial investigation has been made in relation to a fund under paragraph (a) or (b), further regular actuarial investigations must be

Authorised Version F2025C00501 registered 08/05/2025

made as at a date not later than 3 years after the date as at which the last actuarial investigation was made.

9.30 Actuarial reporting standard

(1) A trustee of a defined benefit fund must obtain an actuarial report in accordance with this regulation in relation to each investigation required to be made under regulation 9.29 in relation to the fund.

(2) The actuarial report must be obtained within the period of 12 months commencing on the date immediately following the valuation date in relation to the fund.

(3) The actuarial report must contain:
  (a) in relation to a private sector fund or a fully funded public sector superannuation scheme—the matters specified in regulation 9.31; and
  (b) in relation to a public sector superannuation scheme that is not fully funded—the matters specified in regulation 9.32.

9.31 Contents of actuarial report—private sector funds and fully funded public sector superannuation schemes

(1) Subject to regulation 9.33, an actuarial report required under regulation 9.30 that relates to a private sector fund or a fully funded public sector superannuation scheme must contain, in addition to any other matter:
  (a) a statement of the value of the assets of the fund at the valuation date; and
  (b) a statement of the actuary's opinion on whether, at the valuation date, the value of the assets of the fund is adequate to meet the value of the liabilities of the fund in respect of accrued benefits in the fund of members of the fund; and
  (c) a statement recommending, in respect of the 3-year period immediately following the valuation date, the rate at which, or the range of rates within which, the actuary considers employer contributions should be made or, where the actuary considers employer contributions should be made at different rates or within different ranges in respect of 2 or more periods within the 3-year period, such different rates or ranges of rates; and
  (d) a statement, made in accordance with subregulations (3) and (4) regarding the financial position of the fund; and
  (e) if the fund has been used to reduce or remove the superannuation guarantee charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*:
    (i) a statement that all funding and solvency certificates required under this Part during the period of the investigation to which the report relates were obtained; and
    (ii) a statement of the actuary's opinion regarding the likelihood of an actuary being able to certify the solvency of the fund in any funding and solvency certificate that may be required under these Regulations

Authorised Version F2025C00501 registered 08/05/2025

during the 3-year period immediately following the valuation date; and

(f) if, under section 342 of the Act, a pre-1 July 1988 funding credit has been granted or, under Part 12 of these regulations, has been obtained by transfer and a prescribed event referred to in paragraph 342(4)(a) of the Act has occurred—a statement that the prescribed event has occurred.

(2) In forming an opinion referred to in paragraph (1)(b), an actuary must consider both:

(a) the position of the fund at the valuation date; and

(b) the likely future position of the fund, during the 3 years immediately following the valuation date, based on the reasonable expectations of the actuary.

(3) In making a statement regarding financial position under paragraph (1)(d), the actuary must indicate whether the financial position of the fund is treated as unsatisfactory under regulation 9.04 and whether the fund may, in the actuary's opinion, be about to become unsatisfactory, taking into consideration in relation to the fund the matters referred to in regulation 9.03.

(4) In a statement made under paragraph (1)(d), if an actuary considers that the stated financial position of the fund is dependant upon certain actions being taken or certain schemes being implemented, the actuary must indicate this and must include in the statement a detailed description of those actions or schemes.

9.32 Contents of actuarial report—public sector superannuation schemes that are not fully funded

Subject to regulation 9.33, an actuarial report required under regulation 9.30 that relates to a public sector superannuation scheme that is not fully funded must contain, in addition to any other matter:

(a) a statement of the value of the assets of the fund at the valuation date; and

(b) if the actuary considers it appropriate, taking into account the proportion of the liabilities of the fund that are being funded—a statement recommending, in respect of the 3-year period immediately following the valuation date, the rate at which, or the range of rates within which, the actuary considers employer contributions should be made or, where the actuary considers employer contributions should be made at different rates, or within different ranges, in respect of 2 or more periods within the 3-year period, such different rates or ranges or rates; and

(c) a statement regarding the adequacy of the funding of the liabilities of the fund, having regard to any guarantee given by the Commonwealth or by a State or Territory regarding the payment of benefits to members and taking into account any appropriations in respect of the fund; and

(d) if, under section 342 of the Act, a pre-1 July 1988 funding credit has been granted or, under Part 12 of these Regulations, has been obtained by transfer and a prescribed event referred to in paragraph 342(4)(a) of the Act has occurred—a statement that the prescribed event has occurred.

Authorised Version F2025C00501 registered 08/05/2025

9.33 Content of actuarial report—newly established or converted funds

If an actuarial report required under regulation 9.30 relates to a new fund, the report;

(a) must contain:

(i) a statement recommending, in respect of the 3-year period immediately following the valuation date, the rate at which, or the range of rates within which, the actuary considers employer contributions should be made or, where the actuary considers employer contributions should be made at different rates or within different ranges in respect of 2 or more periods within the 3-year period, such different rates or ranges of rates; and

(ii) a statement of the actuary's opinion regarding the likelihood of an actuary being able to certify the solvency of the fund in any funding and solvency certificate that may be required under these Regulations during the 3-year period immediately following the valuation date; but

(b) need not contain any of the other matters set out in regulation 9.31 or 9.32 (whichever is applicable).

Authorised Version F2025C00501 registered 08/05/2025

Division 9.6—Solvency of accumulation funds

9.34 Application

This Division applies only to accumulation funds other than:

(a) funds that are part of an exempt public sector superannuation scheme; and

(b) funds that have never been used to reduce or remove the superannuation guarantee charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*.

9.35 Interpretation

(1) In this Division:

fund's actuary, in relation to an accumulation fund, means an actuary whose services are secured by the trustee of the fund under subregulation 9.39(2).

mandated employer-financed benefits has the same meaning as in Part 5.

member financed-benefits has the same meaning as in Part 5.

minimum guaranteed benefit, in relation to a member of an accumulation fund, means an amount that is the sum of:

(a) the member-financed benefits of the member; and

(b) the mandated employer-financed benefits of the member.

net realisable value, in relation to the assets of an accumulation fund, means the amount calculated by deducting the estimated cost of disposing of the assets of the fund from the market value of those assets.

period of technical insolvency, in relation to an accumulation fund, means the period starting on the first day of the year of income in which the fund becomes technically insolvent or in which the trustee makes an election under subregulation 9.38(2) and ending on:

(a) in the case where the fund is solvent at the beginning of a year of income that is earlier than the sixth year of income following the year of income in which the period starts—the first day of that first-mentioned year of income;

(b) in any other case—the first day of that sixth year of income.

(2) In this Division, a reference to an accumulation fund being solvent is to be read as a reference to the net realisable value of the assets of the fund being equal to or greater than the minimum guaranteed benefits of members of the fund.

(3) In this Division a reference to an accumulation fund being technically insolvent is to be read as a reference to the net realisable value of the assets of the fund being less than the minimum guaranteed benefits of members of the fund.

Authorised Version F2025C00501 registered 08/05/2025

9.36 Prescription of standards—accumulation funds

For the purposes of subsection 31(1) of the Act, the standards contained in regulations 9.37, 9.38 and 9.39 are prescribed as standards applicable to the operation of accumulation funds to which this Division applies.

9.37 Accumulation funds solvency standard

(1) Subject to subregulation (2), in a year of income the trustee of an accumulation fund that is solvent at the beginning of the year of income must not add such an amount to the minimum guaranteed benefits of members of the fund, in respect of the earnings of the fund, that would result in the fund being technically insolvent at the end of the year of income.

(2) In a year of income, the trustee of an accumulation fund to which subregulation (1) applies may add an amount referred to in subregulation (1) if the amount is added in accordance with a program referred to in subregulation 9.38(2).

(3) In a year of income, the trustee of an accumulation fund that is technically insolvent at the beginning of the year of income must only add amounts to the minimum guaranteed benefits of members of the fund in accordance with a program referred to in subregulation 9.38(1).

9.38 Technical insolvency of accumulation funds—operating standard

(1) The trustee of an accumulation fund that is technically insolvent must either:
  (a) initiate a program in accordance with this Division that is designed by an actuary to ensure that the fund is in a solvent position not later than at the end of the fifth year of income following the year of income in which the fund became technically insolvent; or
  (b) initiate winding-up proceedings.

(2) The trustee of an accumulation fund to which subregulation (1) does not apply may elect to have the fund comply with a program comparable with a program referred to in paragraph (1)(a), except that the program is designed to ensure that the fund is in a solvent position not later than at the end of the fifth year of income following the year of income in which the trustee made the election.

9.39 Technical insolvency program for accumulation funds—procedure

(1) This regulation sets out the procedure to be followed, in relation to an accumulation fund to which this Division applies, during any period of technical insolvency.

(2) The trustee of the fund must secure the services of an actuary for the fund, who must, as soon as practicable, design a program of the kind referred to in paragraph 9.38(1)(a) or subregulation 9.38(2) (whichever is applicable) and inform the trustee of the requirements of that program.

Authorised Version F2025C00501 registered 08/05/2025

(3) The trustee of the fund must not add an amount to the minimum guaranteed benefits of members of the fund during any period of technical insolvency unless:

(a) the addition is approved in writing by the fund's actuary; or

(b) the amount is added in accordance with a scheme approved in writing by the fund's actuary for the adding of such amounts.

(4) During any period of technical insolvency of the fund, the trustee of the fund must not make any payment from the fund unless:

(a) the fund's actuary gives written approval for that particular payment to be made; or

(b) the amount of the payment is determined in accordance with a scheme for payment approved in writing by the fund's actuary.

Authorised Version F2025C00501 registered 08/05/2025

Division 9.7—Winding-up of accumulation funds

9.40 Application

This Division applies only to accumulation funds to which Division 9.6 applies.

9.41 Interpretation

(1) In this Division:

fund's actuary means an actuary whose services are secured under subregulation 9.39(2).

minimum guaranteed benefit, in relation to a member of an accumulation fund, has the same meaning as in Division 9.6.

net realisable value of the assets at the winding-up date, in relation to an accumulation fund, means the amount calculated by deducting from the amount received on realisation of those assets the sum of:

(a) the actual cost of disposing of the assets of the fund; and

(b) the administration and other costs associated with winding-up proceedings in respect of the fund.

period of technical insolvency, in relation to an accumulation fund, has the same meaning as in Division 9.6.

winding-up date, in relation to an accumulation fund, means the date at which the trustee determines the allocations to be made, under the winding-up proceedings, to members of the fund in respect of their benefit entitlements.

(2) In this Division, a reference to an accumulation fund being solvent at the winding-up date is to be read as a reference to the net realisable value of the assets at the winding-up date being equal to or greater than the minimum guaranteed benefits of members of the fund at that date.

(3) In this Division, a reference to an accumulation fund being technically insolvent at the winding-up date is to be read as a reference to the net realisable value of the assets at the winding-up date being less than the minimum guaranteed benefits of members of the fund at that date.

9.42 Prescription of standards—winding-up of accumulation funds

For the purposes of subsection 31(1) of the Act, the standards contained in regulations 9.43, 9.44 and 9.45 are prescribed as standards applicable to the operation of accumulation funds which this Division applies.

Authorised Version F2025C00501 registered 08/05/2025

9.43 Winding-up of accumulation funds

(1) Subject to subregulation (4), the trustee of an accumulation fund to which this Division applies that is in a period of technical insolvency must initiate winding-up proceedings in accordance with this Division if;

(a) the fund fails to comply with regulation 9.38 or 9.39 during a period of technical insolvency; or

(b) the fund is not solvent within the meaning of that term in subregulation 9.35(2) on the date on which that period ends;

and regulation 9.44 does not apply.

(2) Winding-up proceedings initiated under subregulation (1) must be carried out in accordance with this Division.

(3) Subject to subregulation (4), if a trustee of an accumulation fund to which this Division applies initiates winding-up proceedings in relation to the fund otherwise than under subregulation (1), the winding-up proceedings must be carried out in accordance with this Division.

(4) This regulation does not apply to an accumulation fund in respect of which APRA formulates a scheme for the winding-up of the fund.

9.44 Alternative programs approved by APRA for accumulation funds

(1) If, as an alternative to commencing winding-up proceedings, an accumulation fund's actuary recommends in writing to the trustee of the fund a specified course of action, the trustee, if he or she wishes to accept the recommendations of the fund's actuary, must, within 21 days after receiving the recommendations, forward a copy of the recommendations to APRA, together with a request that APRA approve the recommendations.

(2) If APRA approves the recommendations of the fund's actuary and notifies the trustee in writing of the approval, the trustee must follow the specified course of action as recommended.

9.45 Accumulation fund winding-up proceedings—priorities

(1) If a trustee of an accumulation fund initiates winding-up proceedings in relation to the fund, priority must be given to the liabilities of the fund in accordance with this regulation.

(2) The first charge on the assets of the fund must be the liability in respect of the administration and other costs associated with the winding-up proceedings.

(3) In determining the priorities to be given to the remaining liabilities of the fund, the trustee must ensure compliance with subregulations (4) and (5).

(4) If the fund is solvent at the winding-up date, the amount allocated to each individual member of the fund at the winding-up date must not be less than the minimum guaranteed benefit of the member.

Authorised Version F2025C00501 registered 08/05/2025

(5) If the fund is technically insolvent at the winding-up date, an amount equal to the net realisable value of the assets at the winding-up date must be apportioned among all the members of the fund at that date so that the proportion of that amount that is apportioned to an individual member bears the same relation to the whole amount as the minimum guaranteed benefit of that member bears to the total of minimum guaranteed benefits in respect of all the members of the fund at the winding-up date.

Authorised Version F2025C00501 registered 08/05/2025

Part 10—Eligible rollover funds

Division 10.1—Introductory

10.01 Definition of *eligible rollover fund* (Act, s 242)

(1) For the purposes of the definition of ***eligible rollover fund*** in section 242 of the Act, a fund is an eligible rollover fund if:

(a) it has the following characteristics:

(i) the fund is a regulated superannuation fund or an approved deposit fund;

(ii) the trustee of the fund has given to APRA a notice in the approved form stating that it is an eligible rollover fund;

(iii) the fund has not ceased to be an eligible rollover fund; or

(b) the fund:

(i) was an eligible rollover fund immediately before 1 July 1995; and

(ii) has not ceased to be an eligible rollover fund.

(2) A fund ceases to be an eligible rollover fund if the trustee of the fund gives notice of wishing to do so to APRA in the approved form.

(3) A notice under subparagraph (1)(a)(ii) or subregulation (2) has effect at the time when APRA acknowledges having received it.

Authorised Version F2025C00501 registered 08/05/2025

Division 10.2—Prescribed matters

10.02 Interpretation

Expressions used in this Division that are defined for the purposes of Part 24 of the Act have the same meaning in this Division as in that Part.

10.03 Payment of benefit to eligible rollover fund

(1) For the purposes of paragraph 243(1)(b) of the Act, 1 July 1995 is the date from which section 243 of the Act applies to a person.

(2) For the purposes of paragraph 243(3)(b) of the Act, the amount of the consideration for the issue of a superannuation interest is the amount of the beneficiary's withdrawal benefit in the transferor fund.

Note: Section 243 of the Act sets out the circumstances in which the trustee of a fund may apply on behalf of a beneficiary of the fund to an eligible rollover fund for the issue of a superannuation interest to the beneficiary. There are no conditions prescribed for the purposes of paragraph 243(1)(c) of the Act.

Authorised Version F2025C00501 registered 08/05/2025

Division 10.3—Additional operating standards applicable to eligible rollover funds

10.06 Operating standards—eligible rollover funds

(1) For the purposes of subsections 31(1) and 32(1) of the Act, a requirement of this Division is a standard applicable (in addition to other standards applicable under these Regulations) to the operation of an eligible rollover fund.

(2) The trustee of an eligible rollover fund must accept payment of:
  (a) benefits (other than pension benefits) paid from:
    (i) a superannuation fund (other than an eligible rollover fund); or
    (ii) an approved deposit fund (other than an eligible rollover fund); or
    (iii) an RSA; and
  (b) shortfall components; and
  (c) amounts paid from the Superannuation Holding Accounts Reserve.

(3) The trustee of an eligible rollover fund must treat:
  (a) every member of the fund as a protected member at all times; and
  (b) the whole of the benefits of every member as minimum benefits (within the meaning of Part 5) at all times.

Authorised Version F2025C00501 registered 08/05/2025

Part 11—Information to be given to the Regulator and related matters

11.01 Definition

In this Part:

contact person means a named individual, or a person holding a designated office or position, who is available to receive and deal with inquiries from the Regulator.

11.02 Lodgment of annual returns by superannuation entities

For the purposes of subsection 36(1) of the Act, the prescribed period after the end of each year of income of a superannuation entity is:

(a) for a superannuation entity that is an excluded fund—9 months; and

(b) for a superannuation entity, other than an excluded fund, that is a public offer entity—4 months; and

(c) for any other superannuation entity:

(i) for a year of income that ends before 30 June 1999—6 months; and

(ii) for a year of income that ends on or after 30 June 1999—4 months.

11.03 Period for giving information to APRA, Act, s 254 (1)

For subsection 254(1) of the Act, the prescribed period is 7 days.

11.04 Prescribed information (subsection 254(1))—regulated superannuation funds

For the purposes of subsection 254(1) of the Act, the prescribed information in relation to the trustee of a regulated superannuation fund is:

(a) the following general information:

(i) the name of the fund; and

(ii) the postal address of the fund; and

(iii) the registered address of, or an address for service of notices on, the fund; and

(iv) a contact person, and contact telephone and facsimile numbers; and

(b) the following trustee information:

(i) if the trustee is a corporate trustee—the name of the trustee, its registered address, telephone number and Australian Company Number, and the name of each director of the trustee; or

(ii) if the trustee, or each of the trustees, is an individual—the name of the trustee or of each trustee, as the case requires; and

(c) the following fund information:

Authorised Version F2025C00501 registered 08/05/2025

(i) the date of establishment of the fund; and

(ii) a statement as to whether:

(A) the trustee of the fund is a constitutional corporation pursuant to a requirement contained in the governing rules; or

(B) the governing rules of the fund provide that the sole or primary purpose of the fund is the provision of old-age pensions; and

(iii) a statement as to whether the fund is any (and if so, which) of the following:

(A) an excluded superannuation fund; or

(B) a public offer superannuation fund; or

(C) a public sector superannuation fund; or

(D) a public sector superannuation scheme;

(iv) if the fund is an excluded superannuation fund—a statement as to whether, in the trustee's opinion, the fund is likely to be an excluded superannuation fund at the end of 12 months after the date of lodgment of the notice.

11.05 Prescribed information (subsection 254(1))—approved deposit funds

For the purposes of subsection 254(1) of the Act, the prescribed information in relation to the trustee of an approved deposit fund is:

(a) the following general information:

(i) the name of the fund; and

(ii) the postal address of the fund; and

(iii) the registered address of, or an address for service of notices on, the fund; and

(iv) a contact person, and contact telephone and facsimile numbers; and

(b) the following trustee information:

(i) the name of the trustee, its registered address, telephone number and Australian Company Number; and

(ii) the name of each director of the trustee; and

(c) the following fund information:

(i) the date of establishment of the fund; and

(ii) a statement as to whether the fund is an excluded approved deposit fund.

11.06 Prescribed information (subsection 254(1))—PSTs

For the purposes of subsection 254(1) of the Act, the prescribed information in relation to a pooled superannuation trust is:

(a) the following general information:

(i) the name of the trust; and

(ii) the postal address of the trust; and

Authorised Version F2025C00501 registered 08/05/2025

(iii) the registered address of, or an address for service of notices on, the trust; and

(iv) a contact person, and contact telephone and facsimile numbers; and

(b) the following trustee information:

(i) the name of the trustee, its registered address, telephone number and Australian Company Number; and

(ii) the name of each director of the trustee; and

(c) the date of establishment of the trust.

11.07 Operating standard—disclosure of certain information

(1) For the purposes of subsections 31(1), 32(1) and 33(1) of the Act, it is a standard applicable to the operation of a superannuation entity that the trustee must give notice in writing to the APRA, in accordance with subregulation (2), of any change in:

(a) the name of the entity; or

(b) the postal address, registered address or address for service of notices, of the entity; or

(c) details of the contact person, and contact telephone and facsimile numbers.

(2) A notice mentioned in subregulation (1) must be given:

(a) in the case of a superannuation entity that is an eligible rollover fund—immediately after the occurrence of the change; or

(b) in any other case—within 1 month of the occurrence of the change.

(3) For the purposes of subsections 31(1), 32(1) and 33(1) of the Act, it is a standard applicable to the operation of a superannuation entity that the trustee must give notice in writing to APRA, in accordance with subregulation (4), of a decision or resolution to wind up the entity.

(4) Notice under subregulation (3) must be given:

(a) in the case of a regulated superannuation fund that is an excluded fund—before, or as soon practicable after, the winding up is commenced; or

(b) in any other case—as soon as practicable after the making of the decision or resolution to wind up the entity and, in any event, before the winding up is commenced.

11.08 Information regarding lost members to be provided to ASIC

(1) For the purposes of subsections 31(1) and 32(1) of the Act the requirement in subregulation (3) is a standard applicable to:

(a) regulated superannuation funds; and

(b) approved deposit funds.

(2) For the purposes of this regulation, a lost member becomes reportable if:

(a) the member is a lost member at the end of a member reporting period ending on or after 30 June 1996 (or an earlier date chosen by the trustee); or

Authorised Version F2025C00501 registered 08/05/2025

(b) the member joins the fund as a lost member on or after 30 June 1996.

(3) The trustee of a fund must give to ASIC, on or before the dates set out in subregulation (3A), for each half-year of the fund a statement setting out the most recent information, of the kinds set out in subregulation (4), that the trustee has regarding:

(a) each lost member of the fund who became reportable during the half-year, unless:

(i) the member ceased to be a member of the fund; or

(ii) the member ceased to be lost; or

(iii) the member was previously reported under this paragraph and the trustee reasonably believes that the member is recorded as lost on the register of lost members; and

(b) each member of the fund previously reported under paragraph (a) who ceased to be a lost member of the fund during the half-year.

(3A) The dates are:

(a) in relation to a half-year of the fund that ends on 30 June in a calendar year—31 October in that calendar year; and

(b) in relation to a half-year of the fund that ends on 31 December in a calendar year—30 April in the following calendar year.

(4) The information regarding each member is:

(a) in the case of a member who became reportable during the half year:

(i) the member's name, date of birth, contact details and sex; and

(ii) the fund's name, contact details and fund number; and

(iii) the name and contact details of the member's employer last known to the trustee;

(iv) a statement to the effect that the member has become a lost member; and

(v) a statement of the amount of the member's withdrawal benefits at the date on which he or she became reportable; and

(vi) if ASIC requests in writing from the fund, in the half-year, information that ASIC reasonably believes may assist ASIC in administering the register of lost members—that information; and

(b) in the case of a member who ceased to be a lost member during the half year:

(i) a statement to that effect; and

(ii) the member's name, date of birth, and sex; and

(iii) the fund's name, contact details and fund number; and

(iv) if ASIC requests in writing from the fund, in the half-year, information that ASIC reasonably believes may assist ASIC in administering the register of lost members—that information; and

(v) if the trustee so chooses—any other information referred to in paragraph (a).

(5) In subregulation (4):

Authorised Version F2025C00501 registered 08/05/2025

contact details means:

(a) in relation to the member—details of the person's residential address, postal address (if different) and, where available, telephone number and facsimile (electronic transmission) number; and

(b) in relation to the fund or the member's employer—the postal address and, where available, telephone number and facsimile (electronic transmission) number.

fund number, for a regulated superannuation or approved deposit fund, means the number allocated to the fund under the Act.

(5A) For the purposes of this regulation, if a lost member of a fund ceases to be a lost member during a member reporting period or exit reporting period, the trustee may decide that the member is to be taken to continue to be a lost member until the end of that member reporting period or exit reporting period.

(6) For the purposes of this regulation, the trustee of an eligible rollover fund must treat a member who joined the fund under Part 24 of the Act before 1 July 1996 as a lost member who became reportable on 30 June 1996, unless the member is not lost.

(7) For the purposes of this regulation, the trustee of an eligible rollover fund may treat a member who joined the fund under Part 24 of the Act as a lost member who became reportable on the date he or she joined the fund.

(8) For the purposes of this regulation, the trustee of a successor fund may treat a member whose benefits have been transferred to the fund as a lost member who became reportable on the date he or she joined the fund.

(9) This regulation does not apply in relation to a half year beginning before 1 January 1996.

Authorised Version F2025C00501 registered 08/05/2025

Part 12—Pre-1 July 1988 funding credits and debits

12.01 Definitions

In this Part, unless the contrary intention appears:

defined benefit fund has the meaning that would be given by regulation 1.03 if "regulated" were omitted from the definition of ***defined benefit fund*** in that regulation.

PJFC, in relation to a superannuation fund, means an amount specified in a notice by APRA under subsection 342(2) of the Act.

pre-1 July 88 funding amount has the meaning given by regulation 12.02.

pre-1 July 88 funding credit balance has the meaning given by subsection 275A(1) of the Tax Act.

prescribed event has the meaning given by regulation 12.10.

shortfall-in-assets amount means an amount determined by an actuary in accordance with regulation 12.03.

12.02 Pre-1 July 88 funding amounts

(1) In this regulation:

late payment amount, in relation to a superannuation fund, means an amount (other than an amount representing a contribution that was payable or not payable at the discretion of an employer-contributor in respect of the fund) representing contributions to the fund that were unpaid as at 30 June 1988, being contributions that an employer-contributor in respect of the fund was obliged as at 30 June 1988 to pay in accordance with:

(a) except if paragraph (b) applies, the governing rules of the fund then in force; or

(b) in the case of an amount representing contributions in respect of a member of a defined benefit fund who is an associate of an employer-contributor—the determination of an actuary; or

(c) an agreement certified, or an award made, by an industrial authority.

(2) Subject to subregulation (3), the following amounts are to be treated as pre-1 July 88 funding amounts for the purposes of paragraph 342(2)(a) of the Act:

(a) a late payment amount;

(b) a shortfall-in-assets amount.

(3) If:

(a) the pre-1 July 88 funding amount of a defined benefit fund includes a late payment amount; and

Authorised Version F2025C00501 registered 08/05/2025

(b) that late payment amount is sufficient to fund the liabilities of the fund in relation to accrued benefits of the members of the fund;

the pre-1 July 88 funding amount must not include a shortfall-in-assets amount.

12.03 Shortfall-in-assets amount—calculation

(1) The shortfall-in-assets amount in respect of a superannuation fund is the amount determined by an actuary as the lesser of the amounts calculated in accordance with the following formulas:

(a) $$\left\{\left[\begin{array}{c}\textbf{value A of}\\ \textbf{accrued benefits}\end{array} - \begin{array}{c}\textbf{actuarially}\\ \textbf{determined}\\ \textbf{value of}\\ \textbf{fund assets}\end{array}\right] \times \frac{\textbf{net market value of assets}}{\textbf{actuarially determined value of fund assets}}\right\};$$

(b) $$\left\{\begin{array}{c}\textbf{value B of}\\ \textbf{accrued benefits}\end{array} - \begin{array}{c}\textbf{net}\\ \textbf{market value}\\ \textbf{of assets}\end{array}\right\}.$$

Note: A shortfall-in-assets amount is the amount of any deficiency in a superannuation fund as at 30 June 1988, other than a deficiency that is the result of contributions that are due, but have not been paid, to the fund.

(2) In subregulation (1), in relation to a superannuation fund:

actuarially determined value of fund assets means the value of the assets of the fund as at 30 June 1988, including any late payment amount, that is determined by an actuary using a method that the actuary certifies:

(a) is consistent with the method used in the last actuarial investigation of the fund that was completed before 25 May 1988; and

(b) as determining a value that is comparable to the value of the assets determined in that actuarial investigation.

net market value of fund assets means the amount that, having regard to matters specified in regulation 12.04, could reasonably be estimated to be obtained from disposal of the assets of the fund, and includes any late payment amount.

value A of accrued benefits has the meaning given by regulation 12.05.

value B of accrued benefits has the meaning given by regulation 12.06.

(3) For the purposes of this regulation:

Authorised Version F2025C00501 registered 08/05/2025

(a) an alteration made after 25 May 1988 to the governing rules of a superannuation fund that relates to benefits payable to members of the fund is to be disregarded unless the alteration is a prescribed event; and

(b) in the case of the calculation of a shortfall-in-assets amount in respect of a member of a superannuation fund who is an associate of an employer, any amount of benefits in respect of the member that is attributable to the exercise of discretion by, or on behalf of, the trustee of the fund is to be disregarded.

12.04 Estimation of net market value of fund assets

For the purposes of the definition of ***net market value of fund assets*** in subregulation 12.03(2), the following matters are specified:

(a) the assumptions that, when the assets are sold:

(i) the buyer and seller of the assets are willing, but not anxious, to buy and sell the assets; and

(ii) there is a period in which to negotiate the sale that is reasonable, having regard to the nature and situation of the assets and the state of the market for assets of the same kind; and

(iii) the assets will be reasonably exposed to the market; and

(iv) no account is taken of the value or other advantage or benefit, additional to market value, to the buyer incidental to ownership of the assets;

(b) the value of any estate in the property comprising the assets that is not held by the trustee in the capacity of trustee;

(c) deduction of the costs of disposing of the assets from the proceeds of the disposal.

12.05 Value A of accrued benefits

(1) Value A of accrued benefits in relation to a superannuation fund is the total value of accrued benefits in respect of all members of the fund as at 30 June 1988 that is calculated in accordance with regulation 12.07.

(2) For the purposes of calculating value A of accrued benefits, the following assumptions apply:

(a) that a member of the superannuation fund will not die or become disabled before the member's normal retirement from the work force;

(b) that the governing rules of the fund providing for benefits and the amounts of the benefits vested in members of the fund are those rules and amounts as at 25 May 1988;

(c) that the value of the accrued benefits in the fund in respect of a member of the fund is not less than the amount of benefits vested in the member on 30 June 1988;

(d) if the governing rules of the fund provide for adjustment of pension benefits to compensate for changes in the cost of living at the discretion of

Authorised Version F2025C00501 registered 08/05/2025

the trustees of the fund, that the rules providing for adjustment are disregarded, unless:

(i) all pension benefits have been increased under that rule on at least 3 occasions before 30 June 1988; and

(ii) at least 1 of those increases occurred in the period from the beginning of 1 July 1985 to the end of 30 June 1988.

(3) Subject to this regulation, the elements of the actuarial basis for the calculation of value A of accrued benefits in respect of a superannuation fund are taken to be those used in the last actuarial investigation of the fund that was completed before 25 May 1988.

(4) If an actuarial investigation of a superannuation fund was not completed before 25 May 1988, an actuary must submit to APRA in writing the elements that the actuary proposes to use in respect of the fund:

(a) for the purposes of regulation 12.07; and

(b) in substitution for the elements referred to in that subregulation.

(5) APRA must approve a proposed element of the actuarial basis for the calculation of value A of accrued benefits in respect of a superannuation fund if APRA is satisfied that the proposed element corresponds reasonably closely to the element that would have been used if an actuarial investigation had been made into the fund.

(6) In special circumstances, APRA may approve a proposed element of the actuarial basis for the calculation of value A of accrued benefits in respect of a superannuation fund if APRA is satisfied that application of the proposed element is reasonable in those circumstances.

(7) Liability to pay tax on income of the fund is not a special circumstance for the purposes of subregulation (6) if the liability results directly from an amendment of the Tax Act made by the *Taxation Laws Amendment (Superannuation) Act 1989*.

12.06 Value B of accrued benefits

(1) Value B of accrued benefits in relation to a superannuation fund is the total value of accrued benefits in respect of all members of the fund as at 30 June 1988 that is calculated in accordance with regulation 12.07.

(2) For the purposes of calculating value B of accrued benefits, the following assumptions apply:

(a) that a member of the superannuation fund will not:

(i) die, or become disabled, before the member's normal retirement from the work force; or

(ii) withdraw from the fund, or retire from the work force, before the age of the member's normal retirement;

Authorised Version F2025C00501 registered 08/05/2025

(b) that the governing rules of the fund providing for benefits and the amounts of the benefits vested in the member are those rules and amounts as at 25 May 1988;

(c) that the value of the accrued benefits in the fund in respect of the member is not less than the amount of benefits vested in the member on 30 June 1988;

(d) that the annual earning rate of the fund, net of administrative or other costs, is 10%;

(e) that if the governing rules of the fund provide for adjustment of pension benefits to compensate for changes in the cost of living at the discretion of the trustees of the fund—the adjustment factor is the lesser of:

(i) the average annual percentage increase in pension benefits (if any) in the period from the beginning of 1 July 1985 to the end of 30 June 1988; and

(ii) 7% annually;

(f) if the governing rules of the fund provide for adjustment of benefits to compensate for changes in the cost of living, other than at the discretion of the trustee of the fund, that the adjustment factor is 7% annually;

(g) if the governing rules of the fund provide for adjustment of benefits in accordance with the amount or rate of salary of members of the fund, that the amount or rate increases by 8.5% annually;

(h) that the probability of survival of the member after the member's retirement from the work force is ascertained in accordance with the Australian Life Tables 1985-1987 prepared by the Australian Government Actuary.

(3) Subject to this regulation, the elements of the actuarial basis for the calculation of value B of accrued benefits in respect of a superannuation fund are taken to be those used in the last actuarial investigation of the fund that was completed before 25 May 1988.

(4) In special circumstances, an actuary may submit to APRA in writing a proposal to substitute:

(a) an assumption stated in paragraph (2)(d), (e), (f), (g) or (h) in respect of a superannuation fund with another assumption; or

(b) an element referred to in subregulation (3) in respect of a superannuation fund with another element.

(5) APRA may approve a proposed assumption or element mentioned in subregulation (4) if APRA is satisfied that application of that assumption or element would be reasonable in the circumstances.

(6) Liability to pay tax on income of the fund is not a special circumstance for the purposes of subregulation (4) if the liability results directly from an amendment of the Tax Act made by the *Taxation Laws Amendment (Superannuation) Act 1989*.

Authorised Version F2025C00501 registered 08/05/2025

12.07 Calculation of value A or B of accrued benefits

For the purposes of regulations 12.05 and 12.06, the value of the benefits payable to a member in respect of a period after 30 June 1988 is the total of the amounts in respect of each financial year, or part of a financial year, in the period that are determined by an actuary:

(a) in respect of each kind of benefit that the member is, or may be, entitled to receive from the superannuation fund; and

(b) by using the following formula:

$$P_1 \text{ x Net present value x } P_2$$

where:

P1 is the probability, determined by the actuary, of the member being paid a benefit in each financial year, or part of a financial year; and

Net present value is the value of each benefit to the fund, being an amount that is determined by the actuary as at 30 June 1988:

(i) in the case of the calculation of value A of accrued benefits—using the earning rate of the fund used in the actuarial investigation of the fund mentioned in subregulation 12.05(3); and

(ii) in the case of the calculation of value B of accrued benefits—using the earning rate of the fund referred to in paragraph 12.06(2)(d); and

P2 is a proportion that is calculated:

(i) in the case of the calculation of value A of accrued benefits—using the method applied in the actuarial investigation of the fund mentioned in subregulation 12.05(3); and

(ii) in the case of the calculation of value B of accrued benefits—as follows:

$$\frac{\textbf{completed period of fund membership in relation to the member at 30 June 1988}}{\textbf{completed period of fund membership in relation to the member at the members date of exit from the fund}}$$

where a reference to "completed period of fund membership" in relation to the member at a particular time is a reference to the period from the time at which the member joined, or last joined, the fund to the particular time.

12.08 Date before which applications to be made

For the purposes of paragraph 342(3)(b) of the Act, the day on or before which an application in relation to a fund must be made is the day specified for that purpose by APRA by notice in writing given to the trustee of the fund.

Authorised Version F2025C00501 registered 08/05/2025

12.09 Application fees

(1) For the purposes of subparagraph 342(3)(d)(ii) of the Act, the following application fees are prescribed:

(a) if the application is for a PJFC that consists of a late payment amount or is the aggregate of late payment amounts—$300;

(b) subject to subregulation (2), if the application is for a PJFC that consists of a shortfall-in-assets amount or is the aggregate of shortfall-in-assets amounts, an amount calculated using the formula:

$$\mathbf{0.002 \times \text{the amount of the PJFC}};$$

(c) if an application is for a PJFC that includes:

(i) a late payment amount or the aggregate of late payment amounts; and

(ii) a shortfall-in-assets amount or the aggregate of shortfall-in-assets amounts;

the fee prescribed in paragraph (b), as if the PJFC consisted of a shortfall-in-assets amount or the aggregate of shortfall-in-assets amounts.

(2) A fee under paragraph (1)(b) must not be:

(a) less than $500; or

(b) more than $5,000.

12.10 Prescribed events for the purposes of paragraph 342(4)(a) of the Act

(1) For the purposes of paragraph 342(4)(a) of the Act, a prescribed event in relation to a superannuation fund is any alteration of the governing rules of the fund having the effect that calculation of a pre-1 July 88 funding amount under the rules as so altered produces an amount that is less than the amount calculated using the formula:

$$\left(\begin{array}{c}\textbf{PJFC}\\ \textbf{originally}\\ \textbf{granted}\\ \textbf{to the fund}\end{array}\right) + \left(\begin{array}{c}\textbf{any PJFCs}\\ \textbf{transferred}\\ \textbf{to the fund}\end{array}\right) - \left(\begin{array}{c}\textbf{any PJFCs}\\ \textbf{transferred}\\ \textbf{from the fund}\end{array}\right).$$

(2) A reference in subregulation (1) to a PJFC is a reference to the amount of the PJFC multiplied by the indexation factor calculated in accordance with subsection 159SG(2) of the Tax Act.

12.11 When and how APRA to be notified of prescribed events

(1) For the purposes of paragraph 342(4)(b) of the Act, if a prescribed event occurs in relation to a superannuation fund, the trustee of the fund must give notice in writing to APRA of the event not later than:

(a) a date 3 months after the date of the occurrence; or

(b) 31 March 1995;

whichever happens last.

Authorised Version F2025C00501 registered 08/05/2025

(2) The notice must have with it:

(a) a statement of an amount that is certified by an actuary as the amount by which the pre-1 July 88 funding credit balance of the fund is reduced as a result of the prescribed event; and

(b) a statement by the trustees of the fund that describes the prescribed event in sufficient detail to allow the statement to be properly considered.

(3) In spite of subregulation (1), APRA may give notice in writing to the trustee of a superannuation fund extending the time in which the trustee must give notice to APRA of a prescribed event.

12.12 Transfer of PJFCs—trustees of transferor funds

(1) If the trustee of a defined benefit fund proposes to transfer a PJFC, or part of a PJFC, from the fund (in this regulation called ***the transferor fund***) to another superannuation fund (in this regulation called ***the transferee fund***), the trustee may apply in writing to APRA to approve the transfer.

(2) APRA may approve an application only if:

(a) the requirements specified in regulation 12.15 are satisfied; or

(b) if a requirement of that kind is not satisfied—APRA is satisfied that, because of special circumstances, the requirement does not need to be satisfied.

(3) The amount of a PJFC to be transferred must not exceed the lesser of:

(a) the amount of the liability in respect of benefits to be transferred to the transferee fund, being benefits accrued before 1 July 1988; and

(b) the amount of any pre-1 July 88 funding credit balance in the transferor fund immediately before the transfer.

(4) As soon as practicable after a decision is made by APRA to approve a transfer, APRA must give notice in writing of the approval to the trustees of both the transferor fund and the transferee fund.

12.13 Transfer of PJFCs—trustees of transferee funds

(1) The trustee of a superannuation fund (in this regulation called ***the transferee fund***) may apply in writing to APRA to approve the transfer of a PJFC, or part of a PJFC, from a defined benefit fund (in this regulation called ***the transferor fund***), if:

(a) the application arises as a direct result of the transfer of a member or members of the transferor fund, and the benefit entitlements of that member or those members, to 1 or more transferee funds following reconstitution of the transferor fund into the transferee fund or transferee funds; or

(b) the application arises as a direct result of the transfer of a member or members of a transferor fund, and the benefit entitlements of that member or those members, to the transferee fund following the merger of 2 or more transferor funds into the transferee fund; or

Authorised Version F2025C00501 registered 08/05/2025

(c) the transferee fund:
(i) was constituted on or after 1 July 1988; and
(ii) assumed responsibility for the liabilities, but not all the assets, in respect of contributions for superannuation purposes relating to the employment of persons before that date, being contributions that were made to a transferor fund.

(2) APRA may approve an application only if:
(a) the requirements specified in regulation 12.15 are satisfied; or
(b) where a requirement of that kind is not satisfied—APRA is satisfied that, because of special circumstances, the requirement does not need to be satisfied.

(3) The amount of a PJFC to be transferred must not exceed the lesser of:
(a) the amount of the liability in respect of benefits to be transferred to the transferee fund, being benefits accrued before 1 July 1988; and
(b) the amount of any pre-1 July 88 funding credit balance in the transferor fund immediately before the transfer.

(4) As soon as practicable after a decision is made by APRA to approve a transfer, APRA must give notice in writing of the approval to the trustees of both the transferee fund and the transferor fund.

12.14 Transfer of PJFCs—revocation of approval

APRA may revoke an approval given under regulation 12.12 or 12.13 only if:
(a) information about matters relating to the application for approval that was not available to APRA when APRA made the decision to approve the application becomes available to APRA; and
(b) after considering that information, APRA is satisfied that:
(i) a requirement specified in regulation 12.15 (other than a requirement that does not need to be satisfied under paragraph 12.12(2)(b) or 12.13(2)(b)) was not satisfied in relation to the transfer; or
(ii) in the case of a requirement that, under paragraph 12.12(2)(b) or 12.13(2)(b), does not need to be satisfied—there were no special circumstances to justify the application of that paragraph.

12.15 Transfer of PJFCs—requirements to be satisfied

The requirements referred to in paragraph 12.12(2)(a) and 12.13(2)(a) are that:
(a) an actuary certifies that the amount of the PJFC to be transferred is reasonable having regard to:
(i) the amount of unfunded liability to be transferred from the transferor fund; and
(ii) the amount of the remaining unfunded liability of that fund;
in relation to the amount of benefits that have accrued before 1 July 1988; and

Authorised Version F2025C00501 registered 08/05/2025

(b) the trustee of the transferor fund has been given notice by APRA of the grant of the PJFC under subsection 342(2) of the Act; and

(c) at the date of the transfer the amount of the PJFC to be transferred is equal to or less than the amount of the pre-1 July 88 funding credit balance of the transferor fund; and

(d) the transferee fund is a complying superannuation fund, in accordance with section 45 of the Act, in relation to the year of income in which the transfer is to take place; and

(e) an actuary certifies that sufficient information is available about the accrued entitlements of members of the transferor fund as at 30 June 1988 to enable calculations to be made after that date to ascertain whether a prescribed event has occurred.

12.19 Actuaries to certify in relation to determinations

An actuary who makes a determination under this Part must certify that the determination:

(a) is consistent with this Part; and

(b) except to the extent (if any) that this Part otherwise requires, is made in accordance with a method that The Institute of Actuaries of Australia would accept as a proper actuarial practice.

12.20 Substituted accounting periods

The trustee of a superannuation fund for which the Commissioner of Taxation has approved a 12-month period as a substituted accounting period for the purposes of section 18 of the Tax Act may:

(a) treat a reference in this Part to 30 June 1988 as a reference to the last day of the substituted accounting period corresponding to the year of income that ended on 30 June 1988; and

(b) treat a reference in this Part to 1 July 1988 as a reference to the day after that day.

Authorised Version F2025C00501 registered 08/05/2025

Part 13—Miscellaneous

Division 13.1—Transitional provisions

Subdivision 13.1.1—Preliminary

13.01 Interpretation

In this Division:

applicable date, in relation to a fund, means:

(a) 30 June 1994; or

(b) the date on which the fund's 1993-1994 year of income ends;

whichever is earlier.

commencement date, in relation to a prescribed fund, means the date of commencement of the fund's 1994-1995 year of income.

existing management company has the same meaning as in Division 2 of Part 31 of the Act.

Note: For definitions in Division 2 of Part 31, *see* section 356 of the Act.

existing trustee has the same meaning as in Division 2 of Part 31 of the Act.

OSS provisions means:

(a) in relation to a regulated superannuation fund—regulations 18C to 18P of the OSS Regulations as in force on the applicable date in relation to the fund; and

(b) in relation to an approved deposit fund—regulation 22 of the OSS Regulations as in force on the applicable date in relation to the fund;

and the provisions of the *Occupational Superannuation Standards Act 1987* under which those Regulations were made.

OSS Regulations means the Occupational Superannuation Standards Regulations.

Part 31 entity has the same meaning as in Division 2 of Part 31 of the Act.

prescribed fund means:

(a) a regulated superannuation fund; or

(b) an approved deposit fund.

reporting period, in relation to a prescribed fund, means a reporting period, within the meaning of Division 2 of Part II of the OSS Regulations, that commences before the commencement date in relation to the fund.

transitional period has the same meaning as in Subdivision 2E of Part 31 of the Act.

Authorised Version F2025C00501 registered 08/05/2025

Note: For the definition of ***transitional period***, *see* section 373 of the Act.

Subdivision 13.1.1A—Information to be given to members

13.02 Application

This Subdivision applies to prescribed funds.

13.03 Operating standard—OSS provisions

(1) For the purposes of subsection 31(1) and 32(1) of the Act, the standard stated in subregulation (2) is applicable to the operation of a prescribed fund where it would have been a standard applicable to the operation of the fund under the OSS provisions for the fund to give information, on or after the commencement date in relation to the fund, in relation to:

(a) the 1993-1994 year of income of the fund; or

(b) a reporting period; or

(c) an event occurring before:

(i) the commencement date in relation to the fund; or

(ii) in the case of a fund that, under section 50 of the Act, is taken to be a regulated superannuation fund at all times during its pre-lodgment period—the lodgment day referred to in the relevant provision of that section;

if the OSS provisions had continued to apply to, or in relation to, the fund on and after that date.

(2) The fund must give the information in the manner, and within the time, that would have applied under the OSS provisions to the giving of the information if those provisions had continued to apply as mentioned in subregulation (1).

Subdivision 13.1.3—Part 31 of the Act (transition to scheme provided for in the Act): retirement provisions

13.05 Amendment by trustee of governing rules

For the purposes of paragraphs 358(5)(b) and 367(5)(b) of the Act:

(a) the persons whom the trustee of the Part 31 entity must notify of amendments under paragraph 358(2)(c) or 367(2)(c) of the Act are the members of the entity; and

(b) the trustee must give the notification within 28 days after the making of the amendments.

Subdivision 13.1.4—Part 31 of the Act (transition to scheme provided for in the Act): modifications

13.06 Application

The modifications made by this Subdivision:

Authorised Version F2025C00501 registered 08/05/2025

(a) are made for the purposes of section 376 of the Act; and
(b) apply during the transitional period.

13.07 Modifications of the Act and these Regulations

(1) The following provisions, namely:
(a) Part 6, and sections 102, 116, 122, 123, 124, 125 and 126, of the Act; and
(b) provisions of these Regulations made under, or for the purposes of, any provision of the Act mentioned in paragraph (a);
do not apply in relation to a Part 31 entity.

Note: The term ***prescribed provisions***, as used in this regulation, is defined in subregulation (6).

(2) Subject to subregulations (3) and (4), the following prescribed provisions, namely:
(a) section 10 so far as it relates to the definition of ***relevant person***, sections 100 and 101, subsections 103(2) and (3) and 106(1) and (3), sections 119, 121, 132 133, 147, 150, 154, 155, 156, 264, 275, 310 and 312 of the Act; and
(b) regulation 3.10;
apply in relation to a Part 31 entity as though references in those provisions to the "trustee", "corporate trustee" or "trustees" of a fund or trust (however described), to the extent that the fund or trust is a Part 31 entity, were references to the existing management company of the Part 31 entity.

Note: The other prescribed provisions apply to the existing management company in their ordinary application.

(3) For the purposes of subregulation (2), if a provision has a reference to "corporate trustee" and a reference or references to another trustee or other trustees, the reference:
(a) applies in relation to the reference to "corporate trustee"; and
(b) does not apply in relation to the other reference or references.

(4) For the purposes of subregulation (2), section 103 of the Act is modified by omitting subsection 103(2) and substituting the following subsection:

"(2) The directors of the existing management company of a Part 31 entity (within the meaning of Division 2 of Part 31) must keep, and retain for at least 10 years, the relevant minutes of all meetings of the directors at which matters affecting the entity were considered.".

(5) Paragraph 346(3)(a) of the Act is modified in relation to a Part 31 entity:
(a) by omitting from subparagraph 346(3)(a)(iii) "24; and" and substituting "24 or"; and
(b) by inserting after subparagraph 346(3)(a)(iii) the following subparagraph:
"(iv) superannuation entities that, for the purposes of Division 2 of Part 31, are Part 31 entities within the meaning of that Division; and".

(6) In this regulation:

Authorised Version F2025C00501 registered 08/05/2025

prescribed provisions means:

(a) the provisions of the Act (other than Part 31); and

(b) the provisions of these Regulations made under a provision (other than a provision in Part 31) of the Act.

13.08 Modification of the A.C.T. Corporations Law and Regulations

(1) For the purposes of subsection 376(3) of the Act, during the transitional period (within the meaning of section 373 of the Act), the following provisions, namely:

(a) Division 5 of Part 7.12 of the Corporations Law of the Australian Capital Territory as in force on 30 November 1993 (the ***A.C.T. Corporations Law***); and

(b) Part 7.12 of the Corporations Regulations of the Australian Capital Territory as in force on 30 November 1993 (the ***A.C.T. Corporations Regulations***);

as modified in accordance with this regulation and regulation 13.09, apply in relation to a Part 31 entity.

(2) The A.C.T. Corporations Law is modified by omitting subsection 1063(2), sections 1064, 1065, 1066, 1067 and 1068, subsections 1069(8), (9), (9A) and (10) and 1070(3) and sections 1071 and 1075.

(3) The A.C.T. Corporations Law is further modified:

(a) by omitting "an approved deed," from subsection 1069(12) and substituting "the deed of the entity,"; and

(b) by omitting "or (9A)" from paragraph 1073(1A)(b); and

(c) by inserting after section 1074 the following section:

"1074A Part 31 entities to be constituted by deed

A Part 31 entity (within the meaning of Division 2 of Part 31 of the *Superannuation Industry (Supervision) Act 1993*) must be constituted by a deed.

(4) The A.C.T. Corporations Regulations are modified by omitting regulations 7.12.02, 7.12.03 and 7.12.04, regulations 7.12.07 to 7.12.14 (both inclusive), paragraphs 7.12.15(1)(a), (b) and (e) and 7.12.15(2)(c) and (h), subregulations 7.12.15(4), (5), (5A) and (5B), paragraphs 7.12.15(6)(ba), (c), (h) and (j) and 7.12.15(8)(e), subregulation 7.12.15(7), paragraph 7.12.15(10)(h) and regulations 7.12.15A to 7.12.17 (both inclusive).

(5) The A.C.T. Corporations Regulations are further modified:

(a) by omitting the definitions of ***approved deposit fund*** and ***superannuation fund*** from regulation 7.12.01; and

(b) by omitting paragraph 7.12.15(6)(b) and substituting the following paragraph:

"(b) a covenant that the management company will, on receipt of application moneys, pay the moneys to the trustee as soon as practicable after receipt

Authorised Version F2025C00501 registered 08/05/2025

and in any event by the close of business on the next working day after the day of receipt;".

13.09 A.C.T. Corporations Law and Regulations—interpretation of applied provisions

(1) Subject to subregulation (2), the applied provisions are to be interpreted:
  (a) in the case of the whole of the applied provisions—in accordance with the Corporations Law of the Australian Capital Territory as in force on 30 November 1993; and
  (b) in the case of the part of the applied provisions that consists of Regulations—in accordance also with the Corporations Regulations of the Australian Capital Territory as in force on that date.

Note: The term ***applied provisions***, as used in this regulation, is defined in subregulation (3).

(2) In the applied provisions:

approved deposit fund has the same meaning as in the Act.

associate has the same meaning as in the Act.

Australian bank means an ADI.

books has the same meaning as in the Act.

Commission means ASIC.

Court has the same meaning as in the Act.

insolvent under administration has the same meaning as in the Act.

management company has the same meaning as in Division 2 of Part 31 of the Act.

Note: For definitions in Division 2 of Part 31, *see* section 356 of the Act.

prescribed interest means a superannuation interest (within the meaning of the Act).

statement includes:
  (a) matter that is not written but conveys a message; and
  (b) a promise, estimate or forecast.

superannuation fund has the same meaning as in the Act.

this Law means the Act and these Regulations.

(3) In this regulation:

applied provisions means:
  (a) Division 5 of Part 7.12 of the Corporations Law of the Australian Capital Territory as in force on 30 November 1993; and

Authorised Version F2025C00501 registered 08/05/2025

(b) Part 7.12 of the Corporations Regulations of the Australian Capital Territory as in force on 30 November 1993.

13.10 Offences—Corporations Law, sections 1070, 1072 and 1074 as modified

(1) A person who intentionally or recklessly contravenes section 1070 of the Corporations Law is guilty of an offence.

Penalty: $100

(2) A person who intentionally or recklessly contravenes section 1072 or 1074 of the Corporations Law is guilty of an offence.

Penalty: $2,500

(3) In this regulation:

Corporations Law means the Corporations Law of the Australian Capital Territory, as modified by, and interpreted in accordance with, this Subdivision.

Authorised Version F2025C00501 registered 08/05/2025

Division 13.2—Various operating standards

13.11 Interpretation

In this Division:

charge includes a mortgage, lien or other encumbrance.

recognise includes act on or give effect to.

13.12 Assignments of superannuation interests

For the purposes of subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds and approved deposit funds that, subject to regulation 13.15, the trustee of a fund must not recognise, or in any way encourage or sanction, an assignment of a superannuation interest of a member or beneficiary.

13.13 Charges over a member's benefits

(1) For the purposes of subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds and approved deposit funds that, subject to regulation 13.15, the trustee of a fund must not recognise, or in any way encourage or sanction, a charge over, or in relation to a member's benefits.

(2) In this regulation:

charge does not include a specific charge if:

(a) the charge was exercised in respect of particular benefits of a member before the fund became a regulated superannuation fund or an approved deposit fund (as the case may be); and

(b) the trustee was permitted, under the Occupational Superannuation Standards Regulations or the Superannuation Industry (Supervision) (Transitional Provisions) Regulations, to recognise the charge.

13.14 Charges over assets of funds

For the purposes of subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds and approved deposit funds that, subject to regulations 13.15 and 13.15A, the trustee of a fund must not give a charge over, or in relation to, an asset of the fund.

13.15 Restrictions on the standards

The standards stated in regulations 13.12, 13.13 and 13.14 do not apply to an assignment or charge that is permitted, expressly or by necessary implication, by the Act or these Regulations.

Authorised Version F2025C00501 registered 08/05/2025

13.15A Charges in relation to certain derivatives contracts

(1) A trustee may give a charge over, or in relation to, an asset of a fund if:

(a) the charge is given in relation to a derivatives contract entered into:

(i) by, or on behalf of, the trustee; or

(ii) by a broker on the instructions, or on account , of the trustee; or

(iii) by a broker for the benefit of the trustee; and

(b) the charge is given in order to comply with the rules of an approved body (as defined in subregulation (2)) that requires the performance of obligations in relation to the derivatives contract to be secured; and

(c) the fund has in place a risk management statement that sets out:

(i) policies for the use of derivatives that include an analysis of the risks associated with the use of derivatives within the investment strategy of the fund; and

(ii) restrictions and controls on the use of derivatives that take into consideration the expertise of staff; and

(iii) compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits and staff management procedures); and

(d) the investment to which the charge relates is made in accordance with the risk management statement.

(2) In this regulation:

approved body means:

(a) Australian Stock Exchange Ltd;

(b) Options Clearing House Pty Ltd;

(c) Sydney Futures Exchange Ltd;

(d) Sydney Futures Exchange Clearing House Pty Ltd;

(e) a body that is an approved foreign exchange within the meaning of regulation 1.2A.02 of the Corporations Regulations;

(f) a body specified in Schedule 11 of the Corporations Regulations;

(g) a body that performs clearing house functions in relation to a body mentioned in paragraph (e) or (f) (***the second body***) in accordance with the rules of the second body or a law of the country where the second body is situated.

derivative means a financial asset or liability the value of which depends on, or is derived from, other assets, liabilities or indices.

derivatives contract means an option contract or futures contract relating to any right, liability or thing, including in particular:

(a) an option contract as defined in section 9 of the Corporations Law; and

(b) a futures contract within the meaning of section 72 of the Corporations Law; and

(c) an agreement to which section 72A or 92A of the Corporations Law applies.

Authorised Version F2025C00501 registered 08/05/2025

13.16 Accrued benefits—restriction on alteration

(1) For the purposes of subsection 31(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds that, subject to subregulation (2), 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) The standard stated in subregulation (1) does not apply to an alteration if:

(a) in the case of an alteration that does not relate to minimum benefits within the meaning of Part 5:

(i) subject to subregulation (3), the beneficiary has consented in writing to the alteration; or

(ii) APRA has consented in writing to the alteration after either:

(A) 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 (4); or

(B) subject to subregulation (5), if, in accordance with section 89 of the Act, the fund complies with the basic equal representation rules, 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

(b) the alteration is necessary for compliance with the Act, the Tax Act, the *Income Tax Act 1986* or these Regulations; or

(c) the alteration is expressly permitted by the Act or these Regulations; or

(d) 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) APRA has approved the alteration; or

(e) the alteration:

(i) affects only the benefits of members in respect of whom assessments under section 15 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* have been made; and

(ii) serves to enable the trustee:

(A) to be reimbursed for an amount paid, or to be paid, under that Act and the *Superannuation Contributions Tax (Imposition) Act 1997*; or

(B) in relation to an amount paid before reimbursement occurs—to charge interest on the amount paid.

(3) A consent referred to in subparagraph (2) (a) (i) 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:

Authorised Version F2025C00501 registered 08/05/2025

(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.

(4) For the purposes of sub-subparagraph (2)(a)(ii)(A), 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 APRA; 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.

(5) An approval referred to in sub-subparagraph (2)(a)(ii)(B) 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.

Authorised Version F2025C00501 registered 08/05/2025

13.17 Approved deposit funds—restrictions on loans and investments

(1) For the purposes of subsection 32 (1) of the Act, it is a standard applicable to the operation of approved deposit funds that the trustee of a fund must not lend money of the fund to, or invest money of the fund in:

(a) the trustee itself; or

(b) a related body corporate;

except to the extent permitted by subregulation (2).

(2) Subregulation (1) does not apply to investments by a fund in a related body corporate:

(a) in the case of a life insurance policy—if the body corporate issuing the policy is a life insurance company; or

(b) in the case of a deposit—if the body corporate is an ADI or an approved non-ADI financial institution; or

(c) in any other case—if:

(i) the body corporate is an ADI, an approved non-ADI financial institution or a life insurance company; and

(ii) the trustee of the fund complies with the rules set out in regulation 13.17AA.

13.17A Public offer superannuation funds—restrictions on loans and investments

(1) For the purposes of subsection 31(1) of the Act, it is a standard applicable to the operation of public offer superannuation funds that the trustee of a fund must not lend money of the fund to, or invest money of the fund in:

(a) the trustee itself; or

(b) a related body corporate;

except to the extent permitted by subregulation (2).

(2) Subregulation (1) does not apply to investments by a fund in a related body corporate:

(a) in the case of a life insurance policy—if the body corporate issuing the policy is a life insurance company; or

(b) in the case of a deposit—if the body corporate is an ADI or an approved non-ADI financial institution; or

(c) in any other case—if:

(i) the related body corporate is an approved bank, an approved non-bank financial institution or a life insurance company; and

(ii) the trustee of the fund complies with the rules set out in regulation 13.17AA.

13.17AA Rules for certain investments by funds in related bodies corporate

(1) In this regulation:

Authorised Version F2025C00501 registered 08/05/2025

prescribed investment, in relation to a fund, means an investment (other than a deposit or a life insurance policy) in, or a loan to, a related body corporate that is an ADI, an approved non-ADI financial institution or a life insurance company.

(2) If at the end of a year of income (***the current year of income***) the value of a fund's prescribed investments exceeds 5% of the total assets of the fund, the trustee of the fund must prepare a written plan in accordance with subregulations (3) and (4) as soon as practicable after the end of the current year of income.

(3) The plan must specify the amount (***the excess amount***) by which, at the end of the current year of income, the fund's prescribed investments exceed 5% of the fund's total assets.

(4) The plan must set out the steps that the trustee proposes to take in the year of income following the current year of income to ensure that:
  (a) some of the fund's prescribed investments are disposed of during the year of income following the current year of income; and
  (b) the value of the prescribed investments disposed of is equal to or greater than the excess amount.

(5) The trustee must carry out the plan.

(6) If the total value of the fund's prescribed investments is more than 5% of the total value of the fund's assets, the trustee of the fund must not make a prescribed investment.

(7) If the making of a prescribed investment would result in the total value of the fund's prescribed investments exceeding 5% of the total value of the fund's assets, the trustee of the fund must not make the prescribed investment.

13.17B Orders etc. of the Superannuation Complaints Tribunal to be complied with

For the purposes of subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of regulated superannuation funds and approved deposit funds that the trustee of a fund must not fail, without lawful excuse, to comply with an order, direction or determination of the Superannuation Complaints Tribunal.

13.17C Funds that cease to be eligible rollover funds must maintain entitlements

(1) For the purposes of subsections 31(1) and 32(1) of the Act, the requirement set out in subregulation (2) is a standard applicable to the operation of regulated superannuation funds and approved deposit funds.

(2) A fund that ceases to be an eligible rollover fund must continue to provide those of its members who are members when it so ceases with at least the entitlements that an eligible rollover fund must provide to its members under the Act and these Regulations as in force at the time when it so ceases.

Authorised Version F2025C00501 registered 08/05/2025

Division 13.3—Various prescribed matters

13.18 Sole purpose test—specified age

For the purposes of subparagraph 62(1)(a)(ii) of the Act, 65 years is the specified age.

13.19 Custodians of superannuation entities—specified amounts

For the purposes of subparagraphs 123(1)(b)(i) and (ii) and subsection 123(1A) of the Act, $5,000,000 is the prescribed amount.

13.20 Advertisement of scheme for winding-up or dissolution of superannuation entity

For the purposes of subsection 142(7) of the Act, the prescribed form of advertisement is as set out in Schedule 3.

13.21 Report of inspector—prescribed agencies

For the purposes of subparagraph 284(3)(c)(iv) of the Act, the following agencies are prescribed:

(a) Australian Capital Territory—Registrar of Financial Institutions;
(b) Australian Financial Institutions Commission;
(c) Australian Securities Commission;
(d) Australian Transactions Reports and Analysis Centre;
(e) Commissioner of Taxation;
(f) New South Wales Crimes Authority;
(g) New South Wales Financial Institutions Commission;
(h) New South Wales Independent Commission against Corruption;
(i) Northern Territory Supervisory Authority—Registrar of Financial Institutions;
(j) Queensland Criminal Justice Commission;
(k) Queensland Office of Financial Supervision;
(l) Reserve Bank of Australia;
(m) South Australian Office of Financial Supervision;
(n) Tasmanian Office of Financial Supervision;
(o) Victorian Financial Institutions Commission;
(p) Western Australian Financial Institutions Authority;
(q) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;
(r) the police force of a State or Territory.

Authorised Version F2025C00501 registered 08/05/2025

13.22 Statements made at an examination—manner of authentication

For the purposes of subsection 290(7) of the Act, it is a prescribed manner of authentication of a written record of an examination mentioned in the subsection if:

(a) the written record is produced as soon as practicable after the conclusion of the examination; and

(b) the written record is endorsed by a person (***the endorser***) other than the person examined at the examination; and

(c) the endorser:

(i) was present throughout the examination; and

(ii) reads and endorses the written record as soon as practicable after it is produced; and

(d) the endorsement:

(i) is to the effect that the record is a true record of what was said in the examination; and

(ii) is signed and dated by the endorser.

Authorised Version F2025C00501 registered 08/05/2025

Division 13.4—Repeal

13.23 Superannuation Industry (Supervision) (Approval of Trustees) Regulations

Statutory Rules 1993 No. 373 are repealed.

Authorised Version F2025C00501 registered 08/05/2025

Division 13.5—Reconsideration and review of decisions

13.24 Notice of reviewable decisions and reasons for decisions

(1) As soon as practicable after the Regulator makes a reviewable decision, the Regulator must give written notice of the decision to the person at whose request the decision was made.

(2) The notice must have with it a statement by the Regulator of the Regulator's reasons for making the decision.

(3) The notice must include a statement to the effect that, if dissatisfied with the decision, the person may:

(a) in the case of notice of a decision (other than a decision made by the Regulator under regulation 13.25 confirming or varying an earlier reviewable decision of the Regulator)—request reconsideration of the decision under regulation 13.25; and

(b) in the case of notice of a decision made by the Regulator under regulation 13.25 confirming or varying an earlier reviewable decision of the Regulator—apply to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

(4) Failure to comply with subregulation (3) in relation to a decision does not affect the validity of the decision.

13.25 Reconsideration of certain decisions

(1) If a person is dissatisfied with a reviewable decision (other than a decision made by the Regulator under this regulation), the person may give notice in writing to the Regulator within:

(a) the period of 21 days after the day on which the person first receives notice of the decision; or

(b) such further period as the Regulator reasonably allows;

requesting the Regulator to reconsider the decision.

(2) The person must set out in the notice the reasons for the request.

(3) Subject to subregulation (4), the Regulator must reconsider the decision and may:

(a) confirm the decision; or

(b) vary or revoke the decision.

(4) If the Regulator does not confirm, vary or revoke the decision before the end of the period of 60 days after the day on which the Regulator received the request, the Regulator is taken to have confirmed the decision under subregulation (3) at the end of that period.

Authorised Version F2025C00501 registered 08/05/2025

(5) If the Regulator varies or revokes a decision made under regulation 12.12, 12.13 or 12.14, the Regulator must give written notice of the variation or revocation to the Commissioner of Taxation.

13.26 Review by Tribunal of reconsidered decisions

Application may be made to the Administrative Appeals Tribunal for review of a decision of the Regulator to confirm or vary a decision under subregulation 13.25(3), including a decision that is taken under subregulation 13.25(4) to have been confirmed.

Authorised Version F2025C00501 registered 08/05/2025

Schedule 1AAA—Approved auditors—Professional Organisations

(Subregulation 1.04(2))

Item	Professional Organisation	Manner of Association
1	Australian Society of Certified Practising Accountants	Member
2	The Institute of Chartered Accountants in Australia	Member
3	National Institute of Accountants	Member
4	Association of Taxation and Management Accountants	Member or Fellow
5	National Tax and Accountants Association Ltd	Fellow

Authorised Version F2025C00501 registered 08/05/2025

Schedule 1AA

(Subregulation 1.04(4A))

Part 1—Exempt public sector superannuation schemes (1994-95 and 1995-96 years of income)

Commonwealth

Schemes established by or operated under:

Defence Act 1903
Defence Force Retirement and Death Benefits Act 1973
Governor-General Act 1974
Judges' Pensions Act 1968
Parliamentary Contributory Superannuation Act 1948

New South Wales

Schemes established by or operated under:

First State Superannuation Act 1992
Judges' Pensions Act 1953
Local Government and other Authorities (Superannuation) Act 1927 New South Wales Retirement Benefits Act 1972
Parliamentary Contributory Superannuation Act 1971
Police Regulation (Superannuation) Act 1906
Public Authorities Superannuation Act 1985
Public Sector Executives Superannuation Act 1989
State Authorities Non-contributory Superannuation Act 1987
State Authorities Superannuation Act 1987
State Public Service Superannuation Act 1985
Superannuation Act 1916
Superannuation Administration Act 1991
Transport Employees Retirement Benefits Act 1967

Victoria

Schemes established by or operated under:

Attorney-General and Solicitor General Act 1972
Coal Mines (Pensions) Act 1958
Constitution Act 1975
County Court Act 1958
Judicial Remuneration Tribunal Act 1995
Justices Act 1958
Magistrates Courts Act 1989
Magistrates (Summary Proceedings) Act 1975
Mint Act 1958
Ombudsman Act 1973

Authorised Version F2025C00501 registered 08/05/2025

Public Prosecutions Act 1994
Supreme Court Act 1986

Schemes established under trust deeds:

City of Melbourne Superannuation Fund
County Court Associates Superannuation Scheme
Emergency Services Superannuation Scheme
Gas and Fuel Superannuation Fund
Holmesglen Construction Superannuation Plan
Hospitals Superannuation Fund
Local Authorities Superannuation Fund
Melbourne Water Corporation Employees' Superannuation Fund
Parliamentary Contributory Superannuation Fund
Pharmaceutical Organisations Superannuation Fund
Port of Geelong Authority Superannuation Fund
Port of Melbourne Authority Superannuation Scheme
State Casual Employees Superannuation Fund
State Employees Retirement Benefits Fund
State Superannuation Fund
Supreme Court Associates Superannuation Scheme
Transport Superannuation Fund
Victorian Electricity Industry Superannuation Fund
Victorian Superannuation Fund
Zoological Board of Victoria Superannuation Fund

Queensland

Schemes established by or operated under:

Fire Service Act 1990
Governors' Pensions Act 1977
Judges (Pensions and Long Leave) Act 1957
Parliamentary Contributory Superannuation Act 1970
Police Superannuation Act 1974
State Service Superannuation Act 1972
Superannuation (Government and Other Employees) Act 1988
Superannuation (State Public Sector) Act 1990

South Australia

Schemes established by or operated under:

Electricity Corporations Act 1994
Governors' Pensions Act 1976
Judges' Pensions Act 1971
Parliamentary Superannuation Act 1974
Police Superannuation Act 1990
Southern State Superannuation Act 1994
Superannuation Act 1988
Superannuation (Benefit Scheme) Act 1992

Authorised Version F2025C00501 registered 08/05/2025

Schemes established under trust deeds

Lyell McEwen Health Service Incorporated Superannuation Fund
Police Occupational Superannuation Scheme

Western Australia

Schemes established by or operated under:

Government Employees Superannuation Act 1987
Judges' Salaries and Pensions Act 1950
Parliamentary Superannuation Act 1970
Superannuation and Family Benefits Act 1938

Tasmania

Schemes established by or operated under:

Judges' Contributory Pensions Act 1968
Parliamentary Retiring Benefits Act 1985
Parliamentary Superannuation Act 1973
Retirement Benefits Act 1993
Solicitor-General Act 1983

Australian Capital Territory

Schemes established by or operated under:

Superannuation (Legislative Assembly Members) Act 1991

Northern Territory

Schemes established by or operated under:

Administrators Pension Act 1981
Legislative Assembly Members' Superannuation Act 1979
Superannuation Act 1986
Supreme Court (Judges Pensions) Act 1980

Schemes established under trust deeds or other means

Northern Territory Police Supplementary Benefit Scheme
Northern Territory Supplementary Superannuation Scheme

Authorised Version F2025C00501 registered 08/05/2025

Part 2—Exempt public sector superannuation schemes (1996-97 year of income)

Commonwealth

Schemes established by or operated under:

Defence Act 1903
Defence Force Retirement and Death Benefits Act 1973
Governor-General Act 1974
Judges' Pensions Act 1968
Parliamentary Contributory Superannuation Act 1948

New South Wales

Schemes established by or operated under:

First State Superannuation Act 1992
Judges' Pensions Act 1953
Local Government and Other Authorities (Superannuation) Act 1927
New South Wales Retirement Benefits Act 1972
Parliamentary Contributory Superannuation Act 1971
Police Regulation (Superannuation) Act 1906
Public Authorities Superannuation Act 1985
Public Sector Executives Superannuation Act 1989
State Authorities Non-contributory Superannuation Act 1987
State Authorities Superannuation Act 1987
State Public Service Superannuation Act 1985
Superannuation Act 1916
Superannuation Administration Act 1996
Transport Employees Retirement Benefits Act 1967

Victoria

Schemes established by or operated under:

Attorney General and Solicitor General Act 1972
Coal Mines (Pensions) Act 1958
Constitution Act 1975
County Court Act 1958
County Court (Jurisdictions) Act 1968
Emergency Services Superannuation Act 1986
Hospitals Superannuation Act 1988
Justices Act 1958
Local Authorities Superannuation Act 1988
Magistrates (Summary Proceedings) Act 1975
Mint Act 1958
Ombudsman Act 1973

Authorised Version F2025C00501 registered 08/05/2025

Parliamentary Salaries and Superannuation Act 1968
Port of Geelong Authority Act 1958
Port of Melbourne Authority Act 1958
Public Prosecutions Act 1994
Public Sector Superannuation (Administration) Act 1993
State Superannuation Act 1988
Supreme Court Act 1986

Queensland

Government Officers' Superannuation Scheme (GoSuper)
Governors' Pension Scheme
Judges Pension Scheme
Parliamentary Contributory Superannuation Fund
Police Superannuation Fund (Police Super)
Queensland Fire Service Superannuation Plan
State Public Sector Superannuation Scheme (Q Super)
State Service Superannuation Fund (State Super)

South Australia

Schemes established by or operated under:

Electricity Corporations Act 1994
Governors' Pensions Act 1976
Judges' Pensions Act 1971
Parliamentary Superannuation Act 1974
Police Superannuation Act 1990
Southern State Superannuation Act 1994
Superannuation Act 1988
Superannuation (Benefit Scheme) Act 1992

Schemes established by or under trust deeds

Lyell McEwen Health Service Incorporated Superannuation Fund
Police Occupational Superannuation Scheme

Western Australia

Schemes established by or operated under:

Government Employees Superannuation Act 1987
Judges' Salaries and Pensions Act 1950
Parliamentary Superannuation Act 1970
Superannuation and Family Benefits Act 1938

Tasmania

Schemes established by or operated under:

Governor of Tasmania Act 1982
Judges' Contributory Pensions Act 1968
Parliamentary Retiring Benefits Act 1985
Parliamentary Superannuation Act 1973

Authorised Version F2025C00501 registered 08/05/2025

Retirement Benefits Act 1993
Solicitor-General Act 1983

Australian Capital Territory

Schemes established by or operated under:

Superannuation (Legislative Assembly Members) Act 1991

Northern Territory

Schemes established by or operated under:

Administrators Pension Act 1981
Legislative Assembly Members' Superannuation Act 1979
Superannuation Act 1986
Supreme Court (Judges Pensions) Act 1980

Other schemes

Northern Territory Police Supplementary Benefit Scheme
Northern Territory Supplementary Superannuation Scheme

Authorised Version F2025C00501 registered 08/05/2025

Part 3—Exempt public sector superannuation schemes (1997-98 year of income and subsequent years of income)

Commonwealth

Schemes established by or operated under:

Defence Act 1903
Defence Force Retirement and Death Benefits Act 1973
Governor-General Act 1974
Judges' Pensions Act 1968
Parliamentary Contributory Superannuation Act 1948

New South Wales

Schemes established by or operated under:

First State Superannuation Act 1992
Judges' Pensions Act 1953
Local Government and Other Authorities (Superannuation) Act 1927
New South Wales Retirement Benefits Act 1972
Parliamentary Contributory Superannuation Act 1971
Police Regulation (Superannuation) Act 1906
Public Authorities Superannuation Act 1985
Public Sector Executives Superannuation Act 1989
State Authorities Non-contributory Superannuation Act 1987
State Authorities Superannuation Act 1987
State Public Service Superannuation Act 1985
Superannuation Act 1916
Superannuation Administration Act 1996
Transport Employees Retirement Benefits Act 1967

Victoria

Schemes established by or operated under:

Attorney General and Solicitor General Act 1972
Coal Mines (Pensions) Act 1958
Constitution Act 1975
County Court Act 1958
County Court (Jurisdictions) Act 1968
Emergency Services Superannuation Act 1986
Hospitals Superannuation Act 1988
Justices Act 1958
Local Authorities Superannuation Act 1988
Magistrates (Summary Proceedings) Act 1975
Mint Act 1958

Authorised Version F2025C00501 registered 08/05/2025

Ombudsman Act 1973
Parliamentary Salaries and Superannuation Act 1968
Public Prosecutions Act 1994
Public Sector Superannuation (Administration) Act 1993
State Superannuation Act 1988
Supreme Court Act 1986

Queensland

Governors' Pension Scheme
Judges Pension Scheme
Parliamentary Contributory Superannuation Fund
State Public Sector Superannuation Scheme (Q Super)

South Australia

Schemes established by or operated under:

Electricity Corporations Act 1994
Governors' Pensions Act 1976
Judges' Pensions Act 1971
Parliamentary Superannuation Act 1974
Police Superannuation Act 1990
Southern State Superannuation Act 1994
Superannuation Act 1988
Superannuation (Benefit Scheme) Act 1992

Schemes established by or under trust deeds

Lyell McEwen Health Service Incorporated Superannuation Fund
Police Occupational Superannuation Scheme

Western Australia

Schemes established by or operated under:

Government Employees Superannuation Act 1987
Judges' Salaries and Pensions Act 1950
Parliamentary Superannuation Act 1970
Superannuation and Family Benefits Act 1938

Tasmania

Schemes established by or operated under:

Governor of Tasmania Act 1982
Judges' Contributory Pensions Act 1968
Parliamentary Retiring Benefits Act 1985
Parliamentary Superannuation Act 1973
Retirement Benefits Act 1993
Solicitor-General Act 1983

Authorised Version F2025C00501 registered 08/05/2025

Australian Capital Territory

Schemes established by or operated under:

Superannuation (Legislative Assembly Members) Act 1991

Northern Territory

Schemes established by or operated under:

Administrators Pension Act 1981
Legislative Assembly Members' Superannuation Act 1979
Superannuation Act 1986
Supreme Court (Judges Pensions) Act 1980

Other schemes

Northern Territory Police Supplementary Benefit Scheme
Northern Territory Supplementary Superannuation Scheme

Authorised Version F2025C00501 registered 08/05/2025

Schedule 1A—Payment limits

(Subregulations 1.05(4) and 1.06(4))

1.

Subject to clauses 3 and 4, the maximum limits mentioned in paragraph 1.05(4)(f) or 1.06(4)(e) are determined under the formula:

$$\frac{AB}{PVF}$$

where:

AB means the amount of the annuity account balance, or pension account balance, as the case requires:

(a) on 1 July in the financial year in which the payments are made; or

(b) if that year is the year in which the annuity payments, or pension payments, commence—on the commencement day; and

PVF means the maximum pension valuation factor set out in Column 3 in the Table in this Schedule in relation to the item in the Table that represents the age of the beneficiary on:

(a) 1 July in the financial year in which the payments are made; or

(b) if that is the year in which the annuity payments, or pension payments, commence—the commencement day.

2.

Subject to clauses 3 and 4, the minimum limits mentioned in paragraph 1.05(4)(f) or 1.06(4)(e) are determined under the formula:

$$\frac{AB}{PVF}$$

where:

AB means the amount of the annuity account balance, or pension account balance, as the case requires:

(a) on 1 July in the financial year in which the payments are made; or

(b) if that year is the year in which the annuity payments, or pension payments, commence—on the commencement day; and

PVF means the minimum pension valuation factor set out in Column 4 in the Table to this Schedule in relation to the item in the Table that represents the age of the beneficiary on:

(a) 1 July in the financial year in which the payments are made; or

(b) if that is the year in which the annuity payments, or pension payments, commence—the commencement day.

Authorised Version F2025C00501 registered 08/05/2025

Clause 3

3.

For a calculation of the maximum or minimum limit in the year in which the commencement day of the pension or annuity occurs if that day is a day other than 1 July, the appropriate value set out in Column 3 or Column 4 must be applied proportionally to the number of days in the financial year that include and follow the commencement day.

4.

An amount determined under the formula that is not evenly divisible by 10 is to be rounded to the nearest amount that is so divisible.

Table

Column 1 Item	Column 2 Age of Beneficiary	Column 3 Maximum Pension Valuation Factor	Column 4 Minimum Pension Valuation Factor
1	20 or less	10	28.6
2	21	10	28.5
3	22	10	28.3
4	23	10	28.1
5	24	10	28.0
6	25	10	27.8
7	26	10	27.6
8	27	10	27.5
9	28	10	27.3
10	29	10	27.1
11	30	10	26.9
12	31	10	26.7
13	32	10	26.5
14	33	10	26.3
15	34	10	26.0
16	35	10	25.8
17	36	10	25.6
18	37	10	25.3
19	38	10	25.1
20	39	10	24.8
21	40	10	24.6
22	41	10	24.3
23	42	10	24.0
24	43	10	23.7
25	44	10	23.4
26	45	10	23.1

Authorised Version F2025C00501 registered 08/05/2025

Table Column 1 Item	Column 2 Age of Beneficiary	Column 3 Maximum Pension Valuation Factor	Column 4 Minimum Pension Valuation Factor
27	46	10	22.8
28	47	10	22.5
29	48	10	22.2
30	49	10	21.9
31	50	9.9	21.5
32	51	9.9	21.2
33	52	9.8	20.9
34	53	9.7	20.5
35	54	9.7	20.1
36	55	9.6	19.8
37	56	9.5	19.4
38	57	9.4	19.0
39	58	9.3	18.6
40	59	9.1	18.2
41	60	9.0	17.8
42	61	8.9	17.4
43	62	8.7	17.0
44	63	8.5	16.6
45	64	8.3	16.2
46	65	8.1	15.7
47	66	7.9	15.3
48	67	7.6	14.9
49	68	7.3	14.4
50	69	7.0	14.0
51	70	6.6	13.5
52	71	6.2	13.1
53	72	5.8	12.6
54	73	5.4	12.2
55	74	4.8	11.7
56	75	4.3	11.3
57	76	3.7	10.8
58	77	3.0	10.4
59	78	2.2	10.0
60	79	1.4	9.5
61	80	0	9.1
62	81	0	8.7
63	82	0	8.3

Authorised Version F2025C00501 registered 08/05/2025

Clause 4

Table **Column 1** **Item**	**Column 2** **Age of Beneficiary**	**Column 3** **Maximum Pension Valuation Factor**	**Column 4** **Minimum Pension Valuation Factor**
64	83	0	7.9
65	84	0	7.5
66	85	0	7.1
67	86	0	6.8
68	87	0	6.4
69	88	0	6.1
70	89	0	5.8
71	90	0	5.5
72	91	0	5.3
73	92	0	5.0
74	93	0	4.8
75	94	0	4.6
76	95	0	4.4
77	96	0	4.2
78	97	0	4.0
79	98	0	3.8
80	99	0	3.7
81	100 or more	0	3.5

Example:

Iva Fortune, who turns 60 on 5 September 1994, invests $100,000 in an allocated pension fund on 1 October 1994. The date of the first payment to Ms Fortune is 1 January 1995.

Assume a fund earning rate of 7%.

1994/95: The maximum and minimum payments for 1994/95 are based on:

(a) the account balance on the day of purchase; and

(b) the beneficiary's age of 60 on the day of purchase:

$$\frac{\$100{,}000}{9.0} \times \frac{273}{365} = \$8{,}310.50 \left(\text{maximum limit, rounded to } \$8{,}310\right)$$

$$\frac{\$100{,}000}{17.8} \times \frac{273}{365} = \$4{,}201.93 \left(\text{minimum limit, rounded to } \$4{,}200\right)$$

Assume that total payments to Ms Fortune at 30 June 1995 are $6,000.

1995/96: The maximum and minimum payments for the year 1995/96 are based on:

(a) the account balance on 1 July 1995 which is $99,145 (residue $94,000 + interest of $5,145); and

(b) the beneficiary's age of 60 on 1 July 1995:

$$\frac{\$99145}{9.0} = \$11{,}016.11 \left(\text{maximum limit, rounded to } \$11{,}020\right)$$

Authorised Version F2025C00501 registered 08/05/2025

$$\frac{\$99145}{17.8} = \$5{,}569.94\,(\text{minimum limit},\ \text{rounded to}\ \$5{,}570)$$

Authorised Version F2025C00501 registered 08/05/2025

Schedule 1B—Pension valuation factors

(Paragraph 1.06(6)(g) and subregulation 1.08(1))

1.

The pension valuation factor for:

(a) a pension that is to be indexed at a rate greater than 8% each year; or

(b) a pension that is included in a class of pensions that are to be indexed at a rate that is greater than 8% each year;

is the factor determined in writing by APRA, on a case-by-case basis, in relation to that pension or class of pensions.

2.

The pension valuation factor for any other pension is the factor applicable to the pension under the following tables.

3.

A reference in the tables to "Age" is a reference to the age of the recipient on the commencement day of the relevant pension. If the age of a person on that day falls between 2 of the ages specified in a table, the pension valuation factor is to be determined by reference to the factors specified under the next greater age group in the table.

4.

If a pension has no reversion, the pension valuation factor for the pension is to be the relevant factor specified in the relevant table in the "Below 50%" group.

5.

If the rules of a superannuation fund provide that a pension is indexed to movements in salary, the pension valuation factor for the pension is the relevant factor specified in the table relating to an indexation rate of 8%.

6.

If a pension is indexed by reference to movements in a price index published by the Australian Statistician, the pension valuation factor for the pension is the relevant factor applicable under the table into which the standard indexation rate falls.

7.

Subject to clause 8, if the governing rules of a superannuation fund provide for a pension to be indexed at the discretion of the trustees of the fund, the pension

Authorised Version F2025C00501 registered 08/05/2025

valuation factor is to be determined as if the indexation rate were a rate worked out by:

(a) adding together the indexation rates determined by the trustees for pensions of same kind as that pension in respect of each year in the period of 5 years of which the year of income in which the pension commences to be paid is the last year; and

(b) dividing the result by 5.

8.

If a superannuation fund to which clause 7 applies has been in existence, or making pension payments, for less than a continuous period of 5 years, the pension valuation factor is to be the relevant factor specified in the table that relates to the standard indexation rate.

Tables

Indexation rate of 8%

Reversion	Age next birthday of recipient on commencement day of pension													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	33	31	29	27	25	23	21	18	16	14	12	10	9	9
50%-75%	34	33	31	29	27	25	22	20	18	15	13	11	10	9
Above 75%	35	34	32	30	28	26	24	21	19	16	14	12	10	10

Indexation rate of at least 7% but less than 8%

Reversion	Age next birthday of recipient on commencement day of pension													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	26	25	24	23	21	20	18	16	14	13	11	10	9	8
50%-75%	27	26	25	24	23	21	19	18	16	14	12	10	9	9
Above 75%	28	27	26	25	24	22	20	19	17	15	13	11	10	9

Indexation rate of least 6% but less than 7%

Reversion	Age next birthday of recipient on commencement day of pension													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	22	21	20	19	18	17	16	14	13	12	10	9	8	8
50%-75%	22	22	21	20	19	18	17	16	14	13	11	10	9	8

Authorised Version F2025C00501 registered 08/05/2025

Clause 8

Above 75%	23	22	22	21	20	19	18	16	15	13	12	10	9	8

Indexation rate of at least 5% but less than 6%

Reversion	**Age next birthday of recipient on commencement day of pension**													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	18	18	17	17	16	15	14	13	12	11	10	9	8	8
50%-75%	19	18	18	17	17	16	15	14	13	12	10	9	8	8
Above 75%	19	19	18	18	17	17	16	15	13	12	11	9	8	8

Indexation rate of at least 4% but less than 5%

Reversion	**Age next birthday of recipient on commencement day of pension**													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	16	15	15	15	14	13	13	12	11	10	9	8	8	7
50%-75%	16	16	15	15	15	14	13	13	12	11	10	9	8	7
Above 75%	16	16	16	15	15	15	14	13	12	11	10	9	8	7

Indexation rate of at least 3% but less than 4%

Reversion	**Age next birthday of recipient on commencement day of pension**													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	14	14	13	13	13	12	11	11	10	9	8	8	7	7
50%-75%	14	14	14	13	13	13	12	11	11	10	9	8	7	7
Above 75%	14	14	14	14	13	13	12	12	11	10	9	8	8	7

Indexation rate of at least 2% but less than 3%

Reversion	**Age next birthday of recipient on commencement day of pension**													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	12	12	12	12	11	11	10	10	9	9	8	7	7	7
50%-75%	12	12	12	12	12	11	11	10	10	9	8	8	7	7

Authorised Version F2025C00501 registered 08/05/2025

Above 75%	12	12	12	12	12	12	11	11	10	9	9	8	7	7

Indexation rate of at least 1% but less than 2%

Reversion	**Age next birthday of recipient on commencement day of pension**													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	11	11	11	11	10	10	10	10	9	8	7	7	7	6
50%-75%	11	11	11	11	11	10	10	10	9	8	8	7	7	6
Above 75%	11	11	11	11	11	10	10	10	9	9	8	7	7	6

Indexation rate less that 1%

Reversion	**Age next birthday of recipient on commencement day of pension**													
	20 or less	**21 to 25**	**26 to 30**	**31 to 35**	**36 to 40**	**41 to 45**	**46 to 50**	**51 to 55**	**56 to 60**	**61 to 65**	**66 to 70**	**71 to 75**	**76 to 80**	**81 or more**
Below 50%	10	10	10	10	9	9	9	8	8	8	7	7	6	6
50%-75%	10	10	10	10	10	9	9	9	8	8	7	7	6	6
Above 75%	10	10	10	10	10	10	9	9	9	8	8	7	7	6

Authorised Version F2025C00501 registered 08/05/2025

Schedule 1—Conditions of release and cashing restrictions—preserved benefits and restricted non-preserved benefits

(Regulation 6.01)

Part 1—Regulated superannuation funds

Column 1	Column 2	Column 3
Item no.	**Conditions of release**	**Cashing restrictions**
101	Retirement	Nil
102	Death	Nil
103	Permanent incapacity	Nil
103A	Permanent departure from Australia, being a departure by the member from Australia, before 1 July 1998, in relation to which: (a) the trustee is reasonably satisfied that it is for the purpose of permanent residence outside Australia; and (b) the written request for release of benefits was made before 1 July 1998	Nil
104	Termination of gainful employment with a standard employer-sponsor of the regulated superannuation fund on or after 1 July 1997 (where the member's preserved benefits in the fund at the time of the termination are less than $200)	Nil
105	Severe financial hardship	For a person taken to be in severe financial hardship under paragraph 6.01(5)(a)—in each 12 month period (beginning on the date of first payment), a single lump sum not less than $1,000 (except if the amount of the person's preserved benefits and restricted non-preserved benefits is less than that amount) and not more than $10,000 For a person taken to be in severe financial hardship under paragraph 6.01(5)(b)—Nil
106	Attaining age 65	Nil

Authorised Version F2025C00501 registered 08/05/2025

Column 1	Column 2	Column 3
Item no.	**Conditions of release**	**Cashing restrictions**
107	Compassionate ground	A single lump sum, not exceeding an amount determined, in writing, by APRA, being an amount that: (a) taking account of the ground and of the person's financial capacity, is reasonably required; and (b) in the case of the ground mentioned in paragraph 6.19A(1)(b)—in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of: (i) 3 months' repayments; and (ii) 12 months' interest on the outstanding balance of the loan
108	Termination of gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the regulated superannuation fund in relation to the member	1. *Preserved benefits:* Non-commutable life pension or non-commutable life annuity 2. *Restricted non-preserved benefits:* Nil
109	Temporary incapacity	A non-commutable income stream cashed from the regulated superannuation fund for: (a) the purpose of continuing (in whole or part) the gain or reward which the member was receiving before the temporary incapacity; and (b) a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity
110	Any other condition, if expressed to be a condition of release, in an approval under subparagraph 62(1)(b)(v) of the Act	Restrictions expressed in the approval to be cashing restrictions applying to the condition of release

Authorised Version F2025C00501 registered 08/05/2025

Part 2—Approved deposit funds

Column 1	Column 2	Column 3
Item no.	**Conditions of release**	**Cashing restrictions**
201	Retirement	Nil
202	Death	Nil
203	Permanent incapacity	Nil
204	Permanent departure from Australia, being a departure by the member from Australia, before 1 July 1998, in relation to which: (a) the trustee is reasonably satisfied that it is for the purpose of permanent residence outside Australia; and (b) the written request for release of benefits was made before 1 July 1998	Nil
205	Severe financial hardship	For a person taken to be in severe financial hardship under paragraph 6.01(5)(a)—in each 12 month period (beginning on the date of first payment), a single lump sum not less than $1,000 (except if the amount of the person's preserved benefits and restricted non-preserved benefits is less than that amount) and not more than $10,000 For a person taken to be in severe financial hardship under paragraph 6.01(5)(b)—Nil
206	Attaining age 65	Nil
207	Compassionate ground	A single lump sum, not exceeding an amount determined, in writing, by APRA, being an amount that: (a) taking account of the ground and of the person's financial capacity, is reasonably required; and (b) in the case of the ground mentioned in paragraph 6.19A(1)(b)—in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of: (i) 3 months' repayments; and (ii) 12 months' interest on the outstanding balance of the loan

Note: The definitions set out in subregulation 6.01(2) apply, unless they are in material or expressed not to apply, to Schedule 1; *see* that subregulation.

Authorised Version F2025C00501 registered 08/05/2025

Schedule 2—Modifications of the OSS laws in relation to preserved benefits in regulated superannuation funds

(Subregulation 6.02(2))

Part 1—Modifications of the *Occupational Superannuation Standards Act 1987*

101. Section 7 (Operating standards for superannuation funds

101.1 After subsection 7(3), insert:

(4) Despite any other provision of this Act, superannuation funds must comply with the standards prescribed for the purposes of this section.

Authorised Version F2025C00501 registered 08/05/2025

Part 2—Modifications of the Occupational Superannuation Standards Regulations

201. Regulation 3 (Interpretation)

201.1 Paragraph 3(2)(a):

Omit the paragraph.

201A. Regulation 8 (Vesting standards)

201A.1 After subregulation 8(1A), insert:

(1B) Paragraph (1A)(a) does not apply in relation to contributions made in accordance with a prescribed agreement or award.

202. Regulation 9 (Preservation standards)

201.1A Subparagraph 9(1)(a)(i):

Omit "subject to regulation 10,"

202.1 Paragraph 9(1)(b):

After "the fund", insert "before the commencement day".

202.2 Paragraph 9(1)(c):

Omit the paragraph, substitute:

(c) member-financed benefits must be preserved if they arise from contributions made by a member to a superannuation fund during any period during which the member did not have employer support in the fund, being a period that:
  (i) commenced on or after 13 March 1989 (in the case of a private sector fund) or 1 July 1990 (in the case of a public sector fund); and
  (ii) ended before the commencement day;

(d) member-financed benefits must be preserved if they arise from contributions (other than undeducted contributions) made to a superannuation fund in relation to the member on or after the commencement day;

(e) benefits must be preserved if they arise from payments from the Superannuation Holding Accounts Reserve established under that name by section 8 of the *Small Superannuation Accounts Act 1995*;

(f) benefits must be preserved if they arise from eligible spouse contributions within the meaning of section 159TC of the Tax Act;

(g) benefits must be preserved if they arise from a capital gains tax exempt component rolled over to the fund because of subsection 160ZZPZF(1), 160ZZPZH(7) or 160ZZPZI(5) of the Tax Act.

Authorised Version F2025C00501 registered 08/05/2025

202.3 Subregulation 9(3):

After "arising", insert "before the commencement day,".

202.4 Add at the end:

(5) In paragraphs (1)(b), (c) and (d) and subregulation (3):

commencement day has the same meaning as in Part 6 of the Superannuation Industry (Supervision) Regulations.

undeducted contributions has the same meaning as in Part 6 of the Superannuation Industry (Supervision) Regulations.

202A. New regulation 10A

202A.1 After regulation 10, insert:

10A Preservation standard—interaction of subparagraph 9(1)(a)(i) and regulation 10

Where, apart from this regulations, a fund must preserve, in respect of a member:

(a) the amount of benefits in compliance with subparagraph 9(1)(a)(i); and

(b) an amount of benefits in compliance with regulation 10;

it is sufficient compliance with those provisions if the fund preserves the greater of those amounts.

203. Regulation 11 (Preservation and portability standards)

203.1 Omit the regulation

204. Regulation 12 (Preservation standards not to apply in certain cases)

204.1 Omit the regulation.

Authorised Version F2025C00501 registered 08/05/2025

Schedule 3—Prescribed form of advertisement of scheme for winding-up or dissolution

(Regulation 13.20)

Scheme for [*insert "Winding -up", "Dissolution" or both*] ***of*** [*insert name of superannuation entity*]

Acting under subsection 142(1) of the *Superannuation Industry (Supervision) Act 1993*, the Australian Prudential Regulation Authority (APRA) has formulated a scheme for the [*insert "Winding -up", "Dissolution" or both*] of [*insert name of superannuation entity*].

Summary of scheme:

[*Set out a summary of the scheme*].

The trustee of [*insert name of superannuation entity*] has been notified in writing of the scheme.

Any person whose interests are affected by the scheme may obtain a copy of the scheme from the offices of APRA listed below.

[*Insert details of APRA's offices*].

Authorised Version F2025C00501 registered 08/05/2025

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Authorised Version F2025C00501 registered 08/05/2025

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version F2025C00501 registered 08/05/2025

Endnote 3—Legislation history

Number and year	Registration or gazettal	Commencement	Application, saving and transitional provisions
1994 No. 57	11 Mar 1994 (F1996B00580)	r 2.08–2.11, 2.52, 2.53), 3.10–3.12, 6.30, 9.01–10.06, 11.08 and 12.01–12.20: 1 July 1994 (r 1.02(a)–(g)) Remainder: 11 Mar 1994	
1994 No. 189	16 June 1994 (F1996B00581)	r 4: 1 July 1994 (r 1.1) Remainder: 16 June 1994	—
1994 No. 432	23 Dec 1994 (F1996B00582)	23 Dec 1994	—
1995 No. 47	23 Mar 1995 (F1996B00583)	23 Mar 1995	—
1995 No. 64	5 Apr 1995 (F1996B00584)	r 8, 18, 20, 21 and 23: 1 July 1995 (r 1.1) Remainder: 5 Apr 1995	—
1995 No. 142	15 June 1995 (F1996B00585)	1 July 1995 (r 1.1)	—
1995 No. 158	29 June 1995 (F1996B00586)	1 July 1995 (r 1.1)	—
1995 No. 159	29 June 1995 (F1996B00587)	r 22 and 25: 29 June 1995 Remainder: 1 July 1995 (r 1.1)	—
1995 No. 240	11 Aug 1995 (F1996B00588)	11 Aug 1995	—
1995 No. 293	10 Oct 1995 (F1996B00623)	10 Oct 1995	r 3
1995 No. 384	6 Dec 1995 (F1996B00590)	r 5: 1 July 1996 (r 1) Remainder: 6 Dec 1995	—
1995 No. 430	22 Dec 1995 (F1996B00591)	r 4 and 5: 9 Jan 1996 (r 1)) Remainder: 22 Dec 1995	—
1996 No. 44	17 Apr 1996 (F1996B00592)	17 Apr 1996	—
1996 No. 57	15 May 1996 (F1996B00593)	15 May 1996	—
1996 No. 122	28 June 1996 (F1996B00594)	28 June 1996	—
1996 No. 344	24 Dec 1996 (F1997B01010)	30 Dec 1996 (r 1)	r 13 and 14
1997 No. 69	26 Mar 1997 (F1997B02598)	26 Mar 1997	—

Authorised Version F2025C00501 registered 08/05/2025

Endnote 3—Legislation history

Number and year	Registration or gazettal	Commencement	Application, saving and transitional provisions
1997 No. 117	29 May 1997 (F1997B02634)	r 9.5, 10.5 and 15.1: 1 Oct 1997 (r 1.1) Remainder: 1 July 1997 (r 1.2)	r 57
1997 No. 152	26 June 1997 (F1997B02682)	1 July 1997 (r 1)	r 6
1997 No 153	26 June 1997 (F1997B02683)	1 July 1997 (r 1)	r 5
1997 No. 221	27 Aug 1997 (F1997B02721)	27 Aug 1997 (r 1)	—
1997 No. 243	10 Sept 1997 (F1997B02740)	10 Sept 1997	—
1997 No. 293	16 Oct 1997 (F1997B02784)	16 Oct 1997	—
1997 No. 309	5 Nov 1997 (F1997B02800)	5 Nov 1997	—
1997 No. 343	9 Dec 1997 (F1997B02832)	9 Dec 1997	r 5
1997 No. 415	24 Dec 1997 (F1997B02904)	24 Dec 1997	r 3
1998 No. 76	5 May 1998 (F1998B00071)	5 May 1998 (r 1)	—
1998 No. 83	5 May 1998 (F1998B00078)	r 15: 1 Nov 1998 (r 1.1) Remainder: 5 May 1998 (r 1.2)	—
1998 No. 108	27 May 1998 (F1998B00100)	27 May 1998 (r 1)	—
1998 No. 175	30 June 1998 (F1998B00161)	30 June 1998 (r 1)	—
1998 No. 177	30 June 1998 (F1998B00163)	r 4: 1 July 1998 (r 1.2) Remainder: 1 Jan 1998 (r 1.1)	—
1998 No. 193	30 June 1998 (F1998B00179)	1 July 1998 (r 1)	—
1998 No. 240	22 July 1998 (F1998B00223)	22 July 1998 (r 1)	—

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Taxation Laws Amendment Act (No. 2) 1995	169, 1995	16 Dec 1995	Sch 7: 16 Dec 1995 (s 2(1))	Sch 7 (item 3)

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r 1.03	am No 189, 1994; No 64, 1995; No 159, 1995; No 384, 1995; No 344, 1996; No 117, 1997; No 293, 1997; No 309, 1997; No 83, 1998; No 193, 1998
r 1.03A	ad No 64, 1995
	am No 159, 1995; No 117, 1997
r 1.04	am No 432, 1994; No 240, 1995; No 430, 1995; No 122, 1996; No 344, 1996; No 117, 1997; No 83, 1998; No 193, 1998
Part 1A	
Part 1A	ad No 189, 1994
Division 1A.1	
r 1.05	ad No 189, 1994
	am No 309, 1997; No 193, 1998
r 1.06	ad No 189, 1994
	am No 309, 1997; No 193, 1998
r 1.07	ad No 189, 1994
Division 1A.2	
r 1.08	ad No 189, 1994
	am No 309, 1997; No 193, 1998
Part 2	
Division 2.1	
r 2.01	am No 117, 1997; No 309, 1997; No 193, 1998
r 2.03	am No 189, 1994
r 2.05	am No 64, 1995; No 384, 1995; No 117, 1997
Division 2.2	
r 2.08	rs No 159, 1995
	am No 117, 1997; No 83, 1998
r 2.09	am No 159, 1995
r 2.10	am No 159, 1995; No 117, 1997
r 2.11	am No 159, 1995; No 117, 1997
r 2.11A	ad No 159, 1995
	am No 117, 1997
Division 2.3	
r 2.12	am No 159, 1995; No 117, 1997
r 2.13	am No 64, 1995
r 2.14	am No 64, 1995
r 2.14A	ad No 117, 1997
r 2.15	am No 117, 1997
r 2.16	am No 159, 1995; No 117, 1997

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
r 2.16A	ad No 117, 1997
Division 2.4	
Subdivision 2.4.1	
r 2.18	am No 159, 1995
r 2.19	am No 193, 1998
Subdivision 2.4.2	
r 2.22	am No 117, 1997
r 2.23	am No 158, 1995; No 159, 1995; No 117, 1997
r 2.24	am No 117, 1997; No 309, 1997
r 2.24A	ad No 117, 1997
r 2.24B	ad No 117, 1997
r 2.25	am No 309, 1997
r 2.26A	ad No 64, 1995
	am No 309, 1997
r 2.26B	ad No 64, 1995
	am No 159, 1995
Subdivision 2.4.3	
r 2.28	am No 117, 1997
r 2.29	am No 158, 1995; No 293, 1995; No 309, 1997; No 83, 1998; No 193, 1998
r 2.30	am No 309, 1997
r 2.31	rs No 108, 1998
Division 2.5	
r 2.32	am No 159, 1995
r 2.33	am No 158, 1995
r 2.36	am No 158, 1995; No 117, 1997; No 193, 1998
r 2.36A	ad No 159, 1995
	am No 117, 1997
Division 2.6	
r 2.40	am No 117, 1997
r 2.41	am No 83, 1998
Division 2.6A	
Division 2.6A heading	am No 83, 1998
Division 2.6A	ad No 117, 1997
r 2.41A	ad No 117, 1997
	am No 83, 1998
r 2.41B	ad No 117, 1997
	rs No 83, 1998
Division 2.7	
r 2.42	am No 64, 1995; No 159, 1995
r 2.43	am No 158, 1995

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
r 2.45	am No 117, 1997
r 2.46	am No 158, 1995; No 117, 1997
r 2.47	am No 309, 1997
r 2.48	am No 117, 1997
r 2.48A	ad No 64, 1995
	am No 309, 1997
Division 2.7A	
Division 2.7A	ad No 64, 1995
r 2.48B	ad No 64, 1995
r 2.48C	ad No 64, 1995
Division 2.8	
Subdivision 2.8.3	
s 2.55	am No 193, 1998
Subdivision 2.8.4	
s 2.64	am No 193, 1998
Part 3	
r 3.01	rs No 432, 1994
	am No 430, 1995
	rs No 293, 1997
r 3.02	am No 69, 1997
r 3.03	am Act No. 169, 1995
r 3.04A	ad No 432, 1994
r 3.09A	ad No 159, 1995
r 3.09B	ad No 159, 1995
r 3.10	am No 189, 1994; No 158, 1995; No 193, 1998
r 3.13	ad No 159, 1995
Part 4	
Division 4.1	
r 4.03	am No 189, 1994
r 4.04	am No 189, 1994
r 4.05	am No 189, 1994
Division 4..2	
r 4.08	am No 83, 1998
r 4.09	am No 189, 1994; No 384, 1995
r 4.10	am No 193, 1998
r 4.11	am No 193, 1998
r 4.12	ad No 142, 1995
	am No 117, 1997; No 193, 1998
r 4.13	ad No 158, 1995

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
Part 5	
Part 5 heading	rs No 64, 1995
Division 5.1	
r 5.01	am No 189, 1994; No 159. 1995; No 384, 1995; No 117, 1997; No 309, 1997; No 83, 1998; No 193, 1998
r 5.01A	ad No 189, 1994
	am No 309, 1997
r 5.01B	ad No 64, 1995
r 5.02	am No 47, 1995; No 64, 1995
r 5.02A	ad No 159, 1995
r 5.02B	ad No 309, 1997
r 5.02C	ad No 309, 1997
r 5.03	am No 189, 1994; No 64, 1995; No 175, 1998
Division 5.2	
r 5.06	am No 117, 1997
r 5.06A	ad No 117, 1997
Division 5.4	
Division 5.4	ad No 47, 1995
r 5.09	ad No 47, 1995
	am No 159, 1995
r 5.10	ad No 47, 1995
r 5.11	ad No 64, 1995
Division 5.5	
Division 5.5	ad No 64, 1995
r 5.12	ad No 64, 1995
r 5.13	ad No 64, 1995
	rs No 159, 1995
r 5.14	ad No 64, 1995
	am No 159, 1995; No 384, 1995
r 5.15	ad No 64, 1995
r 5.15A	ad No 159, 1995
r 5.15B	ad No 159, 1995
r 5.15C	ad No 384, 1995
r 5.15D	ad No 384, 1995
r 5.16	ad No 64, 1995
r 5.17	ad No 64, 1995
	am No 159, 1995; No 384, 1995; No 117, 1997; No 193, 1998
r 5.18	ad No 64, 1995
	am No 159, 1995

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
Division 5.6	
Division 5.6	ad No 159, 1995
r 5.19	ad No 159, 1995
r 5.20	ad No 159, 1995
r 5.21	ad No 159, 1995
r 5.22	ad No 159, 1995
r 5.23	ad No 159, 1995
r 5.24	ad No 159, 1995
Part 6	
Division 6.1	
Subdivision 6.1.1	
r 6.01	am No 189, 1994; No 64, 1995; No 57, 1996; No 344, 1996; No 117, 1997; No 152, 1997; No 153, 1997; No 293, 1997; No 343, 1997; No 83, 1998; No 175, 1998; No 177, 1998
Subdivision 6.1.2	
r 6.02	am No 159, 1995; No 117, 1997
	rs No 175, 1998
r 6.03	am No 175, 1998
r 6.04	am No 57, 1996; No 344, 1996
	rep No 175, 1998
r 6.04A	ad No 117, 1997
	rep No 175, 1998
r 6.06	am No 189, 1994; No 175, 1998
Subdivision 6.1.3	
r 6.07	am No 117, 1997
	rs No 175, 1998
r 6.08	am No 189, 1994; No 117, 1997
	rs No 175, 1998
r 6.09	am No 57, 1996; No 344, 1996; No 117, 1997
	rs No 175, 1998
r 6.09A	ad No 117, 1997
	rep No 175, 1998
Subdivision 6.1.4	
r 6.10	am No 189, 1994; No 117, 1997; No 293, 1997; No 175, 1998
r 6.11	am No 189, 1994; No 117, 1997; No 293, 1997; No 175, 1998
r 6.13	rs No 189, 1994
Subdivision 6.1.5	
r 6.14	am No 175, 1998
r 6.15A	ad No 83, 1998
r 6.16	am No 117, 1997; No 83, 1998; No 175, 1998

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
r 6.16A	ad No 175, 1998
Division 6.2	
r 6.17	am No 159, 1995
Division 6.3	
Subdivision 6.3.1	
r 6.18	am No 175, 1998
r 6.19	am No 175, 1998
r 6.19A	ad No 152, 1997
	am No 343, 1997; No 193, 1998
r 6.20	am No 189, 1994
r 6.21	am No 189, 1994; No 117, 1997; No 83, 1998; No 175, 1998
r 6.22	am No 189, 1994; No 117, 1997
r 6.22A	ad No 189, 1994
r 6.22B	ad No 117, 1997
	am No 193, 1998
Subdivision 6.3.2	
r 6.23	am No 175, 1998
r 6.25	am No 189, 1994; No 117, 1997; No 83, 1998
r 6.26	am No 189, 1994
r 6.27A	ad No 189. 1994
r 6.27B	ad No 117, 1997
	am No 193, 1998
Division 6.4	
r 6.28	rs No 142, 1995
	am No 159, 1995; No 117, 1997
r 6.29	rs No 142, 1995
	am No 159, 1995; No 117, 1997
Division 6.4A	
Division 6.4A	ad No 159, 1995
r 6.29A	ad No 159, 1995
r 6.29B	ad No 159, 1995
Division 6.5	
r 6.30	am No 189, 1994; No 64, 1995
Part 7	
r 7.02	rs No 117, 1997
r 7.04	am No 432, 1994; No 117, 1997; No 293, 1997
r 7.05	am No 432, 1994; No 117, 1997; No 293, 1997
Part 8	
r 8.01	am No 108, 1998
r 8.01A	ad No 44, 1996

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
r 8.03	rs No 430, 1995
Part 9	
Division 9.3	
r 9.19	am No 193, 1998
Division 9.4	
r 9.23	am No 193, 1998
r 9.24	am No 193, 1998
Division 9.5	
r 9.27	am No 189, 1994
Division 9.6	
r 9.36	am No 189, 1994
Division 9.7	
r 9.43	am No 193, 1998
r 9.44	am No 193, 1998
Part 10	
Part 10 heading	rs No 159, 1995
Division 10.2	
r 10.01	rs No 159, 1995
	am No 193, 1998
r 10.02	rep No 64, 1995
	ad No 159, 1995
r 10.03	rs No 159, 1995
r 10.04	rep No 159, 1995
r 10.04A	ad No 432, 1994
	rep No 159, 1995
r 10.05	rep No 64, 1995
Division 10.3	
r 10.06	rs No 64, 1995
	am No 159, 1995; No 117, 1997
Part 11	
Part 11 heading	am No 193, 1998
r 11.01	am No 193, 1998
r 11.02	am No 193, 1998; No 240, 1998
r 11.03	am No 193, 1998
r 11.07	am No 193, 1998
r 11.08	rs No 64, 1995
	am No 159, 1995; No 384, 1995; No 193, 1998
Part 12	
r 12.01	am No 432, 1994; No 344, 1996; No 193, 1998
r 12.05	am No 193, 1998

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
r 12.06	am No 193, 1998
r 12.08	am No 432, 1994
	rs No 430, 1995
	am No 193, 1998
r 12.11	am No 432, 1994; No 193, 1998
r 12.12	am No 193, 1998
r 12.13	am No 193, 1998
r 12.14	am No 193, 1998
r 12.15	am No 193, 1998
r 12.16	rep No 344, 1996
r 12.17	rep No 344, 1996
r 12.18	rep No 344, 1996
Part 13	
Division 13.1	
Subdivision 13.1.1	
Subdivision 13.1.1 heading	rs No 189, 1994
r 13.01	am No 189, 1994
Subdivision 13.1.1A	
Subdivision 13.1.1A heading	ad No 189, 1994
Subdivision 13.1.2	
Subdivision 13.1.2	am No 189, 1994
	rep No 117, 1997
r 13.04	rep No 117, 1997
Subdivision 13.1.3	
Subdivision 13.1.3	ad No 189, 1994
r 13.05	ad No 189, 1994
Subdivision 13.1.4	
Subdivision 13.1.4	ad No 189, 1994
r 13.06	ad No 189, 1994
r 13.07	ad No 189, 1994
s 13.08	ad No 189, 1994
r 13.09	ad No 189, 1994
	am No 193, 1998
r 13.10	ad No 189, 1994
Division 13.2	
r 13.11	am No 189, 1994; No 432, 1994
r 13.13	am No 189, 1994
r 13.14	am No 83, 1998
r 13.15A	ad No 83, 1998
r 13.16	am No 189, 1994; No 158, 1995; No 221, 1997; No 193, 1998

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
r 13.17	rs No 189, 1994
	am No 432, 1994; No 193, 1998 (r 47(2) md not incorp)
r 13.17A	ad No 189, 1994
	am No 432, 1994; No 193, 1998
r 13.17AA	ad No 432, 1994
	am No 193, 1998
r 13.17B	ad No 189, 1994
r 13.17C	ad No 159, 1995
Division 13.3	
r 13.19	am Act No 169, 1995
r 13.22A	ad No 143, 1997
	am No 193, 1998
r 13.22B	ad No 143, 1997
	rep No 193, 1998
r 13.22C	ad No 143, 1997
	am No 76, 1998
	rep No 193, 1998
Division 13.5	
Division 13.5	ad No 344, 1996
r 13.24	ad No 344, 1996
	am No 193, 1998
r 13.25	ad No 344, 1996
	am No 117, 1997; No 193, 1998
r 13.26	ad No 344, 1996
	am No 193, 1998
Schedule 1AAA	
Schedule 1AAA	ad No 430, 1995
Schedule 1AA	
Heading to Schedule 1AA	rs No 122, 1996
Schedule 1AA	ad No 240, 1995
	am No 122, 1996; No 83, 1998
Schedule 1A	
Schedule 1A	ad No 189, 1994
Schedule 1B	
Schedule 1B	ad No 189, 1994
	am No 158, 1995; No 193, 1998
Schedule 1	
Schedule 1	am No 189, 1994; No 152, 1997; No 153, 1997; No 343, 1997; No 415, 1997; No 193, 1998

Authorised Version F2025C00501 registered 08/05/2025

Endnote 4—Amendment history

Provision affected	How affected
Schedule 2	
Schedule 2.....	am No 189, 1994; No 159, 1995; No 293, 1997
Schedule 3	
Schedule 3.....	am No 193, 1998

Authorised Version F2025C00501 registered 08/05/2025