# Superannuation Industry (Supervision) Regulations 1994

**Statutory Rules No. 57, 1994**

made under the

*Superannuation Industry (Supervision) Act 1993*

## Compilation No. 94

| | |
|---|---|
| **Compilation date:** | 2 June 2015 |
| **Includes amendments up to:** | SLI No. 79, 2015 |
| **Registered:** | 2 June 2015 |

This compilation is in 2 volumes

**Volume 1: regulations 1.01–14.07**
Volume 2: Schedules and Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

# About this compilation

### This compilation

This is a compilation of the *Superannuation Industry (Supervision) Regulations 1994* that shows the text of the law as amended and in force on 2 June 2015 (the ***compilation date***).

This compilation was prepared on 2 June 2015.

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 ComLaw (www.comlaw.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 series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

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.

### 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 series page on ComLaw 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 Name of Regulations ..... 1
1.02 Commencement ..... 1
1.03 Interpretation ..... 1
1.03A Lost member ..... 13
1.03AA Defined benefit interest ..... 15
1.03AAA Defined benefit fund ..... 15
1.03AB Meaning of *growth phase* ..... 16
1.03C Meaning of *permanent incapacity* ..... 16
1.04 Prescribed matters (Act, s 10) ..... 17
1.04AAAA Interdependency relationships (Act s 10A) ..... 21
1.04AAA Modified meaning of *member* (Act s 15B) ..... 23
1.04A Specified body or person (Act s 19) ..... 24
1.04AA Self managed superannuation funds—persons not taken to be employees (Act s 17A(8)) ..... 24

**Part 1A—Annuities and pensions** 25

**Division 1A.1** 25

1.05A Interpretation ..... 25
1.05 Meaning of annuity (Act, s 10) ..... 25
1.06 Meaning of *pension* (Act, s 10) ..... 47
1.07 Periods when beneficiary may not receive benefits ..... 66
1.07A Commutation of allocated annuities and pensions ..... 66
1.07B Commutation of other annuities and pensions ..... 68
1.07C Commutation of market linked income stream ..... 70
1.07D Commutation of superannuation income stream ..... 72

**Division 1A.2—Operating standards** 74

1.08 Restriction on factors for converting pensions ..... 74

**Part 2—Information for certain parties** 75

**Division 2.1—Introductory** 75

2.01 Interpretation ..... 75
2.02 Scope and application of this Part ..... 75
2.03 Duties and requirements arising under this Part ..... 76
2.04 Reasonable efforts are sufficient ..... 76
2.05 Charges for information requested ..... 77





Federal Register of Legislative Instruments F2015C00472

**Division 2.4—Information to be given for each reporting period** 78
**Subdivision 2.4.1—Preliminary** 78
2.17 Interpretation ..... 78
2.18 Application ..... 78
**Subdivision 2.4.3—Derivatives charge ratio** 79
2.29 Specific requirements in particular cases ..... 79
**Division 2.5—Information on request** 80
2.30 Application ..... 80
2.31 Documents may be made available for inspection ..... 80
2.32 Time for compliance ..... 80
2.33 Specific requirements ..... 80
**Division 2.5A—Information about superannuation interest subject to payment split** 82
2.36B Application ..... 82
2.36C Information to be provided by trustee when interest becomes subject to payment split ..... 82
2.36D Other information to be provided by trustee ..... 84
2.36E Other information to be given by trustee—adverse effects on benefits ..... 85
**Division 2.6—Remuneration of executive officers and individual trustees** 87
2.37 Prescribed details ..... 87
2.38 Obligation to make information publicly available—RSE licensee of registrable superannuation entity ..... 94
**Part 3—Matters prescribed or specified in relation to public offer entities** 97
3.01 Public offer superannuation fund—member of a prescribed class ..... 97
3.04 Section 54 of the Act—prescribed percentages ..... 98
3.04A Removal of trustee of public offer entity—s 60A(2) of the Act ..... 99
3.05 Policy committees—sections 91, 92 and 93 of the Act ..... 100
3.06 Policy committees—functions (paragraphs 91(3)(b), 92(3)(b) and 93(3)(b) of the Act) ..... 102



Federal Register of Legislative Instruments F2015C00472

3.07 Definition of policy committee in section 10 of the Act—matters specified for purposes of paragraph (a) ..... 103
3.08 Policy committees—duties of trustee ..... 103
3.09 Dissolution of policy committees ..... 104
3.10 Commission and brokerage ..... 104
3.11 Payment by trustee of a public offer entity of commission or brokerage ..... 105

**Part 3A—Matters prescribed or specified in relation to licensing of trustees and of groups of individual trustees** 107

**Division 3A.1—Classes of RSE licences** 107
3A.01 Public offer entity licences ..... 107
3A.02 Non-public offer entity licences ..... 107
3A.03 Extended public offer entity licences ..... 107
3A.03A Acting trustee licences ..... 108

**Division 3A.3—Applying for RSE licences** 109
3A.05 Definitions ..... 109
3A.06 Application fees ..... 109

**Division 3A.4—Conditions on RSE licences** 113
3A.07 Conditions on RSE licences of FHSA providers ..... 113

**Part 3B—Superannuation data and payment matters** 114
3B.01 Definitions ..... 114
3B.02 Prescribed eligible superannuation entity for register ..... 114
3B.03 Information to be given for register ..... 114

**Part 4—Management and trusteeship of superannuation entities** 117

**Division 4.1—Prescribed matters** 117
4.01 Covenants in governing rules of superannuation entity—prescribed information and documents ..... 117
4.02 Covenants in governing rules of self managed superannuation fund—beneficiary investment choice ..... 117
4.02A Trustee subject to direction—registrable superannuation entity other than regulated superannuation fund with fewer than 5 members ..... 118



Federal Register of Legislative Instruments F2015C00472

4.02AA Operating standard—direction on investment option to trustee of regulated superannuation fund with fewer than 5 members ..... 120
4.03 Trustee of employer-sponsored fund—prescribed direction by employer-sponsor or associate of employer sponsor ..... 122
4.04 Governing rules of a superannuation entity—prescribed exercise of discretion by non-trustee ..... 123
4.05 Governing rules of a superannuation entity—prescribed circumstances of amendment ..... 124
4.06 Removal of member representatives—prescribed circumstances ..... 125
4.07 Removal of independent trustee or independent member—prescribed circumstances ..... 125

**Division 4.2—Operating standards** 127

4.07C Definitions ..... 127
4.07D Operating standard—permitted types of insurance ..... 127
4.07E Operating standard—self-insurance ..... 128
4.08 Operating standard—voting rule where equal representation applies ..... 130
4.08A Operating standard—member representation for certain regulated superannuation funds where a declaration under subsection 18(7) of the Act applies ..... 131
4.09 Operating standard—investment strategy ..... 132
4.09A Operating standard—money and other assets to be kept separate (self managed superannuation funds) ..... 133
4.10 Operating standard—investment by non-complying superannuation funds ..... 133
4.10A Operating standard—ownership of units in a PST ..... 134
4.11 Operating standard—investment by non-complying approved deposit funds ..... 134
4.11A Operating standard—acceptance of deposits by an approved deposit fund ..... 134
4.12 Operating standard—acceptance by regulated superannuation and approved deposit funds of rollovers and transfers ..... 134
4.13 Operating standard—lending to members of an approved deposit fund ..... 135



Federal Register of Legislative Instruments F2015C00472

**Part 5—Benefit protection standards** 137

**Division 5.1—Preliminary** 137

5.01 Interpretation ..... 137
5.01A Operating standards—determination of costs and investment return ..... 141
5.01B Trustee may provide greater protection than this Part requires ..... 142
5.02 Determination of costs ..... 142
5.02B Priority in deducting surcharge or instalment ..... 143
5.02C Refund of costs ..... 143
5.03 Investment returns ..... 144

**Division 5.2—Minimum benefits** 145

5.04 Minimum benefits—regulated superannuation funds ..... 145
5.05 Mandated employer contributions—regulated superannuation funds ..... 145
5.06 Certain benefits rolled over or transferred to regulated superannuation funds taken to be minimum benefits ..... 147
5.06A Benefits rolled over or transferred from an RSA to regulated superannuation funds taken to be minimum benefits ..... 148
5.06B Minimum benefits if new interest created, or benefits rolled over or transferred, under Division 7A.2 ..... 148
5.07 Minimum benefits—approved deposit funds ..... 149

**Division 5.3—Treatment of minimum benefits** 150

5.08 How minimum benefits are to be treated ..... 150

**Part 6—Payment standards** 153

**Division 6.1—Introductory** 153

**Subdivision 6.1.1—General interpretation** 153

6.01 Interpretation ..... 153
6.01AA Meaning of *non-commutable allocated annuity* ..... 161
6.01AB Meaning of *non-commutable allocated pension* ..... 162
6.01A Meaning of *terminal medical condition* ..... 163
6.01B Conditions of release for temporary residents ..... 164

**Subdivision 6.1.2—Preserved benefits** 164



Federal Register of Legislative Instruments F2015C00472

6.02 Preserved benefits in regulated superannuation funds—before 1 July 1999 ..... 164
6.03 Preserved benefits in regulated superannuation funds—on and after 1 July 1999..... 165
6.05 Preserved benefits in approved deposit funds..... 166
6.06 Effect of rollover or transfer on preserved benefits ..... 166
**Subdivision 6.1.3—Restricted non-preserved benefits** 166
6.07 Restricted non-preserved benefits in regulated superannuation funds—before 1 July 1999 ..... 166
6.08 Restricted non-preserved benefits in regulated superannuation funds—on and after 1 July 1999 ..... 168
6.09 Effect of rollover or transfer on restricted non-preserved benefits ..... 169
**Subdivision 6.1.4—Unrestricted non-preserved benefits** 170
6.10 Unrestricted non-preserved benefits—regulated superannuation funds..... 170
6.11 Unrestricted non-preserved benefits—approved deposit funds ..... 171
6.12 Movement of benefits between categories by satisfaction of conditions of release..... 172
6.13 Effect of rollover or transfer on unrestricted non-preserved benefits ..... 173
**Subdivision 6.1.5—Miscellaneous** 173
6.14 Indexation..... 173
6.15 Contributions and benefits taken to be preserved benefits ..... 173
6.15A Certain benefits taken to be unrestricted non-preserved benefits ..... 174
6.16 Redistribution of member benefits within a fund in certain circumstances by operation of governing rules or action of trustee ..... 176
6.16A When non-preserved benefits may be reduced ..... 177
**Division 6.2—Payment of benefits** 178
6.17 Restriction on payment..... 178
6.17A Payment of benefit on or after death of member(Act, s 59(1A)) ..... 181
6.17AA Payments prevented under *Family Law Act 1975*..... 183
6.17B Duty to seek information ..... 183
6.17C Payment and commutation of pension in breach of standards..... 184



Federal Register of Legislative Instruments F2015C00472

**Division 6.3—Cashing of benefits** 185

**Subdivision 6.3.1—Regulated superannuation funds** 185

6.18 Voluntary cashing of preserved benefits in regulated superannuation funds ..... 185

6.19 Voluntary cashing of restricted non-preserved benefits in regulated superannuation funds ..... 186

6.19A Release of benefits on compassionate grounds..... 187

6.20 Voluntary cashing of unrestricted non-preserved benefits in regulated superannuation funds ..... 189

6.20A Compulsory cashing of benefits in a regulated superannuation fund that is not an unfunded public sector superannuation scheme—temporary residents ..... 189

6.20B Voluntary cashing of benefits in a regulated superannuation fund that is an unfunded public sector superannuation scheme—temporary residents ..... 191

6.20C Cashing of benefits in a regulated superannuation fund—payment to Commissioner of Taxation ..... 192

6.21 Compulsory cashing of benefits in regulated superannuation funds..... 193

6.22 Limitation on cashing of benefits in regulated superannuation funds in favour of persons other than members or their legal personal representatives..... 194

6.22A Priority in cashing benefits in certain cases—regulated superannuation funds..... 197

6.22B When benefits in regulated superannuation funds may be cashed in favour of persons except members ..... 197

**Subdivision 6.3.2—Approved deposit funds** 198

6.23 Voluntary cashing of preserved benefits in approved deposit funds..... 198

6.24 Voluntary cashing of unrestricted non-preserved benefits in approved deposit funds ..... 198

6.24A Compulsory cashing of benefits in approved deposit funds—temporary residents ..... 199

6.24B Cashing of benefits in approved deposit funds—payment to Commissioner of Taxation..... 200

6.25 Compulsory cashing of benefits in approved deposit funds ..... 201



Federal Register of Legislative Instruments F2015C00472

6.26 Limitation on cashing of benefits in approved de posit funds in favour of persons other than members or their legal personal representatives ..... 201
6.27 Limitation on cashing benefits in approved deposit funds of less than $500 ..... 202
6.27A Priority in cashing benefits in certain cases—approved deposit funds ..... 203

**Division 6.4—General rules for rollover and transfer of benefits in regulated superannuation funds and approved deposit funds** 204

6.27B Definition ..... 204
6.28 Rollover—regulated superannuation funds and approved deposit funds ..... 204
6.29 Transfer—funds ..... 205

**Division 6.5—Compulsory rollover and transfer of superannuation benefits in regulated superannuation funds and approved deposit funds** 206

6.30 Application ..... 206
6.31 Definitions for Division 6.5 ..... 206
6.32 Superannuation data and payment matters ..... 207
6.33 Request for rollover or transfer of withdrawal benefit ..... 207
6.33A Action by receiving fund on receipt of request ..... 208
6.33B Transferring fund must electronically receive request ..... 210
6.33C Trustee may request information if not provided ..... 211
6.33D Validation of member's details by transferring fund ..... 212
6.33E Verification of self managed superannuation fund and member's details ..... 214
6.34 Rollover or transfer of withdrawal benefit ..... 215
6.34A Timeframes for rollovers and transfers ..... 217
6.34B Member details for rollover or transfer ..... 220
6.34C Receiving fund must electronically receive information and payment ..... 220
6.34D Receiving fund must allocate amount to member ..... 221
6.35 When a trustee may refuse to roll over or transfer an amount ..... 223
6.36 Suspension or variation of obligation to roll over or transfer amounts by APRA ..... 223



Federal Register of Legislative Instruments F2015C00472

6.37 Suspension or variation of obligation to roll over or transfer amounts by APRA—application by trustee ..... 224
6.38 Trustee's obligations if APRA suspends or varies obligation to roll over or transfer amounts ..... 225

**Division 6.6—Additional standards for eligible rollover funds** 226
6.39 Obligations of trustees ..... 226

**Division 6.7—Spouse contributions-splitting amounts** 227
6.40 Interpretation ..... 227
6.41 Meaning of *taxed splittable contribution*, *untaxed splittable contribution* and *untaxed splittable employer contribution* ..... 229
6.42 Meaning of *splittable contribution* ..... 230
6.43 Application of Division 6.7 ..... 231
6.44 Application to roll over, transfer or allot an amount of contributions ..... 231
6.45 Decision on application ..... 233
6.46 Receiving spouse ..... 234

**Division 6.8—Conditions for the use of tax file numbers to facilitate consolidation or rollover** 235
6.47 Definitions for Division 6.8 ..... 235
6.48 Conditions for use of tax file numbers ..... 235
6.49 Consent to use beneficiary's tax file number ..... 235
6.50 Procedure for searching for amounts to facilitate consolidation by rollover ..... 236

**Part 6A—Portability forms** 237
6A.01 Establishment of scheme ..... 237
6A.02 Request to rollover or transfer withdrawal benefit ..... 237
6A.03 Verification of data ..... 238

**Part 7—Contribution and benefit accrual standards (regulated superannuation funds)** 239

**Division 7.1—General** 239
7.01 Interpretation ..... 239
7.02 Application of Division 7.1 ..... 239
7.03 Restriction on accepting contributions or granting benefit accruals ..... 239
7.03A Acceptance of contributions—registrable superannuation entities ..... 240



Federal Register of Legislative Instruments F2015C00472

7.04 Acceptance of contributions—regulated superannuation funds....240
7.04A Acceptance of contributions—public offer superannuation funds....245
7.05 Accrual of benefits—defined benefit funds....246
**Division 7.2—Contributions to be allocated to members** 248
**Subdivision 7.2.1—Superannuation data and payment matters** 248
7.07 Superannuation data and payment matters....248
7.07AA Application....248
7.07A Initial registration of employee....248
7.07B Validation of initial registration information....249
7.07C Trustee may give membership or account number to Commissioner of Taxation....250
7.07D Invalid initial registration information....250
7.07E Employee details for contribution....251
7.07EA Employee details may be passed through default fund....251
7.07F Information and contributions sent electronically....252
7.07G Incomplete contribution information....253
7.07H Contributions to be allocated to member....254
**Subdivision 7.2.2—Operating standards** 255
7.07J Application....255
7.08 Contributions to be allocated to members....255
**Division 7.3—Contributions to be allocated to members—certain other regulated superannuation funds** 257
7.09 Application of Division 7.3....257
7.10 Operating standard....257
7.11 Contributions to be allocated to members....257
**Part 7A—Superannuation interests subject to payment split** 258
**Division 7A.1—General** 258
7A.01 Purpose of Part 7A....258
7A.01A Relevant condition of release....258
7A.02 Operating standards....259
7A.03 Trustee to give payment split notice....259
**Division 7A.1A—Options for trustee in relation to interests** 260
7A.03A Application of Division 7A.1A....260
7A.03B Trustee may create a new interest....261



Federal Register of Legislative Instruments F2015C00472

7A.03C Request to retain a non-member spouse interest....263
7A.03D Request to roll over or transfer benefits....264
7A.03E Request for lump sum payment....264
7A.03F Requirements for requests....264
7A.03G Giving effect to a request....265
7A.03H Trustee's options if no request is received....266
7A.03I Confirming that the non-member spouse has an interest in the fund....268
7A.03J Rolling over or transferring the non-member spouse's interest....269
7A.03K Paying a lump sum....270

**Division 7A.2—Options available for certain superannuation interests** 271

7A.04 Application of Division 7A.2....271
7A.05 Request for new interest....272
7A.06 Request for transfer of benefits....272
7A.07 Request for lump sum payment....272
7A.08 Requirements for requests....273
7A.09 Giving effect to request....273
7A.10 Trustee options if no request received....274
7A.11 Creating a new interest....276
7A.12 Rolling over or transferring transferable benefits....279
7A.13 Paying a lump sum....281

**Division 7A.3—Splittable payments—payment standards for non-member spouse entitlements** 284

7A.14 Application of Division 7A.3....284
7A.16 Preservation of non-member spouse entitlements....284
7A.17 Payment of non-member spouse entitlements from pension....286
7A.18 Cashing of non-member spouse entitlements....288

**Division 7A.4—Superannuation interest split under the Family Law (Superannuation) Regulations 2001** 291

7A.19 Application....291
7A.20 Creating a new interest....291
7A.21 Rolling over or transferring benefits....292
7A.22 Paying an amount....292



Federal Register of Legislative Instruments F2015C00472

**Part 8—Financial reporting** 293
8.01 Accounts—statement of financial position and financial statement ... 293
8.02 Accounts and statements that must be prepared ... 294
8.02A Period within which an auditor must be appointed ... 294
8.02B Asset must be valued at market value ... 295
8.03 Period within which audit report must be given ... 295

**Part 9—Financial management of funds** 296

**Division 9.1—Introductory** 296
9.01 Interpretation ... 296

**Division 9.2—Financial position of funds** 297
9.02 Application ... 297
9.02A Interpretation ... 297
9.03 Subsection 130(1) of the Act etc—obligations of actuaries and auditors ... 297
9.04 Subsection 130(7) of the Act—unsatisfactory financial position ... 298

**Division 9.2A—Size of defined benefit funds** 300
9.04A Application ... 300
9.04B Sub-funds to be treated as funds ... 300
9.04C Operating standard ... 301
9.04D Size of defined benefit funds ... 301

**Division 9.2B—Provision of defined benefit pensions** 302
9.04E Definition for Division 9.2B ... 302
9.04F Application of Division 9.2B ... 302
9.04G Sub-funds to be treated as funds ... 303
9.04H Operating standard ... 303
9.04I Provision of defined benefit pensions ... 303

**Division 9.3—Funding and solvency of defined benefit funds** 305
9.05 Application ... 305
9.06 Interpretation ... 305
9.07 Prescription of standards ... 307
9.08 Funding standard ... 307
9.09 Funding and solvency certificates—operating standard ... 307
9.10 Contents of funding and solvency certificates ... 308
9.11 Effective date of funding and solvency certificates ... 309



Federal Register of Legislative Instruments F2015C00472

9.12 Period of effect of funding and solvency certificates ..... 310
9.13 Effect of notifiable events on funding and solvency certificates ..... 311
9.14 Further funding and solvency certificates to be obtained ..... 312
9.15 Minimum benefit index ..... 313
9.16 Non-compliance with solvency requirement—technical insolvency ..... 314
9.17 Technical insolvency—operating standard ..... 315
9.18 Technical insolvency program—special funding and solvency certificate ..... 315
9.19 Technical insolvency programs—procedure ..... 317

**Division 9.4—Winding-up of defined benefit funds** 319
9.20 Application ..... 319
9.21 Interpretation ..... 319
9.22 Prescription of standards ..... 320
9.23 Winding-up of defined benefit funds ..... 320
9.24 Alternative programs approved by the Regulator ..... 321
9.25 Winding-up proceedings—priorities ..... 321

**9.5—Actuarial standards relating to defined benefit funds that are self-managed superannuation funds** 323
9.26 Application ..... 323
9.27 Interpretation ..... 323
9.28 Prescription of standards ..... 324
9.29 Actuarial investigation standard ..... 324
9.29A Actuarial investigation standard—exemption ..... 325
9.30 Actuarial reporting standard ..... 325
9.31 Contents of actuarial report ..... 326

**Division 9.6—Solvency of accumulation funds** 329
9.34 Application ..... 329
9.35 Interpretation ..... 329
9.36 Prescription of standards—accumulation funds ..... 330
9.37 Accumulation funds solvency standard ..... 330
9.38 Technical insolvency of accumulation funds—operating standard ..... 331
9.39 Technical insolvency program for accumulation funds—procedure ..... 331



Federal Register of Legislative Instruments F2015C00472

**Division 9.7—Winding-up of accumulation funds** 333
9.40 Application ... 333
9.41 Interpretation ... 333
9.42 Prescription of standards—winding-up of accumulation funds ... 334
9.43 Winding-up of accumulation funds ... 334
9.44 Alternative programs approved by the Regulator for accumulation funds ... 335
9.45 Accumulation fund winding-up proceedings—priorities ... 335

**Part 9A—Requirements relating to MySuper products** 337
9.46 Notification—accrued default amount attributed to MySuper product ... 337
9.46A Notification—periodic statements ... 338
9.47 Other factors that may be used for a lifecycle MySuper product ... 339
9.48 Limitation imposed by governing rules ... 339
9.49 Opt-out insurance for MySuper members cannot be obtained at reasonable cost ... 340

**Part 9A—Approved SMSF auditors** 341
9A.01 Qualifications ... 341
9A.02 Relevant courses ... 342
9A.03 Practical experience ... 342
9A.04 Continuing professional development requirements ... 343
9A.05 Professional indemnity requirements ... 343
9A.06 Auditor independence requirements ... 344
9A.07 When fees must be paid ... 344

**Part 10—Eligible rollover funds** 346
10.01 Application for authority to operate eligible rollover fund ... 346
10.02 Payment of benefit to eligible rollover fund ... 346
10.03 Operating standard—eligible rollover funds ... 347

**Part 11—Information to be given to the Regulator and related matters** 348
11.01 Definition ... 348
11.02A Service of contravention notice (Act s 252B) ... 348



Federal Register of Legislative Instruments F2015C00472

11.03 Period for giving information to the Regulator, Act, s 254(1) ..... 349
11.04 Prescribed information (subsection 254(1))—regulated superannuation funds ..... 349
11.05 Prescribed information (subsection 254(1))—approved deposit funds ..... 350
11.06 Prescribed information (subsection 254(1))—PSTs ..... 351
11.06A Specified person or body (Act s 254(1)) ..... 351
11.07 Operating standard—disclosure of certain information (funds other than self managed superannuation funds) ..... 351
11.07AA Operating standard—disclosure of certain information (self managed superannuation funds) ..... 353
11.07A Operating standard—disclosure on change of status ..... 353
11.08 Operating standard—disclosure of successor fund transfer ..... 354

**Part 11A—Register to be kept by APRA** 355
11A.01 Source of power for this Part ..... 355
11A.02 Definition ..... 355
11A.03 APRA must keep register ..... 355
11A.04 Regulated superannuation funds ..... 355
11A.05 Approved deposit funds ..... 356
11A.06 PSTs ..... 357

**Part 12—Pre-1 July 1988 funding credits and debits** 358
12.01 Definitions ..... 358
12.02 Pre-1 July 88 funding amounts ..... 358
12.03 Shortfall-in-assets amount—calculation ..... 359
12.04 Estimation of net market value of fund assets ..... 361
12.05 Value A of accrued benefits ..... 361
12.06 Value B of accrued benefits ..... 363
12.07 Calculation of value A or B of accrued benefits ..... 364
12.08 Date before which applications to be made ..... 366
12.09 Application fees ..... 366
12.10 Prescribed events for the purposes of paragraph 342(4)(a) of the Act ..... 367
12.11 When and how APRA to be notified of prescribed events ..... 367
12.12 Transfer of PJFCs—trustees of transferor funds ..... 368
12.13 Transfer of PJFCs—trustees of transferee funds ..... 368



Federal Register of Legislative Instruments F2015C00472

12.14 Transfer of PJFCs—revocation of approval ..... 370
12.15 Transfer of PJFCs—requirements to be satisfied ..... 370
12.19 Actuaries to certify in relation to determinations ..... 371
12.20 Substituted accounting periods ..... 371

**Part 12A—Trans-Tasman retirement savings portability** 372

**Division 1—General** 372
12A.01 Purpose of Part 12A ..... 372
12A.02 Definitions for Part 12A ..... 372
12A.03 Payments to which this Part applies ..... 374

**Division 2—New Zealand-sourced amounts** 376
12A.04 Application of Division 2 ..... 376
12A.05 Treatment of New Zealand-sourced amounts ..... 376
12A.06 Benefit protection standards ..... 376
12A.07 Payment standards ..... 377
12A.08 Contribution and benefit accrual standards ..... 380

**Division 3—Payment of amount to KiwiSaver scheme** 383
12A.09 Application of Division 3 ..... 383
12A.10 Payment ..... 383

**Division 4—Conditions of release of benefits** 385
12A.11 Application of Division 4 ..... 385
12A.12 Conditions of release ..... 385

**Part 13—Miscellaneous** 386

**Division 13.1A—Transitional arrangements arising out of the Superannuation Legislation Amendment Act (No. 3) 1999** 386
13.10A Transitional arrangement—preserved OSS Act provisions ..... 386
13.10B Outstanding annual returns ..... 387
13.10C Outstanding amounts ..... 387
13.10D Certain annual returns and amounts for 1999-2000 year of income ..... 388

**Division 13.2—Various operating standards** 389
13.11 Interpretation ..... 389
13.12 Assignments of superannuation interests ..... 389
13.13 Charges over a member's benefits ..... 389
13.14 Charges over assets of funds ..... 390



Federal Register of Legislative Instruments F2015C00472

13.15 Restrictions on the standards ..... 390
13.15A Charges in relation to certain derivatives contracts ..... 390
13.16 Accrued benefits—restriction on alteration ..... 391
13.17 Approved deposit funds—restrictions on loans and investments ..... 395
13.17A Public offer superannuation funds—restrictions on loans and investments ..... 396
13.17AA Rules for certain investments by funds in related bodies corporate ..... 396
13.17B Orders etc of the Superannuation Complaints Tribunal to be complied with ..... 397
13.17C Funds that cease to be eligible rollover funds must maintain entitlements ..... 398

**Division 13.3—Various prescribed matters** 399

13.18 Sole purpose test—specified age ..... 399
13.18AA Self managed superannuation funds—investment in collectables and personal use assets ..... 399
13.18A Conditional offer of goods or services—exemptions ..... 402
13.19 Custodians of superannuation entities—specified amounts ..... 403
13.19A Disqualification by Federal Court—matters to take into account ..... 403
13.20 Advertisement of scheme for winding-up or dissolution of superannuation entity ..... 404
13.21 Report of inspector—prescribed agencies ..... 404
13.22 Statements made at an examination—manner of authentication ..... 405

**Division 13.3A—In-house assets of superannuation funds** 406

13.22A Definitions for Division 13.3A ..... 406
13.22B Assets held at commencement of Division 13.3A (Act s 71) ..... 406
13.22C Assets acquired after commencement of Division 13.3A (Act s 71) ..... 407
13.22D When regulations 13.22B and 13.22C cease to apply to assets ..... 409

**Division 13.4—Repeal** 412

13.23 Superannuation Industry (Supervision) (Approval of Trustees) Regulations ..... 412



Federal Register of Legislative Instruments F2015C00472

**Division 13.5—Reconsideration and review of decisions** 412
13.24 Notice of reviewable decisions and reasons for decisions ..... 412
13.25 Reconsideration of certain decisions ..... 413
13.26 Review by Tribunal of reconsidered decisions ..... 413

**Part 14—Transitional arrangements** 414

**Division 14.1—Transitional arrangements arising out of Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012** 414
14.01 Definition ..... 414
14.02 Applications before 1 July 2013 as an approved SMSF auditor ..... 414

**Division 14.2—Transitional arrangements arising out of Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)** 416
14.03 Arrangements ..... 416

**Division 14.3—Transitional arrangements arising out of the Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013** 417
14.04 Arrangements ..... 417

**Division 14.4—Transitional arrangements arising out of the Superannuation Laws Amendment (2014 Measures No. 1) Regulation 2014** 418
14.05 Arrangements ..... 418

**Division 14.5—Transitional arrangements arising out of the Tax and Superannuation Laws Amendment (2014 Measures No. 4) Regulation 2014** 419
14.06 Arrangements ..... 419

**Division 14.6—Transitional arrangements arising out of the Tax and Superannuation Laws Amendment (Release Conditions for Non-concessional Contributions) Regulation 2015** 420
14.07 Arrangements ..... 420



Federal Register of Legislative Instruments F2015C00472

# Part 1—Preliminary

## 1.01 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Regulations 1994*.

## 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:

***1997 Tax Act*** means the *Income Tax Assessment Act 1997*.

***account-based pension*** means a pension that is provided in accordance with the rules of a fund that:

(a) are described in paragraph 1.06(9A)(a); and
(b) meet the standards of subregulation 1.06(9A).

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

***accumulation interest*** means a superannuation interest that is not a defined benefit interest.



Federal Register of Legislative Instruments F2015C00472

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

***adjusted base amount***, in relation to a non-member spouse at a particular date, means the adjusted base amount applicable to the non-member spouse at that date worked out under Division 6.1A of the *Family Law (Superannuation) Regulations 2001*.

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

***allocated pension*** means a pension that is provided under rules of a superannuation fund that meet the standards of subregulation 1.06(4).

***allot***, for Division 6.7, means to credit an amount from a member's account to another account in the regulated superannuation fund held by, or created for, the receiving spouse otherwise than by transfer or roll-over.

***base amount payment split***, in relation to a superannuation interest, means a payment split under which a base amount is allocated to the non-member spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975*.

***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 as in force immediately before 1 July 2007.

***child contributions*** means contributions that are made to a regulated superannuation fund in respect of a child, other than:

(a) contributions made in respect of the child by, or on behalf of, an employer of the child; and

(b) contributions made by a child in respect of himself or herself.

***Co-contribution Act*** means the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.



Federal Register of Legislative Instruments F2015C00472

***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 Special Account;

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

***defined benefit fund***, subject to regulation 1.03AAA, means:

(a) a public sector superannuation scheme that:

(i) is a regulated superannuation fund; and

(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 interest*** has the meaning given by regulation 1.03AA.

***defined benefit member*** means a member who is entitled, on retirement or termination of employment, to be paid a benefit defined wholly or in part by reference to:

(a) the member's salary on retirement, termination of employment or an earlier date; or

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

(c) both (a) and (b); or

(d) a specified amount.

***defined benefit pension*** means a pension mentioned in section 10 of the Act, other than:

(a) a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund, solely for the purposes of providing benefits to members of that fund; or

(b) an allocated pension; or

(c) a market linked pension; or

(d) an account-based pension.

***defined benefit sub-fund*** means a sub-fund of a defined benefit fund that:

(a) has at least one defined benefit member; and

(b) satisfies the conditions mentioned in section 69A of the Act.

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

Note: As to what is an ***eligible rollover fund*** for Part 24 of the Act, *see* section 242 of the Act and regulation 10.01.

***eligible spouse contribution*** means a contribution made by an individual to a superannuation fund:

(a) to provide superannuation benefits for the individual's spouse, whether or not the benefits would be payable to the dependants of the individual's spouse if the spouse dies before or after becoming entitled to receive the benefits; and

(b) in circumstances in which the individual:

(i) could not have deducted the contribution under section 82AAC of the Tax Act in the 2006–07 income year or a previous year; and

(ii) cannot deduct the contribution under Subdivision 290-B of the 1997 Tax Act in the 2007–08 income year or a later year.

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



Federal Register of Legislative Instruments F2015C00472

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

***EPSSS*** means an exempt public sector superannuation scheme.

***FHSA Act*** means the *First Home Saver Accounts Act 2008*.

***flag lifting agreement*** means a flag lifting agreement under Part VIIIB of the *Family Law Act 1975*.

***FSR commencement*** has the same meaning as in section 1410 of the *Corporations Act 2001*.

Note: The ***FSR commencement*** is the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

***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.

***growth phase*** has the meaning given by regulation 1.03AB.

***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.

***life expectancy*** has the same meaning as ***life expectation factor*** in section 27H of the Tax Act.

***lost member*** has the meaning given by regulation 1.03A.

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



Federal Register of Legislative Instruments F2015C00472

***market linked annuity*** means an annuity provided under a contract that meets the standards of subregulation 1.05(10).

***market linked income stream*** means an annuity provided under a contract that meets the standards of subregulation 1.05(10), or a pension paid under rules that meet the standards of subregulation 1.06(8).

***market linked pension*** means a pension paid under rules that meet the standards of subregulation 1.06(8).

***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 spouse***, in relation to a superannuation interest that is subject to a payment split, means the person who is the member spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975*.

***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.

***non-member spouse***, in relation to a superannuation interest that is subject to a payment split, means the person who is the non-member spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975*.

***old Regulations*** means these Regulations as in force immediately before the FSR commencement.

***operative time***, for a payment split, means the operative time under Part VIIIB of the *Family Law Act 1975* for the payment split.



Federal Register of Legislative Instruments F2015C00472

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

***payment split*** means a payment split under Part VIIIB of the *Family Law Act 1975*.

***payment split notice*** means a notice given by a trustee under regulation 7A.03.

***pension age***:

(a) in relation to a person other than a person mentioned in paragraph (b)—has the meaning given by subsections 23(5A), (5B), (5C) or (5D) of the *Social Security Act 1991*; and

(b) in relation to a person who is a veteran within the meaning of the *Veterans' Entitlement Act 1986*—has the meaning that it has in section 5QA of that Act.

***percentage-only interest*** has the meaning given by Part VIIIB of the *Family Law Act 1975*.

***percentage payment split***, in relation to a superannuation interest, means a payment split under a superannuation agreement, flag lifting agreement or splitting order that specifies a percentage that is to apply to all splittable payments in respect of the interest.

***protected member*** has the meaning given by regulation 1.03B.

***PST*** means a pooled superannuation trust.

***receiving spouse*** has the meaning given by regulation 6.46.

***registered company auditor*** has the same meaning as in section 9 of the *Corporations Act 2001*.

***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:



Federal Register of Legislative Instruments F2015C00472

(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) a decision of APRA under paragraph 1.05(2)(c) refusing to approve a sum payable as benefit; or

(b) a decision of the Regulator under paragraph 1.06(2)(c) refusing to approve a sum payable as benefit; or

(c) a decision of the Regulator refusing to approve the use of a factor under subregulation 1.08(2); or

(d) a decision of APRA under paragraph 4.08A(2)(e) refusing to approve an arrangement for management and control of a fund; or

(e) a decision of the Regulator under paragraph 4.12(2)(b), 6.27B (b) or 7A.16 (8)(b) to not determine the form of consent; or

(f) a decision of APRA to refuse to suspend or vary an obligation of a trustee under subregulation 6.37(6); or

(g) a decision of the Regulator under subparagraph 7A.03J(2)(a)(ii) refusing to allow a longer period for a rollover or transfer of a non-member spouse's interest; or

(h) a decision of the Regulator under paragraph 7A.03K(2)(b) or 7A.13(7)(b) refusing to allow a longer period to pay a lump sum; or

(i) a decision of the Regulator under subparagraph 7A.12(4)(a)(ii) refusing to allow a longer period for rolling over or transferring transferable benefits; or

(j) a decision of the Regulator under paragraph 7A.16(3)(b) refusing to allow a longer period to allocate, rollover or transfer non-member spouse entitlements; or



Federal Register of Legislative Instruments F2015C00472

(k) a decision of the Regulator to give a direction to a trustee to obtain a new or a replacement funding and solvency certificate under subregulation 9.09(1A); or

(l) a decision of the Regulator under subregulation 9.24(2) refusing to approve an actuary's recommendation for a defined benefit fund; or

(m) a decision of the Regulator under subregulation 9.44(2) refusing to approve an actuary's recommendation for an accumulation fund; or

(n) a decision of APRA refusing to approve a proposed element of an actuarial basis for calculation of value A under subregulation 12.05(5) or (6); or

(o) a decision of APRA refusing to approve a proposed assumption or element of an actuarial basis for calculation of value B under subregulation 12.06(5); or

(p) a decision of APRA under regulation 12.08 to specify a day on or before which an application is to be made; or

(q) a decision of APRA refusing to approve an application to transfer a PJFC under subregulation 12.12(2) or 12.13(2); or

(r) a decision of APRA under regulation 12.14 to revoke an approval of an application to transfer a PJFC; or

(s) a decision of the Regulator refusing to consent to an alteration of accrued benefits under subparagraph 13.16(2)(a)(ii) or (d)(ii); or

(t) a decision of the Regulator to confirm or vary a reviewable decision under regulation 13.25.

***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.



Federal Register of Legislative Instruments F2015C00472

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

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

***splittable payment*** means a splittable payment under Part VIIIB of the *Family Law Act 1975*.

***splitting order*** means a splitting order under Part VIIIB of the *Family Law Act 1975*.

***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 agreement*** means a superannuation agreement under Part VIIIB of the *Family Law Act 1975*.

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

***Superannuation Holding Accounts Special Account*** means the Special Account established by section 8 of the *Small Superannuation Accounts Act 1995*.

***superannuation lump sum*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

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

***traditional life insurance policy*** means a life policy within the meaning of section 9 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 on:

(i) the death of the life insured; or

(ii) the occurrence of the earlier of the death of the life insured and the attainment by the life insured of the age specified in the policy.

***transferable benefits***, in relation to a superannuation interest that is subject to a payment split and in relation to the non-member spouse in relation to that interest, means benefits that are equal to:

(a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse when the benefits are transferred—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse when the benefits are transferred—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(c) if the payment split is a percentage payment split:

(i) for an entitlement, in respect of an accumulation interest in the growth phase that is not a partially vested accumulation interest, to which subparagraph (ii) does not apply—the amount in relation to the interest at the time when the benefits are transferred, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or



Federal Register of Legislative Instruments F2015C00472

(ii) for an entitlement in respect of an interest in a self-managed superannuation fund—the amount in relation to the interest at the time when the benefits are transferred, determined by a method that a court might use if the court were acting under paragraph 90MT(2)(b) of the *Family Law Act 1975*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(iii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time when the benefits are transferred, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split.

***unfunded public sector superannuation scheme*** means a regulated superannuation fund that is declared to be an unfunded defined benefits superannuation scheme under regulation 2A of the *Superannuation Contributions Tax (Assessment and Collection) Regulations 1997*.

***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 superannuation entity or an EPSSS in respect of the member; and

(c) an RSA in respect of the member; and

(d) another person or entity because of a payment split in respect of the member's interest in the superannuation entity;

if the member voluntarily ceased to be a member.

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



Federal Register of Legislative Instruments F2015C00472

***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).

## 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) either:

(A) the fund has never had an address for the member; or

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

(ii) the fund has not received a contribution or rollover in respect of the member within the last 12 months of the member's membership of the fund; 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 5 years of his or her membership of the fund; or

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



Federal Register of Legislative Instruments F2015C00472

(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 a self managed superannuation 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

(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 report certain details to the Commissioner (see regulation 5 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*); and

(b) that, if the member is transferred to another fund or an EPSSS (***the transferee fund***), the trustee of the transferring fund must supply certain information about the member to the trustee of the transferee fund (see regulation 7.9.81 of the *Corporations Regulations 2001*).



Federal Register of Legislative Instruments F2015C00472

There may also be consequences regarding the information to be supplied to the member (see regulation 7.9.61 of, and Part 14 of Schedule 10A to, the *Corporations Regulations 2001*).

## 1.03AA Defined benefit interest

(1) A superannuation interest is a ***defined benefit interest*** if it is:

(a) an interest in an unfunded public sector superannuation scheme that has at least 1 defined benefit member; or

(b) an interest that entitles the member who holds the interest, when benefits in respect of the interest become payable, to be paid a benefit defined, wholly or in part, by reference to one or more of the following:

(i) the amount of:

(A) the member's salary at the date of the termination of the member's employment, the date of the member's retirement, or another date; or

(B) the member's salary averaged over a period; or

(C) salary, or allowance in the nature of salary, payable to another person (for example, a judicial officer, a member of the Commonwealth or a State Parliament, a member of the Legislative Assembly of a Territory);

(ii) a specified amount;

(iii) specified conversion factors.

(2) However, a superannuation interest is not a ***defined benefit interest*** if the only benefits defined by reference to any of the amounts or factors mentioned in subparagraphs (1)(b)(i) to (iii) are benefits payable on death or invalidity.

## 1.03AAA Defined benefit fund

For the following provisions, a fund is taken to be a defined benefit fund if at least one member of the fund receives a defined benefit pension:

(a) paragraph (c) of the definition of ***investment return*** in subregulation 5.01(1);
(b) subregulation 5.04(3);
(c) regulation 7.05;
(d) Divisions 9.3 to 9.5.

## 1.03AB Meaning of *growth phase*

(1) A superannuation interest is taken to be in the ***growth phase*** at a particular date if the member satisfies 1 of the following requirements at that date:
   (a) the member has not satisfied a relevant condition of release;
   (b) the member has satisfied a relevant condition of release but no benefit has been paid in respect of the superannuation interest, and no action has been taken by or for the member under the governing rules of the fund to cash any benefit that the member is entitled to be paid as a result of satisfying the condition of release;
   (c) the member has satisfied a relevant condition of release and a benefit (other than a benefit that is paid as a pension) has been paid to or for the benefit of the member or, if the member has died, to his or her legal personal representative, but no action has been taken by or for the member, or his or her legal personal representative, under the governing rules of the fund to receive any other benefit that the member, or his or her estate, is entitled to be paid as a result of satisfying the condition of release.

(2) In this regulation:

***relevant condition of release*** means a condition of release mentioned in item 101, 102, 103, 106, 108, 201, 202, 203 or 206 of Schedule 1.

## 1.03C Meaning of *permanent incapacity*

For subsection 10(1) of the Act, a member of a superannuation fund or an approved deposit fund is taken to be suffering



Federal Register of Legislative Instruments F2015C00472

permanent incapacity if a trustee of the fund is reasonably satisfied that the member's ill-health (whether physical or mental) makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.

## 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.

*Defined benefit member*

(2) For paragraph 10(1A)(b) of the Act, subregulations (3) and (3A) set out circumstances in which a member of a superannuation fund is to be taken to be a ***defined benefit member*** for section 20B or Part 2C of the Act.

(3) A circumstance is that the member:

(a) is a member of the scheme established under the *Military Superannuation and Benefits Act 1991* (the ***military superannuation scheme***); or

(b) holds an interest, as a ***non-member spouse*** within the meaning of section 90MD of the *Family Law Act 1975*, in the military superannuation scheme; or

(c) has a preserved benefit in the military superannuation scheme; or

(d) has an ancillary account in the military superannuation scheme; or

(e) both:

(i) is a member of the scheme established under the *Defence Force Retirement and Death Benefits Act 1973*; and

(ii) has an ancillary account in the military superannuation scheme.

(3A) A circumstance is that the member:



Federal Register of Legislative Instruments F2015C00472

(a) holds an interest, as a ***non-member spouse*** within the meaning of section 90MD of the *Family Law Act 1975*, in a superannuation scheme established under the *Superannuation Act 1976* or the *Superannuation Act 1990*; or

(b) has made an election under section 137 of the *Superannuation Act 1976*; or

(c) is a ***preserved benefit member*** within the meaning of the *Public Sector Superannuation Scheme Trust Deed*, as in force from time to time; or

(d) has either of the following in the scheme established under the *Superannuation (State Public Sector) Act 1990* (Qld):

(i) a capital guaranteed interest in a voluntary preservation plan;

(ii) a deferred retirement benefit amount; or

(e) both:

(i) is covered by the *Crown Employees (Fire and Rescue NSW Firefighting Staff* Death and Disability) Award 2012 (the ***2012 award***) or by an award that replaces the 2012 award (a ***successor award***); and

(ii) would be entitled, on the occurrence of an event mentioned in any of the following clauses, to a pension or lump sum mentioned in that clause:

(A) clause 7 of the 2012 award, or an equivalent clause of a successor award;

(B) clause 8 of the 2012 award, or an equivalent clause of a successor award;

(C) clause 10 of the 2012 award, or an equivalent clause of a successor award;

(D) clause 11 of the 2012 award, or an equivalent clause of a successor award.

*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:



Federal Register of Legislative Instruments F2015C00472

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

(b) a fund that was established on or after 1 July 1994 using eligible termination payments (within the meaning of the Tax Act as in force when the fund was established) of the fund's beneficiary that had an initial value of at least $400 000; or

(c) a fund that is established after 1 July 2007 using a superannuation lump sum or an employment termination payment (within the meaning of the 1997 Tax Act) of the fund's beneficiary that had 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.

(4AA) A scheme that is listed, or established by or operated under legislation that is listed, in Schedule 1AA ceases to be an exempt public sector superannuation scheme at the time it is registered as a registrable superannuation entity under Division 2 of Part 2B of the Act.

(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.



Federal Register of Legislative Instruments F2015C00472

*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) virtual PST assets of a life insurance company within the meaning of the 1997 Tax Act;

(v) segregated exempt assets of a life insurance company within the meaning of the 1997 Tax Act; and

Note 1: ***PST*** is defined in regulation 1.03 to mean a pooled superannuation trust.

Note 2: ***Life insurance company***, ***segregated exempt assets*** and ***virtual PST asset***, are defined in subsection 995-1(1) of the 1997 Tax Act.

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

(c) a trust in relation to which each of the following circumstances applies:

(i) the trustee has confirmed in writing an intention to have the trust treated as a PST;

(ii) the confirmation was given to APRA, in the approved form, and signed and dated by the trustee;

(iii) the confirmation was given not later than:

(A) the time of lodgment, in accordance with subsection 36(1) of the Act, of the first return in relation to the trust after 12 July 2000 (the ***time of lodgment***); or

(B) such later time as allowed, in writing, by APRA, either generally or in a particular case and whether allowed before or after the time of lodgment;

(iv) the confirmation has not been withdrawn.



Federal Register of Legislative Instruments F2015C00472

(6) The trustee of a unit trust may confirm an intention under paragraph (5)(c) despite anything in the governing rules of the unit trust.

(7) The trustee of a unit trust mentioned in subregulation (6) must inform APRA in writing as soon as practicable after the unit trust ceases to be a PST because paragraph (5)(a) or (b) ceases to apply to the trust.

(8) The trustee may withdraw the confirmation of an intention under paragraph (5)(c) by giving to APRA a notice of the withdrawal that is signed and dated by the trustee.

## 1.04AAAA Interdependency relationships (Act s 10A)

(1) For paragraph 10A(3)(a) of the Act, the following matters are to be taken into account in determining whether 2 persons have an interdependency relationship, or had an interdependency relationship immediately before the death of 1 of the persons:

(a) all of the circumstances of the relationship between the persons, including (where relevant):

(i) the duration of the relationship; and

(ii) whether or not a sexual relationship exists; and

(iii) the ownership, use and acquisition of property; and

(iv) the degree of mutual commitment to a shared life; and

(v) the care and support of children; and

(vi) the reputation and public aspects of the relationship; and

(vii) the degree of emotional support; and

(viii) the extent to which the relationship is one of mere convenience; and

(ix) any evidence suggesting that the parties intend the relationship to be permanent;

(b) the existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.



Federal Register of Legislative Instruments F2015C00472

(2) For paragraph 10A(3)(b) of the Act, 2 persons have an interdependency relationship if:

(a) they satisfy the requirements of paragraphs 10A(1)(a) to (c) of the Act; and

(b) one or each of them provides the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate.

Examples of care normally provided in a close personal relationship rather than by a friend or flatmate:

1. Significant care provided for the other person when he or she is unwell.

2. Significant care provided for the other person when he or she is suffering emotionally.

(3) For paragraph 10A(3)(b) of the Act, 2 persons have an interdependency relationship if:

(a) they have a close personal relationship; and

(b) they do not satisfy the other requirements set out in subsection 10A(1) of the Act; and

(c) the reason they do not satisfy the other requirements is that they are temporarily living apart.

Example for paragraph (3)(c): One of the persons is temporarily working overseas or is in gaol.

(4) For paragraph 10A(3)(b) of the Act, 2 persons have an interdependency relationship if:

(a) they have a close personal relationship; and

(b) they do not satisfy the other requirements set out in subsection 10A(1) of the Act; and

(c) the reason they do not satisfy the other requirements is that either or both of them suffer from a disability.

(5) For paragraph 10A(3)(b) of the Act, 2 persons do not have an interdependency relationship if 1 of them provides domestic support and personal care to the other:

(a) under an employment contract or a contract for services; or



Federal Register of Legislative Instruments F2015C00472

(b) on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.

## 1.04AAA Modified meaning of *member* (Act s 15B)

(1) This regulation applies if:

(a) a superannuation interest in a fund is subject to a payment split, or a non-member spouse interest has been created under regulation 7A.03B; and

(b) the non-member spouse in relation to the interest was not a member of the fund immediately before the operative time for the payment split.

(2) For the purposes of the provisions of the Act set out in Table 1, the non-member spouse is to be treated as being a member of the fund in which the interest is held from the later of:

(a) the operative time for the payment split; and

(b) the time that the trustee receives the agreement or order under which the payment split is effected.

**Table 1**

| Item | Provision |
|---|---|
| 1 | subsection 17A, except subsection (5) (definition of self managed superannuation fund) |
| 2 | section 65 (lending to members of regulated superannuation fund prohibited) |
| 3 | Part 8 (in-house asset rules applying to regulated superannuation funds) |

(3) For subsection 17A(5) of the Act, the non-member spouse is to be treated as being a member of the fund in which the interest is held from the later of:

(a) the end of 6 months after the operative time for the payment split; and

(b) the end of 6 months after the time that the trustee receives the agreement or order under which the payment split is effected.

(4) For regulation 1.03A, the non-member spouse is to be treated as being a member of the fund in which the interest is held from the operative time for the payment split.

(5) For subsection 17A(5) of the Act, a non-member spouse who became a member of a fund as a result of the creation of a non-member spouse interest under Division 7A.1A is not treated as a member of the fund until the earlier of:

(a) 6 months after the operative time for the payment split; and

(b) the time that the non-member spouse's interest in the fund is confirmed under regulation 7A.03H or 7A.03I.

## 1.04A Specified body or person (Act s 19)

For subsection 19(4) of the Act, the Commissioner of Taxation is specified.

## 1.04AA Self managed superannuation funds—persons not taken to be employees (Act s 17A(8))

(1) For the purposes of paragraph 17A(8)(b) of the Act, a class of persons is a specified class if it comprises persons each of whom is, in relation to a member of a superannuation fund, an exempt person mentioned in subregulation (2).

(2) A person is an exempt person in relation to a member of a superannuation fund if:

(a) the person is an employer-sponsor of the fund; and

(b) the member is a director of the employer-sponsor.

(3) For the purposes of paragraph 17A(8)(b) of the Act, a class of persons is a specified class if it comprises persons each of whom is a member of a superannuation fund in relation to which the following circumstances exist:

(a) the person is the employer, but not a relative, of a member of the fund (the ***employee***);

(b) another member is the employer, and a relative, of that employee.



Federal Register of Legislative Instruments F2015C00472

# Part 1A—Annuities and pensions

## Division 1A.1

### 1.05A Interpretation

In this Division, unless a contrary intention appears:

***rolled over*** means paid as a superannuation lump sum within the superannuation system.

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

(1) A benefit that is provided by a life insurance company or a registered organisation is taken to be an annuity for the purposes of the Act if:

(a) it arises under a contract that:

(i) meets the standards of subregulation (11A); and

(ii) does not permit the capital supporting the annuity to be added to by way of contribution or rollover after the annuity has commenced; and

(b) for a benefit purchased on or after 3 August 1993 and before 1 July 2007—it 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; and

(c) for a benefit purchased on or after 1 July 2007—it is purchased with the whole or part of:

(i) a roll-over superannuation benefit within the meaning of the 1997 Tax Act; or

(ii) a directed termination payment within the meaning of the *Income Tax (Transitional Provisions) Act 1997*; and

(d) in the case of a contract to which paragraph (11A)(a) applies—the contract also meets the standards of regulation 1.07D; and



Federal Register of Legislative Instruments F2015C00472

(e) in the case of a contract to which paragraph (11A)(b) applies—the contract also meets the standards of regulation 1.07B.

(1A) A benefit that is provided by a life insurance company or a registered organisation that commenced to be paid before 20 September 2007 is taken to be an annuity for the purposes of the Act if:

(a) it arises under a contract that meets the standards of subregulation (2), (4), (6), (7), (8), (9) or (10); and

(b) for a benefit purchased on or after 3 August 1993 and before 1 July 2007—it 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; and

(c) for a benefit purchased on or after 1 July 2007 and before 20 September 2007—it is purchased with the whole or part of:

(i) a roll-over superannuation benefit within the meaning of the 1997 Tax Act; or

(ii) a directed termination payment within the meaning of the *Income Tax (Transitional Provisions) Act 1997*; and

(d) for a benefit that arises under a contract that meets the standards of subregulation (9) and is purchased by the primary beneficiary on or after 20 September 1998—the commencement day under the contract is the day when the benefit was purchased; and

(e) for a benefit that arises under a contract that meets the standards of subregulation (4)—the contract also meets the standards of regulation 1.07A; and

(f) for a benefit that arises under a contract that meets the standards of subregulation (2), (6), (7) or (9)—the contract also meets the standards of regulation 1.07B; and

(g) for a benefit that arises under a contract that meets the standards of subregulation (8):

(i) the benefit can be taken to consist of two benefits:



Federal Register of Legislative Instruments F2015C00472

(A) an annuity that arises from that part of the contract that provides for payments whose size is not fixed; and

(B) an annuity that arises from that part of the contract that provides for payments whose size in a year is fixed; and

(ii) the contract meets the standards of regulation 1.07A in relation to the annuity mentioned in sub-subparagraph (i)(A); and

(iii) the contract meets the standards of regulation 1.07B in relation to the annuity mentioned in sub-subparagraph (i)(B); and

(h) for a benefit that arises under a contract that meets the standards of subregulation (10), and has a commencement day on or after 20 September 2004—the contract also meets the standards of regulation 1.07C.

(1B) A benefit provided by a life insurance company or registered organisation that commenced to be paid on or after 20 September 2007 is taken to be an annuity for the purposes of the Act if:

(a) the benefit arises under a contract that meets the standards of:

(i) subregulation 1.05(9) or (10); and

(ii) subregulation 1.05(11A); and

(b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:

(i) an annuity provided under a contract that meets the standards of subregulation 1.05(2), (9) or (10); or

(ii) a pension provided under rules that meet the standards of subregulation 1.06(2), (7) or (8); or

(iii) a pension provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations; and

(c) for a benefit that arises under a contract that meets the standards of subregulation (9)—the contract also meets the standards of regulation 1.07B; and



Federal Register of Legislative Instruments F2015C00472

(d) for a benefit that arises under a contract that meets the standards of subregulation (10)—the contract also meets the standards of regulation 1.07C.

(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; or

(iii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and

(c) unless APRA otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:

(i) if $CPI_c$ is not less than $CPI_p$—not less than $SP_p$; or

(ii) if $CPI_c$ is less than $CPI_p$—not less than:

$$\frac{CPI_c}{CPI_p} \times SP_p$$

where:



Federal Register of Legislative Instruments F2015C00472

***CPI$_c$*** means the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made.

***CPI$_p$*** means the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.

***SP$_p$*** means the sum payable in the immediately 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 in any of the following circumstances:

(i) the annuity is not funded from the commutation of:

(A) an annuity that meets the standards of this subregulation or subregulation (3), (9) or (10); or

(B) a pension that meets the standards of subregulation 1.06(2), (3), (7) or (8); or

(C) a pension that meets the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the annuity;

(ii) the commutation is made to the benefit of a reversionary beneficiary on the death of the primary beneficiary and within one of the following periods after the commencement day of the annuity:

(A) if the primary beneficiary's life expectancy on the commencement day, rounded up to the next whole number, is a period less than 20 years—that period;

(B) in any other case—20 years;



Federal Register of Legislative Instruments F2015C00472

(iii) the superannuation lump sum resulting from the commutation is transferred directly for the purpose of purchasing another benefit provided under:

(A) a contract that meets the standards of this subregulation or subregulation (3), (9) or (10); or

(B) rules that meet the standards of subregulation 1.06(2), (3), (7) or (8); or

(C) terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

(iv) to pay a superannuation contributions surcharge;

(v) to give effect to an entitlement of a non-member spouse under a payment split;

(vi) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

(C) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(D) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the primary beneficiary;

(vii) the annuity was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; 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



Federal Register of Legislative Instruments F2015C00472

(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 the period used for subparagraph (2)(f)(ii), 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; and

(b) if the primary beneficiary dies within the period used for subparagraph (2)(f)(ii) 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, is payable to the primary beneficiary's estate; and

(c) if the primary beneficiary dies within the period used for subparagraph (2)(f)(ii) 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

(f) for an annuity that has a commencement day on or after 22 December 1992 and before 1 January 2006—the payments in a year (excluding payments by way of



Federal Register of Legislative Instruments F2015C00472

commutation but including payments made under a payment split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A; and

(g) for an annuity that has a commencement day on or after 1 January 2006—the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than the following:

(i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006—the respective maximum and minimum limits for the year calculated in accordance with 1 of the following Schedules:

(A) Schedule 1A;

(B) Schedule 1AAB;

(ii) for payments made on or after 1 July 2006—the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB.

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 on or after 1 June 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



Federal Register of Legislative Instruments F2015C00472

(b) that fixes the size of the payments of benefit in a year, allowing for variation only as specified in the contract or to allow payments to be made under a payment split; 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:

(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



Federal Register of Legislative Instruments F2015C00472

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*.



Federal Register of Legislative Instruments F2015C00472

(9) A contract for the provision of a benefit (in this subregulation called ***the annuity***) meets the standards of this subregulation if the contract ensures that:

(a) for an annuity that has a commencement day before 20 September 2004:

(i) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years—the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more—the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; and

(b) for an annuity that has a commencement day on or after 20 September 2004:

(i) the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at



Federal Register of Legislative Instruments F2015C00472

the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or

(iia) if the annuity has a commencement day on or after 1 January 2006—the annuity is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph 1.05(9)(b)(i), and not more than the greater of the following periods:

(A) the maximum period available under subparagraph 1.05(9)(b)(ii);

(B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or

(iii) if:

(A) the annuity is an annuity that reverts to a surviving spouse on the death of the primary beneficiary; and

(B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and

(C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iia) for the annuity;

the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

(D) the life expectancy of the spouse on the commencement day; or

(E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or



Federal Register of Legislative Instruments F2015C00472

(F) if the annuity has a commencement day on or after 1 January 2006—a period that is not less than the period available under sub-subparagraph 1.05(9)(b)(iii)(D), and not more than the greater of the following periods:

(I) the maximum period available under sub-subparagraph 1.05(9)(b)(iii)(E);

(II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years; and

(c) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the benefit was purchased; and

(d) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the ***previous total***), and does not exceed the previous total:

(i) if $CPI_c$ is less than or equal to 4%—by more than 5% of the previous total; or

(ii) if $CPI_c$ is more than 4%—by more than $CPI_c$ + 1%;

where:

***$CPI_c$*** is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first



Federal Register of Legislative Instruments F2015C00472

published by the Australian Statistician for the same quarter in the immediately preceding year;

and

(e) the total amount of the payments to be made in a year in accordance with paragraph (c) or (d) may be varied only:

(i) to allow commutation to pay a superannuation contributions surcharge; or

(ii) to allow an amount to be paid under a payment split and reasonable fees to be charged in respect of the payment split; and

(f) the amount paid as the purchase price is wholly converted into annuity income; and

(g) the annuity does not have a residual capital value; and

(h) the annuity cannot be commuted except in any of the following circumstances:

(i) the annuity is not funded from the commutation of:

(A) an annuity that meets the standards of this subregulation or subregulation (2), (3) or (10); or

(B) a pension that meets the standards of subregulation 1.06(2), (3), (7) or (8); or

(C) a pension that meets the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the annuity;

(ii) subject to subparagraph (iv), by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary;

(iii) subject to subparagraph (iv), by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary;



Federal Register of Legislative Instruments F2015C00472

(iv) for subparagraphs (ii) and (iii), if the primary beneficiary has opted, under subparagraph (b)(iii), for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse—the annuity cannot be commuted until the death of both the primary beneficiary and the spouse;

(v) the superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation (2), (3) or (10) or this subregulation; or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06(2), (3), (7) or (8); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

(vi) to pay a superannuation contributions surcharge;

(vii) to give effect to an entitlement of a non-member spouse under a payment split;

(viii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

(C) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(D) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the primary beneficiary;

(ix) the annuity was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under



Federal Register of Legislative Instruments F2015C00472

subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

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

(j) if the annuity is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and

(k) the annuity cannot be transferred to a person except:

(i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

(ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and

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

(10) A contract for the provision of a benefit (***market linked annuity***) meets the standards of this subregulation if the contract ensures that:

(a) the market linked annuity:

(i) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the annuity, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or



Federal Register of Legislative Instruments F2015C00472

(iia) if the annuity has a commencement day on or after 1 January 2006—the annuity is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph 1.05(10)(a)(i), and not more than the greater of the following periods:

(A) the maximum period available under subparagraph 1.05(10)(a)(ii);

(B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or

(iii) if:

(A) the annuity is an annuity that reverts to a surviving spouse on the death of the primary beneficiary; and

(B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and

(C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iia) for the annuity;

the annuity is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

(D) the life expectancy of the spouse on the commencement day; or

(E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or

(F) if the annuity has a commencement day on or after 1 January 2006—a period that is not less than the period available under sub-subparagraph 1.05(10)(a)(iii)(D), and not more than the greater of the following periods:



Federal Register of Legislative Instruments F2015C00472

(A) the maximum period available under sub-subparagraph 1.05(10)(a)(iii)(E);

(B) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years; and

(b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a payment split) is determined in accordance with Schedule 6; and

(c) the market linked annuity does not have a residual capital value; and

(d) the market linked annuity cannot be commuted except in any of the following circumstances:

(i) the annuity is not funded from the commutation of:

(A) another annuity that is provided under a contract that meets the standards of subregulation (2), (3) or (9) or this subregulation; or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06(2), (3), (7) or (8); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the annuity;

(ii) subject to subparagraph (iii), on the death of the primary beneficiary or reversionary beneficiary, by payment of:



Federal Register of Legislative Instruments F2015C00472

(A) a lump sum or a new annuity to one or more dependants of either the primary beneficiary or reversionary beneficiary; or

(B) a lump sum to the legal personal representative of either the primary beneficiary or reversionary beneficiary; or

(C) if, after making reasonable enquiries, the provider of the annuity is unable to find a person mentioned in sub-subparagraph (A) or (B)—a lump sum to another individual;

(iii) for subparagraph (ii), if the primary beneficiary has opted, under subparagraph (a)(iii), for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse—the market linked annuity cannot be commuted until the death of both the primary beneficiary and the spouse;

(iv) the superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation 1.05(2), (3) or (9) or this subregulation; or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06(2), (3), (7) or (8); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

(v) to pay a superannuation contributions surcharge;

(vi) to give effect to an entitlement of a non-member spouse under a payment split;

(vii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or



Federal Register of Legislative Instruments F2015C00472

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

(C) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(D) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the primary beneficiary;

(viii) the annuity was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

(e) if the market linked annuity reverts, it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and

(f) if the market linked annuity is commuted, the commutation amount cannot exceed the account balance immediately before the commutation; and

(g) the market linked annuity can be transferred only:

(i) on the death of the primary beneficiary:

(A) to 1 of the dependants of the primary beneficiary; or

(B) to the legal personal representative of the primary beneficiary; or

(ii) on the death of the reversionary beneficiary:

(A) to 1 of the dependants of the reversionary beneficiary; or

(B) to the legal personal representative of the reversionary beneficiary; and

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

(11) A contract mentioned in subregulation (10) is not prevented from meeting the standards of that subregulation by reason only that the contract provides that, if the commencement day of the annuity is



Federal Register of Legislative Instruments F2015C00472

on or after 1 June in a financial year, no payment is required to be made for that financial year.

(11A) A contract for the provision of a benefit (the ***annuity***) meets the standards of this subregulation if the contract ensures that payment of the annuity is made at least annually, and also ensures that:

(a) for an annuity in relation to which there is an account balance attributable to the annuitant—the total of payments in any year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 1 of Schedule 7; and

(b) for an annuity that is not described in paragraph (a):

(i) both of the following apply:

(A) the contract does not provide for a residual capital value, commutation value or withdrawal benefit greater than 100% of the purchase price of the annuity;

(B) the total of payments in any year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 2 of Schedule 7; or

(ii) each of the following applies:

(A) the annuity is payable throughout the life of the beneficiary (primary or reversionary), or for a fixed term of years that is no greater than the difference between the primary beneficiary's age on the commencement day and age 100;

(B) the amount paid as the purchase price is wholly converted into annuity payments;

(C) there is no arrangement for an amount (or a percentage of the purchase price) prescribed by the contract to be returned to the recipient when the annuity ends;

(D) the total of payments from the annuity in the first year (including under a payment split but excluding amounts rolled over) is at least the



Federal Register of Legislative Instruments F2015C00472

amount calculated under clause 2 of Schedule 7;

(E) the total of payments from the annuity in a subsequent year cannot vary from the total of payments in the previous year unless the variation is as a result of an indexation arrangement or the transfer of the annuity to another person;

(F) if the annuity is commuted, the commutation amount cannot exceed the benefit that was payable immediately before the commutation; or

(iii) the standards of subregulation (2) are met; and

(c) the annuity is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and

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

(11B) A contract for the provision of a benefit does not meet the standards of any of subregulations (2) to (11A) if, in relation to the death of the annuity recipient on or after 1 July 2007, the annuity is transferred or paid to a person who would not be eligible to be paid a benefit in the form of an annuity under subregulation 6.21(2A) or (2B).

(12) Despite regulation 9 of the *Income Tax Regulations 1936*, for an annuity that has a commencement day on or after 20 September 2004 and on or before 31 December 2004, one of the following life tables are to be used in ascertaining the life expectancy of a person under this regulation:

(a) the most recently published Australian Life Tables;

(b) the *1995-97 Australian Life Tables*.

(13) In this regulation:



Federal Register of Legislative Instruments F2015C00472

***indexation arrangement***, in relation to an annuity, means an arrangement specified in the contract for the provision of the annuity that:

(a) results in the total amount of annuity payments in each year:
  (i) increasing by the same percentage factor; or
  (ii) being adjusted in line with movements in the Consumer Price Index; or
  (iii) being adjusted in line with movements in an index of average weekly earnings published by the Australian Statistician; or
  (iv) being adjusted in accordance with subparagraph (ii) or (iii) but with an increase capped at a maximum level; and

(b) ensures that, unless APRA otherwise approves, an adjustment is made at least annually to the amount of the annuity payments.

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

(1) A benefit is taken to be a pension for the purposes of the Act if:
  (a) it is provided under rules of a superannuation fund that:
    (i) meet the standards of subregulation (9A); and
    (ii) do not permit the capital supporting the pension to be added to by way of contribution or rollover after the pension has commenced; and
  (b) in the case of rules to which paragraph (9A)(a) applies—the rules also meet the standards of regulation 1.07D; and
  (c) in the case of rules to which paragraph (9A)(b) applies—the rules also meet the standards of regulation 1.07B.

(1A) A benefit that commenced to be paid before 20 September 2007 is taken to be a pension for the purposes of the Act if:
  (a) it is provided under rules of a superannuation fund that meet the standards of subregulation (2), (4), (6), (7) or (8); and
  (b) where the primary beneficiary became entitled to the benefit on or after 20 September 1998 under rules of a



Federal Register of Legislative Instruments F2015C00472

superannuation fund that meet the standards of subregulation (7)—those rules provide that the commencement day is the day when the primary beneficiary became entitled to the pension; and

(c) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (4)—the rules also meet the standards of regulation 1.07A; and

(d) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (2), (6) or (7)—the rules also meet the standards of regulation 1.07B; and

(e) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (8), and has a commencement day on or after 20 September 2004—the rules also meet the standards of regulation 1.07C.

(1B) A benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if:

(a) the benefit arises under rules of a superannuation fund that meet the standards of:

(i) subregulation 1.06(7) or (8); and

(ii) subregulation 1.06(9A); and

(b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:

(i) an annuity provided under a contract that meets the standards of subregulation 1.05(2), (9) or (10); or

(ii) a pension provided under rules that meet the standards of subregulation 1.06(2), (7) or (8); or

(iii) a pension provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations; and

(c) for a benefit that arises under rules that meet the standards of subregulation (7)—the rules also meet the standards of regulation 1.07B; and

(d) for a benefit that arises under rules that meet the standards of subregulation (8)—the rules also meet the standards of regulation 1.07C.



Federal Register of Legislative Instruments F2015C00472

(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

(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; or

(iii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and

(c) unless the Regulator otherwise approves, the sum payable as benefit in each year to the primary beneficiary or to the reversionary beneficiary, as the case may be, is:

(i) if $CPI_c$ is not less than $CPI_p$—not less than $SP_p$; or

(ii) if $CPI_c$ is less than $CPI_p$—not less than:

$$\frac{CPI_c}{CPI_P} \times SP_P$$

where:

***$CPI_c$*** means the quarterly CPI first published by the Australian Statistician for the second-last quarter before the day on which payment is to be made.

***$CPI_p$*** means the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year.



Federal Register of Legislative Instruments F2015C00472

***SP***$_p$ means the sum payable in the immediately preceding year;

and

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

(e) the pension cannot be commuted except in any of the following circumstances:

(i) the pension is not funded from the commutation of:

(A) an annuity that meets the standards of subregulation 1.05(2), (3), (9) or (10); or

(B) a pension that meets the standards of this subregulation or subregulation (3), (7) or (8); or

(C) a pension that meets the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the pension;

(ii) the commutation is made to the benefit of a reversionary beneficiary on the death of the primary beneficiary and within one of the following periods after the commencement day of the pension:

(A) if the primary beneficiary's life expectancy on the commencement day, rounded up to the next whole number, is a period less than 20 years—that period;

(B) in any other case—20 years;

(iii) the superannuation lump sum resulting from the commutation is transferred directly for the purpose of purchasing another benefit provided under:

(A) rules that meet the standards of this subregulation or subregulation (3), (7) or (8); or

(B) a contract that meets the standards of subregulation 1.05(2), (3), (9) or (10); or

(C) terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

(iv) to pay a superannuation contributions surcharge;



Federal Register of Legislative Instruments F2015C00472

(v) to give effect to an entitlement of a non-member spouse under a payment split;

(vi) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

(C) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(D) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the primary beneficiary;

(vii) the pension was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; 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) 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) 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 the period used for subparagraph (2)(e)(ii), 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; and

(b) if the primary beneficiary dies within the period used for subparagraph (2)(e)(ii) 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, is payable to the primary beneficiary's estate; and

(c) if the primary beneficiary dies within the period used for subparagraph (2)(e)(ii) 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) for a pension that has a commencement day on or after 22 December 1992 and before 1 January 2006—the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1A; and

(f) for a pension that has a commencement day on or after 1 January 2006—the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than the following:

(i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006—the respective maximum and minimum limits for the year calculated in accordance with 1 of the following Schedules:

(A) Schedule 1A;

(B) Schedule 1AAB;



Federal Register of Legislative Instruments F2015C00472

(ii) for payments made on or after 1 July 2006—the respective maximum and minimum limits for the year calculated in accordance with Schedule 1AAB.

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 June 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 or to allow payments to be made under a payment split; 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

(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



Federal Register of Legislative Instruments F2015C00472

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.

(7) Rules meet the standards of this subregulation if the rules ensure that:

(a) for a pension that has a commencement day before 20 September 2004:

(i) if the life expectancy of the primary beneficiary on the commencement day is less than 15 years—the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) if the life expectancy of the primary beneficiary on the commencement day is 15 years or more—the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period that is not less than 15 years but not more than the primary beneficiary's life expectancy on the commencement day, rounded up, at the primary beneficiary's option, to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; and

(b) for a pension that has a commencement day on or after 20 September 2004:

(i) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or



Federal Register of Legislative Instruments F2015C00472

(ii) the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or

(iia) if the pension has a commencement day on or after 1 January 2006—the pension is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph 1.06(7)(b)(i), and not more than the greater of the following periods:

(A) the maximum period available under subparagraph 1.06(7)(b)(ii);

(B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or

(iii) if:

(A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and

(B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and

(C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iia) for the pension;

the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

(D) the life expectancy of the spouse on the commencement day; or

(E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the



Federal Register of Legislative Instruments F2015C00472

spouse were up to 5 years younger on the commencement day; or

(F) if the pension has a commencement day on or after 1 January 2006—a period that is not less than the period available under sub-subparagraph 1.06(7)(b)(iii)(D), and not more than the greater of the following periods:

(I) the maximum period available under sub-subparagraph 1.06(7)(b)(iii)(E);

(II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years; and

(c) the total amount of the payment, or payments, to be made in the first year after the commencement day (not taking commuted amounts into account) is fixed and that payment, or the first of those payments, relates to the period commencing on the day the primary beneficiary became entitled to the pension; and

(d) the total amount of the payments to be made in a year other than the first year after the commencement day (not taking commuted amounts into account) does not fall below the total amount of the payments made in the immediately preceding year (the ***previous total***), and does not exceed the previous total:

(i) if $CPI_c$ is less than or equal to 4%—by more than 5% of the previous total; or

(ii) if $CPI_c$ is more than 4%—by more than $CPI_c$ + 1%;

where:

***$CPI_c$*** is the change (if any), expressed as a percentage, determined by comparing the quarterly CPI first published by the Australian Statistician for the



Federal Register of Legislative Instruments F2015C00472

second-last quarter before the day on which the first of those payments is to be made and the quarterly CPI first published by the Australian Statistician for the same quarter in the immediately preceding year;

and

(e) the total amount of the payments to be made in a year in accordance with paragraph (c) or (d) may be varied only:

(i) to allow commutation to pay a superannuation contributions surcharge; or

(ii) to allow an amount to be paid under a payment split and reasonable fees in respect of the payment split to be charged; and

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

(g) the pension cannot be commuted except in any of the following circumstances:

(i) the pension is not funded from the commutation of:

(A) an annuity that meets the standards of subregulation 1.05(2), (3), (9) or (10); or

(B) a pension that meets the standards of this subregulation or subregulation (2), (3) or (8); or

(C) a pension that meets the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the pension;

(ii) subject to subparagraph (iv), by payment, on the death of the primary beneficiary, to the benefit of a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary;

(iii) subject to subparagraph (iv), by payment, on the death of a reversionary beneficiary, to the benefit of another reversionary beneficiary, or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary;

(iv) for subparagraphs (ii) and (iii), if the primary beneficiary has opted, under subparagraph (b)(iii), for a



Federal Register of Legislative Instruments F2015C00472

period worked out in relation to the life expectancy or age of the primary beneficiary's spouse—the pension cannot be commuted until the death of both the primary beneficiary and the spouse;

(v) the superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation (2), (3)(9) or (10); or

(B) a pension that is provided under rules that meet the standards of subregulation 1.06(2), (3) or (8) or this subregulation; or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

(vi) to pay a superannuation contributions surcharge;

(vii) to give effect to an entitlement of a non-member spouse under a payment split;

(viii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

(C) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(D) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the primary beneficiary;

(ix) the pension was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and



Federal Register of Legislative Instruments F2015C00472

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

(i) if the pension is commuted, the commuted amount cannot exceed the benefit that was payable immediately before the commutation; and

(j) the pension cannot be transferred to a person except:

(i) on the death of the primary beneficiary, to a reversionary beneficiary or, if there is no reversionary beneficiary, to the estate of the primary beneficiary; or

(ii) on the death of a reversionary beneficiary, to another reversionary beneficiary or, if there is no other reversionary beneficiary, to the estate of the reversionary beneficiary; and

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

(8) Rules that provide a benefit (the ***market linked pension***) meet the standards of this subregulation if the rules ensure that:

(a) the market linked pension:

(i) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the pension, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or

(ii) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or

(iia) if the pension has a commencement day on or after 1 January 2006—the pension is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period



Federal Register of Legislative Instruments F2015C00472

available under subparagraph 1.06(8)(a)(i), and not more than the greater of the following periods:

(A) the maximum period available under subparagraph 1.06(8)(a)(ii);

(B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or

(iii) if:

(A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and

(B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and

(C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iia) for the pension;

the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

(D) the life expectancy of the spouse on the commencement day; or

(E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or

(F) if the pension has a commencement day on or after 1 January 2006—a period that is not less than the period available under sub-subparagraph 1.06(8)(a)(iii)(D), and not more than the greater of the following periods:

(I) the maximum period available under sub-subparagraph 1.06(8)(a)(iii)(E);



Federal Register of Legislative Instruments F2015C00472

(II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;

at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years; and

(b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a payment split) is determined in accordance with Schedule 6; and

(c) the market linked pension does not have a residual capital value; and

(d) the market linked pension cannot be commuted except in any of the following circumstances:

(i) the pension is not funded from the commutation of:

(A) an annuity that is provided under a contract that meets the standards of subregulation 1.05(2), (3), (9) or (10); or

(B) another pension that is provided under rules that meet the standards of subregulation (2), (3) or (7) or this subregulation; or

(C) another pension that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

and the commutation is made within 6 months after the commencement day of the pension;

(ii) subject to subparagraph (iii), on the death of the primary beneficiary or reversionary beneficiary, by payment of:

(A) a lump sum or a new pension to one or more dependants of either the primary beneficiary or reversionary beneficiary; or

(B) a lump sum to the legal personal representative of either the primary beneficiary or reversionary beneficiary; or

(C) if, after making reasonable enquiries, the provider of the pension is unable to find a person mentioned in sub-subparagraph (A) or (B)—a lump sum to another individual;

(iii) for subparagraph (ii), if the primary beneficiary has opted, under subparagraph (a)(iii), for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse—the market linked pension cannot be commuted until the death of both the primary beneficiary and the spouse;

(iv) the superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is:

(A) an annuity provided under a contract that meets the standards of subregulation 1.05(2), (3), (9) or (10); or

(B) a pension that is provided under rules that meet the standards of this subregulation, or subregulation 1.06(2), (3) or (7); or

(C) a pension that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the RSA Regulations;

(v) to pay a superannuation contributions surcharge;

(vi) to give effect to an entitlement of a non-member spouse under a payment split;

(vii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or



Federal Register of Legislative Instruments F2015C00472

(C) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(D) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the primary beneficiary;

(viii) the pension was commenced in contravention of Part 6 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F (1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

(e) if the market linked pension reverts—it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and

(f) if the market linked pension is commuted—the commutation amount cannot exceed the account balance immediately before the commutation; and

(g) the market linked pension can be transferred only:

(i) on the death of the primary beneficiary:

(A) to 1 of the dependants of the primary beneficiary; or

(B) to the legal personal representative of the primary beneficiary; or

(ii) on the death of the reversionary beneficiary:

(A) to 1 of the dependants of the reversionary beneficiary; or

(B) to the legal personal representative of the reversionary beneficiary; and

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

(9) Rules mentioned in subregulation (8) are not prevented from meeting the standards of that subregulation by reason only that the rules provide that, if the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.



Federal Register of Legislative Instruments F2015C00472

(9A) Rules for the provision of a benefit (the ***pension***) meet the standards of this subregulation if the rules ensure that payment of the pension is made at least annually, and also ensure that:

(a) for a pension in relation to which there is an account balance attributable to the beneficiary—the total of payments in any year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 1 of Schedule 7; and

(b) for a pension that is not described in paragraph (a):

(i) both of the following apply:

(A) the rules do not provide for a residual capital value, commutation value or withdrawal benefit greater than 100% of the purchase price of the pension;

(B) the total of payments in any year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 2 of Schedule 7; or

(ii) each of the following applies:

(A) the pension is payable throughout the life of the beneficiary (primary or reversionary), or for a fixed term of years that is no greater than the difference between the primary beneficiary's age on the commencement day and age 100;

(B) there is no arrangement for an amount (or a percentage of the purchase price) prescribed by the rules to be returned to the recipient when the pension ends;

(C) the total of payments from the pension in the first year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under clause 2 of Schedule 7;

(D) the total of payments from the pension in a subsequent year cannot vary from the total of payments in the previous year unless the variation is as a result of an indexation



Federal Register of Legislative Instruments F2015C00472

arrangement or the transfer of the pension to another person;

(E) if the pension is commuted, the commutation amount cannot exceed the benefit that was payable immediately before the commutation; or

(iii) the standards of subregulation (2) are met; or

(iv) for rules in existence at the date of registration of the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 3),* the standards of subregulation (2) would be met, except for the circumstances in which those rules allow for either or both of the following:

(A) the pension to be commuted;

(B) the variation or cessation of pension payments in respect of a child of the deceased; and

(c) the pension is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and

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

(9B) Rules for the provision of a benefit do not meet the standards of any of subregulations (2) to (9A) if, in relation to the death of the beneficiary on or after 1 July 2007, the pension is transferred or paid to a person who would not be eligible to be paid a benefit in the form of a pension under subregulation 6.21(2A) or (2B).

(9C) If a pension is paid from a successor fund in accordance with rules to which subparagraph (9A)(b)(iv) applied in the original fund, the pension meets the standards of subregulation (9A).

(10) Despite regulation 9 of the *Income Tax Regulations 1936*, for a pension that has a commencement day on or after 20 September 2004 and on or before 31 December 2004, one of the following life tables are to be used in ascertaining the life expectancy of a person under this regulation:

(a) the most recently published Australian Life Tables;



Federal Register of Legislative Instruments F2015C00472

(b) the *1995-97 Australian Life Tables*.

(11) In this regulation:

***indexation arrangement***, in relation to a pension, means an arrangement specified in the rules for the provision of the pension that:

(a) results in the total amount of pension payments in each year:

(i) increasing by the same percentage factor; or

(ii) being adjusted in line with movements in the Consumer Price Index; or

(iii) being adjusted in line with movements in an index of average weekly earnings published by the Australian Statistician; or

(iv) being adjusted in accordance with subparagraph (ii) or (iii) but with an increase capped at a maximum level; and

(b) ensures that, unless APRA otherwise approves, an adjustment is made at least annually to the amount of the pension payments.

## 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.

## 1.07A Commutation of allocated annuities and pensions

(1) This regulation applies in relation to the following:

(a) a contract mentioned in paragraph 1.05(1A)(e) for a benefit (in this regulation called the ***annuity***);

(b) a contract mentioned in paragraph 1.05(1A)(g) for a benefit that is an annuity under sub-subparagraph 1.05(1A)(g)(i)(A) (in this regulation called the ***annuity***);



Federal Register of Legislative Instruments F2015C00472

(c) rules of a superannuation fund mentioned in paragraph 1.06(1A)(c) for a benefit (in this regulation called the ***pension***).

(2) The contract or rules, meet the standards of this regulation if the contract or rules ensure that the annuity or pension cannot be commuted, in whole or in part, unless:

(a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or

(b) the sole purpose of the commutation is:

(i) to pay a superannuation contributions surcharge; or

(ii) to give effect to an entitlement of a non-member spouse under a payment split; or

(iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or

(ba) for a commutation in part—the account balance of the annuity or pension, immediately after the commutation in part, would be equal to or would exceed the minimum limit under Schedule 1A or Schedule 1AAB, whichever is applicable to the annuity or pension under subregulation 1.05(4) or 1.06(4) as the case may be, as reduced by the amount of payments (excluding amounts rolled over) to the annuitant or pensioner already made in the financial year in which the commutation in part would occur; or

(c) the annuity or pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount under subregulation (3).

(3) For paragraph (2)(c), the minimum amount is calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:



Federal Register of Legislative Instruments F2015C00472

***Days in payment period*** means the number of days in the period that:

(a) begins on:

(i) if the annuity or pension commenced in the financial year in which the commutation is to take place—the commencement day; or

(ii) otherwise—1 July in that financial year; and

(b) ends on the day on which the commutation is to take place.

***Days in financial year*** means the number of days in the financial year in which the commutation is to take place (365 or 366).

***Minimum annual amount*** for the financial year means:

(a) for an annuity mentioned in paragraph (1)(b)—the minimum limit worked out in accordance with clause 2 of Schedule 1A or 1AAB as the case may be, as if the annuity account balance was the amount of the annuity account that is allocated by the annuity provider to make payments whose size is not fixed, in accordance with subparagraph 1.05(8)(c)(ii); and

(b) otherwise—the minimum limit worked out in accordance with clause 2 of Schedule 1A or 1AAB as the case may be;

rounded to the nearest 10 whole dollars.

## 1.07B Commutation of other annuities and pensions

(1) This regulation applies in relation to the following:

(a) a contract mentioned in paragraph 1.05(1)(e), (1A)(f) or (1B)(c) for a benefit (the ***annuity***);

(b) a contract mentioned in paragraph 1.05(1A)(g) for a benefit that is an annuity under sub-subparagraph 1.05(1A)(g)(i)(B) (the ***annuity***);

(c) rules of a superannuation fund mentioned in paragraph 1.06(1)(c), (1A)(d) or (1B)(c) for a benefit (the ***pension***).



Federal Register of Legislative Instruments F2015C00472

(2) For this regulation, other than for subregulation (5), the ***payment year*** for an annuity or pension means the period of 12 months that begins on the day after:

(a) the commencement day; or

(b) the anniversary of the commencement day.

(3) The contract or rules, meet the standards of this regulation if the contract or rules ensure that the annuity or pension cannot be commuted, in whole or in part, unless:

(a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or

(b) the sole purpose of the commutation is:

(i) to pay a superannuation contributions surcharge; or

(ii) to give effect to an entitlement of a non-member spouse under a payment split; or

(iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or

(c) the annuity or pension has paid, in the payment year in which the commutation is to take place, at least the minimum amount under subregulation (4).

(4) For paragraph (3)(c), the minimum amount is calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in payment year}}$$

where:

***Days in payment period*** means:

(a) the number of days in the period that:

(i) begins on:

(A) the day after the anniversary of the commencement day that occurs before the day on which the commutation is to take place; or



Federal Register of Legislative Instruments F2015C00472

(B) if the annuity or pension commenced on the day before the start of the payment year in which the commutation is to take place—the day after the commencement day; and

(ii) ends on the day on which the commutation is to take place; or

(b) if subregulation (5) applies—1 day.

***Days in payment year*** means the number of days in the payment year in which the commutation is to take place (365 or 366).

***Minimum annual amount*** means:

(a) for an annuity mentioned in paragraph (1)(b)—the minimum amount that the annuity would pay as fixed-size payments in the payment year if the annuity were not commuted; and

(b) otherwise—the minimum amount that the annuity or pension would pay in the payment year if the annuity or pension were not commuted.

(5) If the commencement day for an annuity or a pension is the day on which the commutation of the annuity or pension is to take place:

(a) the payment year is taken to commence on the commencement day and end on the day before the anniversary of the commencement day; and

(b) there is taken to be 1 day in the payment period.

(6) If, to calculate the minimum annual amount, it is necessary to use a future unknown value of the CPI, that value is taken to be equal to the CPI for the last known quarter.

## 1.07C Commutation of market linked income stream

(1) This regulation applies in relation to the following:

(a) a contract mentioned in paragraph 1.05(1A)(h) or (1B)(d) for a market linked annuity;

(b) rules of a superannuation fund mentioned in paragraph 1.06(1A)(e) or (1B)(d) for a market linked pension.



Federal Register of Legislative Instruments F2015C00472

(2) The contract or rules meet the standards of this regulation if the contract or rules ensure that the annuity or pension cannot be commuted, in whole or in part, unless:

(a) the commutation results from the death of an annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or

(b) the sole purpose of the commutation is:

(i) to pay a superannuation contributions surcharge; or

(ii) to give effect to an entitlement of a non-member spouse under a payment split; or

(iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or

(ba) for a commutation in part—the account balance of the annuity or pension, immediately after the commutation in part, would be equal to or would exceed the total payment amount calculated in accordance with Schedule 6, as reduced by the amount of payments (excluding amounts rolled over) to the annuitant or pensioner already made in the financial year in which the commutation in part would occur; or

(c) the annuity or pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount under subregulation (3).

(3) For paragraph (2)(c), the minimum amount is calculated using the formula:

$$\text{annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

***annual amount*** for the financial year means the amount worked out in accordance with Schedule 6 for the annuity or pension, rounded to the nearest 10 whole dollars.

***days in payment period*** means the number of days in the period that:

(a) starts on:



Federal Register of Legislative Instruments F2015C00472

(i) if the annuity or pension commenced in the financial year in which the commutation is to take place—the commencement day; or

(ii) in any other case—1 July in that financial year; and

(b) ends at the end of the day on which the commutation is to take place.

***days in financial year*** means the number of days in the financial year in which the commutation is to take place.

## 1.07D Commutation of superannuation income stream

(1) For paragraphs 1.05(1)(d) and 1.06(1)(b), a benefit meets the standards of this regulation if, under the applicable contract or rules, the annuity or pension cannot be commuted, in whole or in part, except in the following circumstances:

(a) the commutation results from the death of the annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or

(b) the sole purpose of the commutation is:

(i) to pay a superannuation contributions surcharge; or

(ii) to give effect to an entitlement of a non-member spouse under a payment split; or

(iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or

(c) for a commutation in part—the account balance of the annuity or pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated in accordance with Schedule 7, as reduced by the amount of payments (excluding amounts rolled over) to the annuitant or pensioner already made in the financial year in which the commutation occurs; or

(d) the annuity or pension has paid, in the financial year in which the commutation takes place, at least the minimum amount prescribed by subregulation (2).



Federal Register of Legislative Instruments F2015C00472

(2) For paragraph (1)(d), the minimum amount is the amount calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

***days in financial year*** means the number of days in the financial year (365 or 366) in which the commutation takes place.

***days in payment period*** means the number of days in the period that:

(a) begins on:

(i) if the annuity or pension commenced in the financial year in which the commutation is to take place—the commencement day; or

(ii) otherwise—1 July in that financial year; and

(b) ends on the day on which the commutation is to take place.

***minimum annual amount*** means the minimum amount payable under the annuity or pension, in the financial year, calculated in accordance with Schedule 7.



Federal Register of Legislative Instruments F2015C00472

# 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) the Regulator has approved in writing; or
  (b) is for conversion in relation to a commutation to pay a superannuation contributions surcharge; or
  (c) is for conversion in relation to a commutation to give effect to an entitlement of a non-member spouse under a payment split.

(3) In this regulation, ***prescribed pension***:
  (a) 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); but
  (b) does not include any of the following:
    (i) an account-based pension;
    (ii) an allocated pension;
    (iii) a market linked pension.



Federal Register of Legislative Instruments F2015C00472

# Part 2—Information for certain parties

## Division 2.1—Introductory

### 2.01 Interpretation

(1) In this Part:

***amount*** includes a nil amount.

***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).

(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.

### 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 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 will, or may, be materially misleading, 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 Division 2.4 or 2.5, the trustee of a superannuation entity is taken to have satisfied a duty or requirement to give information to



Federal Register of Legislative Instruments F2015C00472

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 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.



Federal Register of Legislative Instruments F2015C00472

# 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 5.6 of Part 7.9 of the *Corporations Regulations 2001*.

***fund reporting period*** means a reporting period that applies under Subdivision 5.5 of Part 7.9 of the *Corporations Regulations 2001*.

***member information*** means information required to be given under section 1017D of the *Corporations Act 2001*.

***member reporting period*** means a reporting period that applies under section 1017D of the *Corporations Act 2001*.

### 2.18 Application

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

(2) This Division does not apply to a self managed superannuation fund.

(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.



Federal Register of Legislative Instruments F2015C00472

## Subdivision 2.4.3—Derivatives charge ratio

### 2.29 Specific requirements in particular cases

(1) For this Subdivision, the derivatives charge ratio of a fund is:

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

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)).

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

(2) If paragraph 7.9.37(1)(i) of the *Corporations Regulations 2001* 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.



Federal Register of Legislative Instruments F2015C00472

# Division 2.5—Information on request

## 2.30 Application

(1) This Division applies to a superannuation entity.

(2) For 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.

## 2.31 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.

## 2.32 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 after receiving the request.

## 2.33 Specific requirements

(1) In this regulation:



Federal Register of Legislative Instruments F2015C00472

***concerned person*** has the same meaning as in section 1017C of the *Corporations Act 2001*.

(2) The trustee of a superannuation entity (other than a self managed superannuation fund) must give to a person (other than a concerned 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) audited accounts of the superannuation entity, together with (whether or not specifically requested) the RSE auditor's report in relation to the accounts;

(b) for a regulated superannuation fund or approved deposit fund—a copy of the fund information that was most recently given to the members;

(c) for a PST—a copy of the information mentioned in Subdivision 5.7 of Part 7.9 of the *Corporations Regulations 2001* that was most recently given to the members.



Federal Register of Legislative Instruments F2015C00472

# Division 2.5A—Information about superannuation interest subject to payment split

## 2.36B Application

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

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

## 2.36C Information to be provided by trustee when interest becomes subject to payment split

(1) If an interest in a fund becomes subject to a payment split, the trustee of the fund must give to the non-member spouse in relation to the interest a written notice stating the following information:
  (a) the contact details for the fund;
  (b) if the interest is not a percentage-only interest and the payment split is a base amount split:
    (i) the base amount allocated to the non-member spouse under the relevant superannuation agreement, flag lifting agreement or splitting order; and
    (ii) the method by which the base amount will be adjusted on an ongoing basis; and
    (iii) whether the governing rules of the fund would allow the non-member spouse to become a member of the fund, and information about the options available to the non-member spouse in relation to the interest under Part 7A;
  (c) if the interest is not a percentage-only interest and the payment split is a percentage payment split:
    (i) the percentage that is to apply to all splittable payments in respect of the interest; and



Federal Register of Legislative Instruments F2015C00472

(ii) whether the governing rules of the fund would allow the non-member spouse to become a member of the fund, and information about the options available to the non-member spouse in relation to the interest under Part 7A;

(d) if the interest is a percentage-only interest:

(i) the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order; and

(ii) if the payment split is under a superannuation agreement or flag lifting agreement, whether the percentage is to apply for the purposes of subparagraph 90MJ(1)(b)(i) of the *Family Law Act 1975*; and

(iii) if the payment split is under a splitting order, whether the order is made under paragraph 90MT(1)(c) of the *Family Law Act 1975*;

(e) the circumstances in which the entitlement of the non-member spouse will become payable;

(g) if the governing rules of the fund would allow thenon-member spouse to become a member of the fund, information that the non-member spouse would reasonably need to understand the management and financial condition of the fund and of any relevant sub-plan (for example, the fund's product disclosure statement);

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

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

(j) details of any fee payable by the non-member spouse in respect of the payment split, and arrangements for the payment of any such fee.

(2) The information must be given when the trustee gives the payment split notice to the non-member spouse.

Note: See regulation 7A.03 for the payment split notice requirements.



Federal Register of Legislative Instruments F2015C00472

## 2.36D Other information to be provided by trustee

(1) This regulation applies to an interest in a fund to which a transition period (within the meaning of section 1410 of the *Corporations Act 2001*) applies, if:

(a) the interest is subject to a base amount payment split; and

(b) the interest is not a percentage-only interest; and

(c) the interest is in the growth phase; and

(d) none of the following has occurred as a result of a payment split:

(i) a new interest was created for the non-member spouse;

(ii) the transferable benefits of the non-member spouse were transferred or rolled out of the fund;

(iii) the amount to which the non-member spouse is entitled under the payment split was paid, as a lump sum, to the non-member spouse.

(2) The trustee of the fund must give to the member spouse and the non-member spouse the following information for each reporting period:

(a) the value of the adjusted base amount applicable to the non-member spouse at the end of the reporting period;

(b) the amount of the adjustment in the reporting period;

(c) the method used to calculate the adjustment, including the rate of return over the reporting period.

(3) The information required under subregulation (2):

(a) must be given as soon as practicable after the end of the relevant reporting period; and

(b) in the case of information that is to be given to the member spouse, must be given with the information required to be given to the member spouse under Subdivision 2.4.2 of the old Regulations.

(4) In this regulation:

***reporting period*** means a reporting period that applies under Subdivision 2.4.2 of the old Regulations.



Federal Register of Legislative Instruments F2015C00472

Note: A non-member may also be entitled to information under section 1017C of the *Corporations Act 2001* and Division 2.5.

## 2.36E Other information to be given by trustee—adverse effects on benefits

(1) This regulation applies if:

(a) an interest in a fund is subject to a base amount payment split or a percentage payment split; and

(b) the interest is not a percentage-only interest; and

(c) the interest is in the growth phase; and

(d) none of the following has occurred in respect of a payment split:

(i) a new interest was created for the non-member spouse;

(ii) the transferable benefits of the non-member spouse were transferred or rolled out of the fund;

(iii) the amount to which the non-member spouse is entitled under the payment split was paid, as a lump sum, to the non-member spouse.

(2) The trustee of the fund must give to the non-member spouse information about an event if the trustee reasonably believes that:

(a) the event is likely to have a material effect on the interest in the fund; and

(b) the effect may be adverse (whether the adverse effect would occur at the time of the event or a later time).

(2A) If:

(a) the member spouse lodges a notice, or makes a request of a trustee, which would bind the trustee to pay death benefits to a particular beneficiary or beneficiaries; and

(b) a payment made in accordance with the notice or request would not be a splittable payment because of the identity or characteristics of that beneficiary or those beneficiaries;

the trustee must inform the non-member spouse that the member spouse has lodged the notice or made the request.



Federal Register of Legislative Instruments F2015C00472

(3) The information required under subregulation (2) or (2A) must be given before, or as soon as practicable after, the occurrence of the event.



Federal Register of Legislative Instruments F2015C00472

# Division 2.6—Remuneration of executive officers and individual trustees

## 2.37 Prescribed details

(1) For paragraph 29QB(1)(a) of the Act, details of the kind set out in the table are prescribed in relation to:

(a) an executive officer of the RSE licensee of a registrable superannuation entity (a ***relevant executive officer***) or

(b) an individual trustee of a registrable superannuation entity (a ***relevant individual trustee***).

**Prescribed remuneration details**

| Item | Condition (if any) | Details |
|---|---|---|
| General | | |
| 1 | | The name of the each person who is a relevant executive officer or relevant individual trustee |
| 2 | If a person:<br>(a) began to hold a position as a relevant executive officer or relevant individual trustee during the current financial year; or<br>(b) retired from a position as a relevant executive officer or relevant individual trustee during the current financial year | The date on which the person:<br>(a) began holding the position; or<br>(b) retired from the position |
| 3 | If the position of a person who is either of the following changes during the current financial year:<br>(a) a relevant executive officer who is a chief executive officer or director;<br>(b) a relevant individual trustee | (a) The person's name and position; and<br>(b) when the change occurred |



Federal Register of Legislative Instruments F2015C00472

Regulation 2.37

| **Prescribed remuneration details** | | |
|---|---|---|
| **Item** | **Condition (if any)** | **Details** |
| 4 | If a relevant executive officer who is not mentioned in item 3 has retired during the current financial year | (a) The relevant executive officer's name and position; and<br>(b) when the retirement took effect |
| Payments and benefits | | |
| 5 | | The short-term employee benefits of each relevant executive officer or relevant individual trustee for the 2 most recently completed financial years, divided into at least the following components:<br>(a) cash salary, fees and short-term compensated absences;<br>(b) short-term cash profit-sharing and other bonuses;<br>(c) non-monetary benefits;<br>(d) other short-term employee benefits |
| 6 | | The post-employment benefits of each relevant executive officer or relevant individual trustee for the 2 most recently completed financial years, divided into at least the following components:<br>(a) pension and superannuation benefits;<br>(b) other post-employment benefits |
| 7 | | The long-term employee benefits other than benefits mentioned in items 5 and 6 for each relevant executive officer or relevant individual trustee for the 2 most recently completed financial years (any amount attributable to a long-term incentive plan being separately identified) |



Federal Register of Legislative Instruments F2015C00472

| **Prescribed remuneration details** | | |
|---|---|---|
| **Item** | **Condition (if any)** | **Details** |
| 8 | If a person's position as a relevant executive officer or relevant individual trustee was terminated during the current financial year | The person's termination benefits |
| 9 | If a person:<br>(a) began to hold a position as relevant executive officer or relevant individual trustee during the most recently completed financial year; and<br>(b) received a payment as part of the consideration for agreeing to hold the position | Details of the payment, including:<br>(a) the monetary value of the payment; and<br>(b) the date of the payment |
| 10 | | The share-based payments made to each person who was a relevant executive officer or relevant individual trustee during the 2 most recently completed financial years, divided into at least the following components:<br>(a) equity-settled share-based payment transactions, showing separately:<br>(i) shares and units; and<br>(ii) options and rights;<br>(b) cash-settled share-based payment transactions;<br>(c) all other forms of share-based payment compensation (including hybrids) |



Federal Register of Legislative Instruments F2015C00472

Regulation 2.37

| **Prescribed remuneration details** | | |
|---|---|---|
| **Item** | **Condition (if any)** | **Details** |
| Compensation | | |
| 11 | If a grant of a cash bonus, performance-related bonus or share-based payment compensation benefit, whether part of a specific contract for services or not, was made to a relevant executive officer or relevant individual trustee during the most recently completed financial year | The terms and conditions of each grant affecting compensation, including the following:<br>(a) the grant date;<br>(b) the nature of the compensation granted;<br>(c) the service and performance criteria used to determine the amount of compensation;<br>(d) if there has been any alteration of the terms or conditions of the grant since the grant date--the date, details and effect of each alteration;<br>(e) the percentage of the bonus or grant for the financial year that was paid to the person, or that vested in the person, in the financial year;<br>(f) the percentage of the bonus or grant for the financial year that was forfeited by the person (because the person did not meet the service and performance criteria for the bonus or grant) in the financial year;<br>(g) the financial years, after the most recently completed financial year, for which the bonus or grant will be payable if the person meets the service and performance criteria for the bonus or grant; |



Federal Register of Legislative Instruments F2015C00472

**Prescribed remuneration details**

| Item | Condition (if any) | Details |
|---|---|---|
| | | (h) estimates of the maximum and minimum possible total value of the bonus or grant (other than option grants) for financial years after the most recently completed financial year |
| 12 | If, during the most recently completed financial year, a contract for services was negotiated between the RSE licensee and a relevant executive officer or relevant individual trustee | An explanation of:<br>(a) how the amount of compensation was determined; and<br>(b) how the terms of the contract affect compensation in future periods |
| 13 | If the terms of share-based payment transactions (including options or rights) granted as compensation to a relevant executive officer were altered or modified by the RSE licensee during the most recently completed financial year | (a) The date of the alteration or modification; and<br>(b) the market price of the underlying equity instrument at the date of the alteration or modification; and<br>(c) the terms of the grant of compensation immediately before the alteration or modification, including:<br>(i) the number and class of the underlying equity instruments;<br>(ii) the exercise price for any option or other right affected by the alternation or modification, immediately before and after the alteration or modification; and<br>(iii) the time remaining until expiry of the underlying equity instruments; and |



Federal Register of Legislative Instruments F2015C00472

Regulation 2.37

| Prescribed remuneration details | | |
|---|---|---|
| **Item** | **Condition (if any)** | **Details** |
| | | (iv) each other condition in the terms affecting the vesting or exercise of an option or other right; and<br>(d) the modified or altered terms; and<br>(e) the difference between:<br>(i) the total of the fair value of the options or other rights affected by the alteration or modification immediately before the alteration or modification; and<br>(ii) the total of the fair value of the options or other rights immediately after the alteration or modification |
| 14 | If, during the most recently completed financial year, options and rights over an equity instrument issued or issuable by the RSE licensee or by a related body corporate were provided as compensation to a person who was a relevant executive officer or relevant individual trustee | (a) The number of options and the number of rights that, during the financial year, were:<br>(i) granted; and<br>(ii) vested; and<br>(b) the terms and conditions of each grant made during the financial year, including:<br>(i) the fair value per option or right at grant date; and<br>(ii) the exercise price per share or unit; and<br>(iii) the amount, if any, paid or payable by the person; and<br>(iv) the expiry date of the grant; and |



Federal Register of Legislative Instruments F2015C00472

| **Prescribed remuneration details** | | |
|---|---|---|
| **Item** | **Condition (if any)** | **Details** |
| | | (v) when the options or rights may be exercised; and<br>(vi) a summary of the service and performance criteria that must be met before the beneficial interest vests in the person |
| 15 | If an equity instrument that is issuable by the RSE licensee or a related body corporate was issued as a result of the exercise, during the most recently completed financial year, of options and rights that were granted as compensation to a relevant executive officer or relevant individual trustee | (a) How many equity instruments were issued; and<br>(b) if the number of options or rights exercised differs from the number of equity instruments disclosed under paragraph (a)—how many options or rights were exercised; and<br>(c) the amount paid under each instrument; and<br>(d) the amount payable under each instrument that is yet to be paid |
| 16 | If an amount attributable to the service of a relevant executive officer who is a director, or a relevant individual trustee, for the most recently completed financial year is paid to an organisation or entity rather than to the relevant executive officer or relevant individual trustee | (a) The amount; and<br>(b) the name of the organisation or entity |

(2) If:

(a) a person is:

(i) an executive officer of the RSE licensee of a registrable superannuation entity (the ***reporting entity***); or

(ii) an individual trustee of a registrable superannuation entity (the ***reporting entity***); and



Federal Register of Legislative Instruments F2015C00472

(b) the person receives a payment, benefit or compensation from a related entity of the reporting entity;

(c) all or part of the payment, benefit or compensation relates to work performed for the reporting entity;

then, to the extent that the payment, benefit or compensation relates to that work, the payment, benefit or compensation must be disclosed in the table in the same way as it would be disclosed if it had been paid or given by the reporting entity.

(3) The RSE licensee entity must apply the requirements of relevant accounting standards when disclosing the information mentioned in the table.

(4) If an expression used in the table is defined in an accounting standard that is applied for the purpose of disclosing information, the expression has the meaning given by the standard.

(5) A disclosure required by item 14 or 15 of the table must:

(a) be separated into each class of equity instrument; and

(b) identify each class of equity instrument by:

(i) the name of the issuing entity;

(ii) the class of equity instrument; and

(iii) if the instrument is an option or right—the class and number of equity instruments for which it may be exercised.

## 2.38 Obligation to make information publicly available—RSE licensee of registrable superannuation entity

(1) This regulation is made for paragraph 29QB(1)(b) of the Act.

(2) The following documents and information relating to the registrable superannuation entity are prescribed (if applicable):

(a) both:

(i) a current version of the trust deed; and

(ii) any material not incorporated in the current version of the trust deed;

(b) the governing rules;



Federal Register of Legislative Instruments F2015C00472

(c) rules relating to the nomination, appointment and removal of trustees or trustee directors;
(d) the most recent actuarial report for each defined benefit fund;
(e) the most recent product disclosure statement for each superannuation product (within the meaning of Chapter 7 of the *Corporations Act 2001*) offered by the entity;
(f) the annual report for the previous financial year;
(g) the financial services guide;
(h) a summary of each significant event or material change notice made to members within the previous 2 years;
(i) the name and Australian Business Number of each outsourced service provider who provides a service which may affect a material business activity of the entity;
(j) the following information about each executive officer of the RSE licensee of the entity or each individual trustee of the entity (***relevant person***):
  (i) the relevant person's name;
  (ii) the qualifications of the relevant person;
  (iii) a summary of the relevant person's experience as a trustee or board member, including the periods during which the relevant person served as a trustee or board member;
(k) the record of attendance at board meetings for each director for:
  (i) the last 7 financial years; or
  (ii) if the director has served for a period of less than 7 years—that period;
(l) a register of relevant interests and a register of relevant duties;
(m) a summary of the conflicts management policy;
(n) the proxy voting policies;
(o) a summary of when, during the previous financial year, and how the entity has exercised its voting rights in relation to shares in listed companies.



Federal Register of Legislative Instruments F2015C00472

(3) The following documents or information relating to the RSE licensee are prescribed:

(a) if the RSE licensee is a body corporate—the constitution;

(b) the annual financial statement for the previous financial year.

(4) In this regulation a requirement that is expressed to apply to a defined benefit fund may be met by the requirement being satisfied in relation to each defined benefit sub-fund in the defined benefit fund.



Federal Register of Legislative Instruments F2015C00472

# 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, 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:



Federal Register of Legislative Instruments F2015C00472

(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; or

(f) a non-member spouse for whom an interest has been created in the fund, if the original interest of the member spouse was an interest in that fund; or

(g) a person in relation to whom the fund concerned has accepted child contributions:

(i) made by a standard employer-sponsored member; or

(ii) made by a person who is a former standard-employer sponsored member while the person was a member; or

(h) a person in relation to whom the fund concerned has accepted child contributions:

(i) made by a standard employer-sponsored member of a fund that has the same standard employer-sponsor as the fund concerned; or

(ii) made by a person who is a former standard-employer sponsored member of a fund that has the same standard employer-sponsor as the fund concerned:

(A) while the person was a member of the fund; and

(B) while the fund had the same standard employer-sponsor as the fund concerned; or

(i) a spouse or former spouse of a current or former standard employer-sponsored member for whom an interest has been created in the fund under Division 6.7.

## 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:



Federal Register of Legislative Instruments F2015C00472

(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.



Federal Register of Legislative Instruments F2015C00472

## 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.

*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.



Federal Register of Legislative Instruments F2015C00472

*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).



Federal Register of Legislative Instruments F2015C00472

*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;



Federal Register of Legislative Instruments F2015C00472

(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.

## 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



Federal Register of Legislative Instruments F2015C00472

(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.

## 3.10 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 (including commission or brokerage in the form of remuneration or other benefits) 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



Federal Register of Legislative Instruments F2015C00472

(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 (the ***provider***) for the provision of a financial service by the provider in respect of issuing an interest in the entity unless the provider is:

(a) a financial services licensee that is authorised to deal in superannuation products; or

(b) an authorised representative of a financial services licensee that is authorised to deal in superannuation products; or

(c) exempt from the requirement to hold an Australian financial services licence; or

(d) the provider of the financial service on behalf of another person who is exempt.

(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 Payment by trustee of a public offer entity of commission or brokerage

(1) This regulation applies in relation to a person who, immediately before this regulation commences, was entitled to a payment of commission or brokerage in the circumstances mentioned in paragraph 3.10(3)(a), (b), (d), (e) or (f) of the SIS Regulations.

(2) Regulation 3.10, as in force immediately before this regulation commences, continues to apply in relation to the person's entitlement.

(3) Subregulation (2) ceases to apply in relation to the entitlement on the earlier of:



Federal Register of Legislative Instruments F2015C00472

(a) the day on which the person becomes a financial services licensee in relation to the activity to which the payment relates; and

(b) the end of the transition period for the person mentioned in section 1438 of the *Corporations Act 2001*.



Federal Register of Legislative Instruments F2015C00472

# Part 3A—Matters prescribed or specified in relation to licensing of trustees and of groups of individual trustees

## Division 3A.1—Classes of RSE licences

### 3A.01 Public offer entity licences

For paragraph 29B(2)(b) of the Act, the following classes of registrable superannuation entities are specified:

(a) superannuation entities that are superannuation funds with fewer than 5 members (other than self managed superannuation funds);

(b) excluded approved deposit funds.

### 3A.02 Non-public offer entity licences

(1) For subsection 29B(3) of the Act, all classes of registrable superannuation entities, other than the following classes, are specified:

(a) public offer entities;

(b) superannuation entities that are superannuation funds with fewer than 5 members (other than self managed superannuation funds);

(c) excluded approved deposit funds.

(2) The class of RSE licences provided for under subsection 29B(3) of the Act is called the class of ***non-public offer entity licences***.

### 3A.03 Extended public offer entity licences

(1) For subsection 29B(4) of the Act, extended public offer entity licences are a class of RSE licences.



Federal Register of Legislative Instruments F2015C00472

(2) Subject to any condition imposed on an extended public offer entity licence under subsection 29EA(3) of the Act, the licence enables a trustee that holds a licence of that class to be a trustee of any registrable superannuation entity.

## 3A.03A Acting trustee licences

(1) For subsection 29B(4) of the Act, acting trustee licences are a class of RSE licences.

(2) Subject to any condition imposed on an acting trustee licence under subsection 29EA(3) of the Act, the licence allows:

(a) a trustee that holds an acting trustee licence; or

(b) a trustee who is a member of a group of individual trustees that holds an acting trustee licence;

to be a trustee of a registrable superannuation entity or entities to which the trustee is appointed to act as trustee under section 134 of the Act by APRA.

(3) For subsection 29E(7) of the Act, for the period of the licence, a trustee must not, without APRA approval, carry on a business other than that of performing the functions and duties of a trustee of a registrable superannuation entity or entities to which the appointment relates (the ***trustee business***).

(4) APRA may approve the trustee carrying on a business other than the trustee business if APRA is satisfied that the carrying on of the other business would not prejudice the proper and efficient performance of the trustee's functions and duties.



Federal Register of Legislative Instruments F2015C00472

# Division 3A.3—Applying for RSE licences

## 3A.05 Definitions

In this Division:

***asset***, for a registrable superannuation entity, means an item described as an asset in a statement of financial position prepared in respect of the entity.

***asset value***, for a registrable superannuation entity, means the value worked out by determining the net balance of the registrable superannuation entity based on the statement of financial position prepared in respect of the entity for the last year of income of the entity before the start of the licensing transition period.

***extended public offer entity licence*** means an RSE licence of a class specified in regulation 3A.03.

***non-public offer entity licence*** means an RSE licence of a class provided for under subsection 29B(3) of the Act.

***statement of financial position***, for a registrable superannuation entity, means a statement of financial position prepared in respect of an entity, as a reporting document for the purpose of reporting standards referred to in section 13 of the *Financial Sector (Collection of Data) Act 2001*.

Note: The definitions of ***licensing transition period*** and ***public offer entity licence*** are contained in subsection 10(1) of the Act.

## 3A.06 Application fees

For paragraphs 29C(4)(c) and 29F(2)(c) of the Act, the following fees are prescribed:



Federal Register of Legislative Instruments F2015C00472

Regulation 3A.06

| Item | Application | Fees ($) | | |
|---|---|---|---|---|
| | | **Non-public offer entity licence** | **Public offer entity licence** | **Extended public offer entity licence** |
| 1 | Application for RSE licence, other than an application mentioned in items 2 to 7. | 5 500 | 20 000 | 20 000 |
| 2 | Application for non-public offer entity licence by an applicant that is a body corporate if:<br>(a) the body corporate was a trustee of a registrable superannuation entity at the start of the licensing transition period; and<br>(b) APRA is satisfied that the asset value of all registrable superannuation entities for which the body corporate proposes to become the RSE licensee is less than $5 000 000; and<br>(c) item 5 does not apply. | 3 500 | n/a | n/a |
| 3 | Application for non-public offer entity licence by an applicant that is a group of individual trustees if:<br>(a) any member of the group was a trustee of a registrable superannuation entity at the start of the licensing transition period; and<br>(b) APRA is satisfied that the asset value of all registrable superannuation entities for which the group proposes to become the RSE licensee is less than $5 000 000; and<br>(c) item 5 does not apply. | 3 500 | n/a | n/a |
| 4 | Application for non-public offer entity licence if, in the 12 months before the application is made: | 2 750 | n/a | n/a |



Federal Register of Legislative Instruments F2015C00472

| Item | Application | Fees ($) | | |
|---|---|---|---|---|
| | | **Non-public offer entity licence** | **Public offer entity licence** | **Extended public offer entity licence** |
| | (a) the applicant applied for a licence of that class, for a public offer entity licence, or for an extended public offer entity licence; and<br>(b) that application was refused or withdrawn; and<br>(c) item 5 does not apply. | | | |
| 5 | Application for non-public offer entity licence by an applicant to whom item 2 or 3 applies if, in the 12 months before the application is made:<br>(a) the applicant applied for a licence of that class, for a public offer entity licence, or for an extended public offer entity licence; and<br>(b) that application was refused or withdrawn. | 1 750 | n/a | n/a |
| 6 | Application for public offer entity licence if, in the 12 months before the application is made:<br>(a) the applicant applied for a licence of that class, or for an extended public offer entity licence; and<br>(b) that application was refused or withdrawn. | n/a | 10 000 | n/a |
| 7 | Application for extended public offer entity licence if, in the 12 months before the application is made:<br>(a) the applicant applied for a licence of that class, or for a public offer entity licence; and<br>(b) that application was refused or | n/a | n/a | 10 000 |

Regulation 3A.06

| Item | Application | Fees ($) | | |
|---|---|---|---|---|
| | | Non-public offer entity licence | Public offer entity licence | Extended public offer entity licence |
| | withdrawn. | | | |
| 8 | Application for variation under paragraph 29F(1)(a): | | | |
| | (a) if the applicant already holds a non-public offer entity licence, and item 9 does not apply; or | n/a | 14 500 | 14 500 |
| | (b) if the applicant already holds a public offer entity licence; or | 500 | n/a | 500 |
| | (c) if the applicant already holds an extended public offer entity licence. | 500 | 500 | n/a |
| 9 | Application for variation under paragraph 29F(1)(a) if:<br>(a) the applicant already holds a non-public offer entity licence; and<br>(b) when the applicant applied for that licence, item 2 or 3 applied. | n/a | 16 500 | 16 500 |



Federal Register of Legislative Instruments F2015C00472

# Division 3A.4—Conditions on RSE licences

## 3A.07 Conditions on RSE licences of FHSA providers

(1) For subsection 29E(7) of the Act, this regulation sets out conditions that apply to RSE licences of RSE licensees that hold authorisations as FHSA providers under Part 7 of the FHSA Act.

(2) An RSE licensee must not:

(a) appoint or engage a person to be; or

(b) allow a person to act as;

an investment manager or custodian of a superannuation entity if the person is a disqualified person under Part 15 of the Act as applied by Division 2 of Part 7 of the FHSA Act.

(3) An RSE licensee that becomes aware that it has breached the condition specified in subregulation (2) must, as soon as practicable after so becoming aware, remove the person from the position of investment manager or custodian of the trust.



Federal Register of Legislative Instruments F2015C00472

# Part 3B—Superannuation data and payment matters

## 3B.01 Definitions

In this Part:

***prescribed eligible superannuation entity*—**see regulation 3B.02.

***unique superannuation identifier***, for an eligible superannuation entity, means either:

(a) the entity's ABN followed by 3 numerals; or

(b) another kind of unique identifier approved in writing by the Commissioner of Taxation.

## 3B.02 Prescribed eligible superannuation entity for register

For paragraph 34Z(1)(a) of the Act, a prescribed eligible superannuation entity is an eligible superannuation entity that is not a self managed superannuation fund.

## 3B.03 Information to be given for register

(1) For subsection 34Z(1) of the Act, the trustee of a prescribed eligible superannuation entity must give to the Commissioner of Taxation (the ***Commissioner***):

(a) at least one unique superannuation identifier for the entity; and

(b) for each unique superannuation identifier:

(i) one set of bank details that is sufficient to enable an electronic payment to be made; and

(ii) either:

(A) one internet protocol address; or



Federal Register of Legislative Instruments F2015C00472

(B) one other kind of digital address approved by the Commissioner for the receipt of electronic communications.

(2) The trustee may give:

(a) the same bank details for more than one unique superannuation identifier; and

(b) the same internet protocol address, or other approved digital address, for more than one unique superannuation identifier.

(3) The trustee must tell the Commissioner the date on which the information is to be operative for the entity.

(4) However, the information must be operative for the entity on or before the later of:

(a) 1 July 2013; and

(b) the date on which the entity first receives a contribution, or a rollover or a transfer of a member's withdrawal benefit.

(5) Subregulation (6) applies to the trustee of an entity if:

(a) the entity is receiving contributions, or rollovers or transfers of members' withdrawal benefits, from an employer, RSA provider or other superannuation entity on the commencement of this Part; and

(b) the trustee expects that the entity will continue to receive contributions, or rollovers or transfers of members' withdrawal benefits, on or after 1 July 2013.

(6) The trustee must give the information mentioned in subregulation (1) to the Commissioner on or before the later of:

(a) 20 business days after the commencement of this Part; and

(b) 1 April 2013.

(7) The trustee of an entity to which subregulation (6) does not apply must give the information mentioned in subregulation (1) to the Commissioner on or before the later of:

(a) 10 business days before the day on which the entity first receives a contribution, or a rollover or a transfer of a member's withdrawal benefit; and

(b) 1 April 2013.

(8) If the trustee of an entity proposes to change any information given for the entity under this regulation, the trustee must give the changed information to the Commissioner no later than 10 business days before the new information is to be operative for the entity.



Federal Register of Legislative Instruments F2015C00472

# Part 4—Management and trusteeship of superannuation entities

## Division 4.1—Prescribed matters

### 4.01 Covenants in governing rules of superannuation entity—prescribed information and documents

For paragraphs 52(2)(j) and 52B(2)(h) of the Act, the information and documents that are available to a concerned person under section 1017C of the *Corporations Act 2001* are prescribed.

### 4.02 Covenants in governing rules of self managed superannuation fund—beneficiary investment choice

(1) This regulation is made for paragraph 52B(4)(b) of the Act.

(2) The circumstances in which a direction, other than a subsequent direction, may be made by a specified beneficiary or class of beneficiaries are the following:

(a) the trustee:

(i) gives the beneficiary or class a choice of 2 or more strategies for investing the interest of the beneficiary or class in the fund; and

(ii) informs the beneficiary or class that the beneficiary or class may choose a strategy or combination of strategies;

(b) the beneficiary or class is fully informed of:

(i) the investment objectives of each strategy; and

(ii) anything else the trustee reasonably believes a person would need to know to understand the effect of, and any risk involved in, each strategy;

(c) the direction specifies:

(i) which strategy or combination of strategies the beneficiary or class has chosen; and



Federal Register of Legislative Instruments F2015C00472

(ii) where applicable, matters related to the choice mentioned in subparagraph (i);

Example: The chosen strategy could be one that allows the beneficiary a choice in exposure to certain classes of asset. The beneficiary may choose 60% in fixed interest loans and 40% in shares. The choice of the level of exposure to the class of assets would be information for subparagraph (ii).

(d) the beneficiary or class is fully informed of the range of directions that can be given and the circumstances in which they can be changed.

(3) A subsequent direction may be given in the following circumstances:

(a) the beneficiary or class is given all the information the trustee believes a person would need to understand the effect of, and any risk involved in, giving the subsequent direction;

(b) the subsequent direction relates to the strategy for investing the beneficiary or class's interest in the fund.

## 4.02A Trustee subject to direction—registrable superannuation entity other than regulated superannuation fund with fewer than 5 members

(1) This regulation is made for subparagraph 58(2)(d)(ii) of the Act.

(2) If a beneficiary is a standard employer-sponsored member, the circumstances in which a direction other than a subsequent direction may be given by the beneficiary to take up, dispose of or alter the amount invested in an investment option are:

(a) the trustee:

(i) gives the beneficiary a choice of 2 or more strategies for investing the interest of the beneficiary in the fund; and

(ii) informs the beneficiary that the beneficiary may choose a strategy or combination of strategies;

(b) the beneficiary is fully informed of:

(i) the investment objectives of each strategy; and



Federal Register of Legislative Instruments F2015C00472

(ii) anything else the trustee reasonably believes a person would need to know to understand the effect of, and any risk involved in, each strategy;

(c) the direction specifies:

(i) which strategy or combination of strategies the beneficiary has chosen; and

(ii) where applicable, matters related to the choice mentioned in subparagraph (i).

Example: The chosen strategy could be one that allows the beneficiary a choice in exposure to certain classes of asset. The beneficiary may choose 60% in fixed interest loans and 40% in shares. The choice of the level of exposure to the class of assets would be information for subparagraph (ii).

Note: Information regarding investment strategies is generally set out in a Product Disclosure Statement. However, a shorter Product Disclosure Statement may, in accordance with the modifications of the *Corporations Act 2001* set out in Part 5B of Schedule 10A to the *Corporations Regulations 2001* provide some of the information by applying, adopting or incorporating a matter in writing; or refer to information that is set out in another document.

(d) the beneficiary is fully informed of the range of directions that can be given and the circumstances in which they can be changed;

(e) the trustee, when presenting a choice of 2 or more investment strategies to the beneficiary, informs the beneficiary which strategy the trustee will adopt if no direction is given.

(3) Disregard the circumstance in paragraph (2)(e) if it is a condition of membership that the beneficiary chooses a strategy or combination of strategies.

(4) If a beneficiary is not a standard employer-sponsored member, the circumstances in which a direction other than a subsequent direction may be given by the beneficiary to take up, dispose of or alter the amount invested in an investment option are the circumstances in paragraphs (2)(a) to (d).

(5) A subsequent direction may be given in the following circumstances:



Federal Register of Legislative Instruments F2015C00472

(a) the beneficiary is given all the information the trustee believes a person would need to understand the effect of, and any risk involved in, giving the subsequent direction;
(b) the subsequent direction relates to the strategy for investing the beneficiary's interest in the fund.

### 4.02AA Operating standard—direction on investment option to trustee of regulated superannuation fund with fewer than 5 members

(1) This standard:
(a) is made for subsection 31(1) of the Act; and
(b) applies to a regulated superannuation fund (other than a self managed superannuation fund) with fewer than 5 members.

(2) A beneficiary of the fund who is a standard employer-sponsored member may give a direction other than a subsequent direction to take up, dispose of or alter the amount invested in an investment option only if the circumstances in subregulation (3) apply.

(3) For subregulation (2), the circumstances are the following:
(a) the trustee:
(i) gives the beneficiary a choice of 2 or more strategies for investing the interest of the beneficiary in the fund; and
(ii) informs the beneficiary that the beneficiary may choose a strategy or combination of strategies;
(b) the beneficiary is fully informed of:
(i) the investment objectives of each strategy; and
(ii) anything else the trustee reasonably believes a person would need to know to understand the effect of, and any risk involved in, each strategy;
(c) the direction specifies:
(i) which strategy or combination of strategies the beneficiary has chosen; and
(ii) where applicable, matters related to the choice mentioned in subparagraph (i);



Federal Register of Legislative Instruments F2015C00472

Example: The chosen strategy could be one that allows the beneficiary a choice in exposure to certain classes of asset. The beneficiary may choose 60% in fixed interest loans and 40% in shares. The choice of the level of exposure to the class of assets would be information for subparagraph (ii).

Note: Information regarding investment strategies is generally set out in a Product Disclosure Statement. However, a shorter Product Disclosure Statement may, in accordance with the modifications of the *Corporations Act 2001* set out in Part 5B of Schedule 10A to the *Corporations Regulations 2001* provide some of the information by applying, adopting or incorporating a matter in writing; or refer to information that is set out in another document.

(d) the beneficiary is fully informed of the range of directions that can be given and the circumstances in which they can be changed;

(e) the trustee, when presenting a choice of 2 or more investment strategies to the beneficiary, informs the beneficiary which strategy the trustee will adopt if no direction is given.

(4) Disregard the circumstance in paragraph (2)(e) if it is a condition of membership that the beneficiary chooses a strategy or combination of strategies.

(5) If a beneficiary is not a standard employer-sponsored member, the circumstances in which a direction other than a subsequent direction may be given by the beneficiary to take up, dispose of or alter the amount invested in an investment option are the circumstances in paragraphs (3)(a) to (d).

(6) A subsequent direction may be given in the following circumstances:

(a) the beneficiary is given all the information the trustee believes a person would need to understand the effect of, and any risk involved in, giving the subsequent direction;

(b) the subsequent direction relates to the strategy for investing the beneficiary's interest in the fund.



Federal Register of Legislative Instruments F2015C00472

## 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 a superannuation fund with fewer than 5 members) 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

(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



Federal Register of Legislative Instruments F2015C00472

(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 a self managed superannuation 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



Federal Register of Legislative Instruments F2015C00472

(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 a self managed superannuation fund may be amended are:

(a) where, after the making of the amendment:

(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



Federal Register of Legislative Instruments F2015C00472

(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.

(2) The circumstances referred to in subregulation (1) are:

(a) if the office-holder resigns from office; or



Federal Register of Legislative Instruments F2015C00472

(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.



Federal Register of Legislative Instruments F2015C00472

# Division 4.2—Operating standards

## 4.07C Definitions

In this Division:

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

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

## 4.07D Operating standard—permitted types of insurance

(1) This regulation is made for subsection 31(1) of the Act.

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

(3) However, subregulation (2) does not apply to:
  (a) the continued provision of benefits to members who joined a fund before 1 July 2014; or
  (b) the provision of benefits under an approval granted before 1 July 2014 under subparagraph 62(1)(b)(v) of the Act.

(4) If a trustee is unable to amend the governing rules of a fund, to make the governing rules comply with subregulation (2):
  (a) the rules that do not comply with subregulation (2) are taken to have been omitted from the governing rules; and
  (b) the rules omitted under paragraph (a) are taken to have been replaced by rules that allow the provision of benefits that are permitted under subregulation (2).

(5) This regulation does not apply until 1 July 2014.



Federal Register of Legislative Instruments F2015C00472

## 4.07E Operating standard—self-insurance

(1) This regulation is made for subsection 31(1) of the Act.

Note: See also paragraph 31(2)(eb) of the Act.

(2) If, on 1 July 2013, a regulated superannuation fund does not self-insure, in relation to a particular risk, a trustee of the fund may, on and after 1 July 2013, provide an insured benefit, in relation to that risk, to members of the fund only if the provision of the benefit is fully supported by an insurance policy provided by an insurer.

(3) Subregulation (2) does not apply, on or before 1 July 2016, to a member who is transferred from a fund that self-insured, in relation to the member and the risk, into:

(a) a successor fund that, immediately before the transfer, did not self-insure in relation to the risk; or

(b) under Part 33 of the Act—a fund that, immediately before the transfer, did not self-insure in relation to the risk.

(4) If, on 1 July 2013, a regulated superannuation fund self-insures, in relation to a particular risk, a trustee of the fund may, on and after 1 July 2016, provide an insured benefit, in relation to that risk, to members of the fund only if the provision of the benefit is fully supported by an insurance policy provided by an insurer.

(5) If the governing rules of the fund mentioned in subregulation (4) do not allow the trustee to obtain the insurance policy mentioned in that subregulation, the trustee must, before 1 July 2016, amend the rules of the fund to allow the trustee to do so.

(6) If the trustee cannot amend the rules, the rules are taken to be amended to allow the trustee to obtain the insurance policy.

(7) Subregulation (4) does not apply if the Commonwealth Government, or the government of a State or Territory:

(a) provides an insured benefit to members of the fund; or

(b) guarantees the provision of an insured benefit to members of the fund.



Federal Register of Legislative Instruments F2015C00472

(8) Subregulation (4) does not apply, in relation to defined benefit members of the fund, if:

(a) on or before 1 July 2013, APRA has not imposed, under subsection 29EA(1) of the Act, a condition on the licence of the RSE licensee of the fund that prohibits self-insurance in relation to defined benefit members; and

(b) on 1 July 2013, the fund self-insures in relation to the members.

(9) Despite subregulation (4), a beneficiary of the fund who is mentioned in column 2 of the table has the entitlement mentioned in column 3 of the table.

**Entitlements of beneficiaries**

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

(10) In this regulation:

***fund*** includes a sub-fund.



Federal Register of Legislative Instruments F2015C00472

## 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.



Federal Register of Legislative Instruments F2015C00472

## 4.08A Operating standard—member representation for certain regulated superannuation funds where a declaration under subsection 18(7) of the Act applies

(1) For the purposes of subsection 31(1) of the Act, the standard stated in subregulation (2) applies to the operation of regulated superannuation funds.

(2) A regulated superannuation fund:

(a) that is not a standard employer-sponsored fund; and

(b) that has more than 4 members; and

(c) in relation to which a declaration under subsection 18(7) of the Act is in force;

must have in place an arrangement in relation to the management and control of the fund that:

(d) has been agreed to by a majority of the members of the fund; and

(e) is approved by APRA in writing.

Note: Subsection 18(7) of the Act allows for funds to be declared not to be public offer funds.

(3) An approval for paragraph (2)(e):

(a) is subject to any conditions specified in the instrument of approval; and

(b) may be revoked by APRA by written notice given to the holder of the approval.

(4) APRA may vary the conditions of an approval for paragraph (2)(e) by written notice given to the holder of the approval.

(5) An approval that:

(a) was granted by the Commissioner or APRA under the regulation 4.08A that, under section 2 of Modification Declaration 10, had effect as if it had been inserted into these regulations; and

(b) was in force immediately before 1 March 2001;



Federal Register of Legislative Instruments F2015C00472

continues in force as if granted by APRA for this regulation after that commencement.

Note: Modification Declaration 10 was gazetted on 19 July 1995 under section 332 of the Act.

(6) When deciding whether or not to approve an arrangement for paragraph (2)(e), APRA must have regard to any written guidelines determined by APRA under this subregulation.

(7) This regulation does not apply to a fund if the fund has an acting trustee appointed under Part 17 of the Act.

## 4.09 Operating standard—investment strategy

(1) This regulation:
  (a) is made for subsection 31(1) of the Act; and
  (b) applies to a superannuation entity that is a self managed superannuation fund.

(2) The trustee of the entity must formulate, review regularly and give effect to an investment strategy that has regard to the whole of the circumstances of the entity including, but not limited to, the following:
  (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;
  (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;
  (e) whether the trustees of the fund should hold a contract of insurance that provides insurance cover for one or more members of the fund.



Federal Register of Legislative Instruments F2015C00472

(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.

### 4.09A Operating standard—money and other assets to be kept separate (self managed superannuation funds)

(1) For subsection 31(1) of the Act, the standard stated in subregulation (2) applies to the operation of regulated superannuation funds.

(2) A trustee of a regulated superannuation fund that is a self managed superannuation fund must keep the money and other assets of the fund separate from any money and assets, respectively:

(a) that are held by the trustee personally; or

(b) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the fund.

### 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 the Regulator 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 the Regulator otherwise directs.



Federal Register of Legislative Instruments F2015C00472

## 4.10A Operating standard—ownership of units in a PST

(1) For paragraph 33(2)(aa) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is a PST.

(2) A trustee of the registrable superannuation entity must not offer ownership of units in the registrable superannuation entity unless the registrable superannuation entity is registered under Part 2B of the Act.

## 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.

## 4.11A Operating standard—acceptance of deposits by an approved deposit fund

(1) For paragraph 32(2)(aa) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is an approved deposit fund.

(2) A trustee of the registrable superannuation entity must not accept deposits unless the registrable superannuation entity is registered under Part 2B of the Act.

## 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



Federal Register of Legislative Instruments F2015C00472

benefit from another regulated superannuation fund or approved deposit fund, or from an EPSSS or 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

(b) any other form of consent determined by the Regulator 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:



Federal Register of Legislative Instruments F2015C00472

(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:

***member***, of a fund, includes the non-member spouse in relation to a superannuation interest in the fund that is subject to a payment split.

***relative*** has the same meaning as in the Income Tax Assessment Act.



Federal Register of Legislative Instruments F2015C00472

# 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



Federal Register of Legislative Instruments F2015C00472

to those benefits and charged to those benefits in accordance with that regulation down to that time.

***deferred annuity*** means an annuity that is not payable on purchase, and the terms of which ensure:

(a) that payment of benefits under the annuity:
  (i) is not commenced earlier than the time at which Part 6 permits or requires the benefits to be paid from an approved deposit fund; and
  (ii) is to commence as soon as practicable after the annuitant:
    (A) dies; or
    (B) if the annuitant dies before attaining the age of 65—would have attained that age; and

(b) that, except as permitted in relation to approved deposit funds by the Act or these Regulations, the provider of the annuity is not taken to recognise, or in any way encourage or sanction:
  (i) an assignment of an interest under the annuity; or
  (ii) the giving of a charge over, or in relation to, the annuity.

***Government co-contribution benefits*** means Government co-contributions made under the Co-contribution Act, less:

(a) the costs applicable to them; and
(b) any amounts repaid under section 24 of the Co-contribution Act.

***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:



Federal Register of Legislative Instruments F2015C00472

(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.



Federal Register of Legislative Instruments F2015C00472

***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:

(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 a superannuation lump sum (other than by way of being transferred) within the superannuation system.



Federal Register of Legislative Instruments F2015C00472

***superannuation provider*** means:

(a) the trustee of a regulated superannuation fund; or

(b) the trustee of an approved deposit fund; or

(c) an RSA provider.

***superannuation system*** means the system comprising:

(a) regulated superannuation funds; and

(b) approved deposit funds; and

(c) the Commissioner of Taxation in the Commissioner of Taxation's role as the maker of payments to a superannuation provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and

(d) deferred annuities; and

(e) EPSSSs; and

(h) RSAs; and

(i) annuities.

***transferred***, in relation to a member's benefits paid out of, or received by, a regulated superannuation fund or approved deposit fund, means paid to, or received from:

(a) another regulated superannuation fund or approved deposit fund; or

(b) an RSA provided by an RSA institution; or

(c) an EPSSS;

otherwise than upon the satisfaction by the member of a condition of release (within the meaning of Part 6) for all those benefits.

(2) For the purposes of this Part, a payment from the Superannuation Holding Accounts Special Account is taken to be a mandated employer contribution.

## 5.01A Operating standards—determination of costs and investment return

For the purposes of subsections 31(1) and 32(1) of the Act:



Federal Register of Legislative Instruments F2015C00472

(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: This regulation was amended with effect from 1 July 2013 as part of changes to the former member protection standards. A trustee might choose to continue to protect the benefits of all members from 1 July 2013 until when the trustee starts to enrol members in the MySuper product.

## 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

(b) any administrative, insurance and taxation costs relating to the establishment, operation and termination of the fund; and



Federal Register of Legislative Instruments F2015C00472

(c) if the member's benefits are subject to a payment split, the costs incurred in administering the payment split (not including the costs offset by any fees payable under regulation 59 of the *Family Law (Superannuation) Regulations 2001* in respect of the payment split).

(3) Subject to 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.

## 5.02B 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



Federal Register of Legislative Instruments F2015C00472

fair and reasonable manner to all the members of the fund against whom the costs were charged.

## 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 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.



Federal Register of Legislative Instruments F2015C00472

## Division 5.2—Minimum benefits

### 5.04 Minimum benefits—regulated superannuation funds

(1) Subject to regulations 5.05, 5.06 and 5.06B, 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 all of the member's benefits in the fund.

(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; and

(iii) Government co-contribution benefits and any investment earnings on them; and

(iv) any amount allocated under regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*.

### 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:



Federal Register of Legislative Instruments F2015C00472

(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).

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.



Federal Register of Legislative Instruments F2015C00472

## 5.06 Certain benefits rolled over or transferred to regulated superannuation funds taken to be minimum benefits

(1) Subject to this regulation, the following benefits are taken to be minimum benefits in a regulated superannuation fund:

(a) benefits rolled over or transferred to the regulated superannuation fund;

(b) benefits allotted under Division 6.7 to an interest in the regulated superannuation fund held by, or created for, a receiving spouse.

(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.



Federal Register of Legislative Instruments F2015C00472

(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.

## 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.

## 5.06B Minimum benefits if new interest created, or benefits rolled over or transferred, under Division 7A.2

(1) This regulation applies if:

(a) an interest (the ***original interest***) in an accumulation fund is subject to a payment split; and

(b) under Division 7A.2:

(i) a new interest is created in the fund for the non-member spouse; or

(ii) the transferable benefits of the non-member spouse are rolled over or transferred to another fund, an EPSSS or an RSA.

(2) If subparagraph (1)(b)(i) applies, the trustee may decide that all the benefits held in the original interest, and in the new interest, immediately after the new interest is created are minimum benefits.

(3) If subparagraph (1)(b)(ii) applies, the trustee may decide that all the benefits held in the original interest immediately after the transferable benefits are rolled over or transferred are minimum benefits.



Federal Register of Legislative Instruments F2015C00472

Note: Transferable benefits rolled over or transferred to another regulated superannuation fund would be minimum benefits in accordance with regulation 5.06.

(4) However, the trustee must not make a decision mentioned in subregulation (2) or (3) if the decision would have the effect of reducing the minimum benefits held by the other members of the fund.

(5) If the trustee does not make a decision mentioned in subregulation (2) or (3), the minimum benefits held in the original interest are allocated between the member spouse and the non-member spouse in proportion to the split of benefits in the original interest.

## 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.



Federal Register of Legislative Instruments F2015C00472

# Division 5.3—Treatment of minimum benefits

## 5.08 How minimum benefits are to be treated

(1) For 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; or

(c) transferred, rolled over or allotted under Division 6.7.

(1A) Subregulation (1) does not apply if, under a law of the Commonwealth, a State or a Territory mentioned in the table, a court makes a forfeiture order (however called) forfeiting part or all of the member's benefits in the fund to the Commonwealth, a State or a Territory.

| Item | Law | Provision(s) |
|---|---|---|
| ***Commonwealth*** | | |
| 1.1 | *Proceeds of Crime Act 2002* | Section 47<br>Section 48<br>Section 49<br>Section 92 |
| ***New South Wales*** | | |
| 2.1 | *Confiscation of Proceeds of Crime Act 1989* | Subsection 18(1) |
| 2.2 | *Criminal Assets Recovery Act 1990* | Section 22 |
| ***Victoria*** | | |
| 3.1 | **Confiscation Act 1997** | Division 1 of Part 3<br>Section 35<br>Part 4<br>Subsection 157(6) |



Federal Register of Legislative Instruments F2015C00472

| Item | Law | Provision(s) |
|---|---|---|
| ***Queensland*** | | |
| 4.1 | *Criminal Proceeds Confiscation Act 2002* | Section 58<br>Section 58A<br>Section 151<br>Part 5 of Chapter 3 |
| ***Western Australia*** | | |
| 5.1 | *Criminal Property Confiscation Act 2000* | Section 30, to the extent that it applies to confiscation under section 6 in satisfaction of a person's liability under section 20<br>Section 30, to the extent that it applies to confiscation under section 7 |
| ***South Australia*** | | |
| 6.1 | *Criminal Assets Confiscation Act 2005* | Section 47 |
| ***Tasmania*** | | |
| 7.1 | *Crime (Confiscation of Profits) Act 1993* | Section 16 |
| ***Australian Capital Territory*** | | |
| 8.1 | *Confiscation of Criminal Assets Act 2003* | Section 54<br>Section 58<br>Section 62<br>Section 67 |
| ***Northern Territory*** | | |
| 9.1 | *Criminal Property Forfeiture Act 2002* | Section 75<br>Section 76<br>Section 80<br>Section 96<br>Section 97<br>Section 99 |

(2) Subregulation (1) does not apply in relation to an amount of a member's minimum benefits in an accumulation fund if:



Federal Register of Legislative Instruments F2015C00472

(a) the amount is attributable only to employer contributions (other than mandated employer contributions); and

(b) there is a written agreement between the member of the fund and the member's employer that:

(i) was entered into before the commencement of this subparagraph; and

(ii) requires the employer to make the employer contributions (other than mandated employer contributions) to the fund for the benefit of the member; and

(iii) specifies that if the member's employment with the employer ends at or after the end of a period specified in the agreement, the employee is entitled to all of the amount; and

(iv) specifies that if the member's employment with the employer ends before the end of the specified period, the member is entitled only to a proportion of the amount; and

(c) the member's employment has ended before the end of the period mentioned in subparagraph (b)(iii).

(3) In addition to subregulation (1), a trustee of an accumulation fund may allow an amount of a member's minimum benefits in the fund to be cashed as benefits of the member if:

(a) the cashing of the benefits is for the purpose of the member's temporary incapacity; and

(b) the amount:

(i) is not attributable to the member's member-financed benefits; and

(ii) is not attributable to the member's mandated employer-financed benefits.



Federal Register of Legislative Instruments F2015C00472

# 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:

***cashing restriction***, in relation to a condition of release, means a cashing restriction specified in column 3 of the item in Schedule 1 that mentions the condition of release.

***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



Federal Register of Legislative Instruments F2015C00472

(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; or

(f) a payment of income support for the purposes of the Farm Family Support Scheme.

***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, subject to regulation 6.01B, 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 (as in force before 1 July 2007), modified so that subsection (1) reads as follows:



Federal Register of Legislative Instruments F2015C00472

‘(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 allocated annuity*** has the meaning given by regulation 6.01AA.

***non-commutable allocated pension*** has the meaning given by regulation 6.01AB.

***non-commutable annuity*** means an annuity provided under a contract that:

(a) meets the standards of subregulation 1.05(2), (9) or (10); and

(b) ensures that payments of benefits are made only in accordance with the rules set out in regulations 6.16, 6.18, 6.19 and 6.22A, as if:

(i) the annuity were a regulated superannuation fund; and

(ii) the annuitant were a member of the fund; and

(iii) the annuity provider were a trustee of the fund; and

(c) ensures that, if the annuity is commuted under subparagraph 1.05(2)(f)(i), (9)(h)(i) or (10)(d)(i), the resulting superannuation lump sum cannot be cashed unless:

(i) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or

(ii) before commutation, the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is ‘Nil’.



Federal Register of Legislative Instruments F2015C00472

***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.

***non-commutable pension*** means a pension provided under rules of a superannuation fund that:

(a) meet the standards of subregulation 1.06(2), (7) or (8); and

(b) ensure that, if the pension is commuted under subparagraph 1.06(2)(e)(i), (7)(g)(i) or (8)(d)(i), the resulting superannuation lump sum cannot be cashed unless:

(i) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or

(ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'.

***permanent resident*** means a holder of a permanent visa under the *Migration Act 1958* that has not ceased to be in effect.

***preservation age*** means:

(a) for a person born before 1 July 1960—55 years; or



Federal Register of Legislative Instruments F2015C00472

(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

(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.

***temporary resident*** means a holder of a temporary visa under the *Migration Act 1958*.

***terminal medical condition*** has the meaning given by regulation 6.01A.

***transition to retirement income stream*** means:

(a) an annuity provided under a contract that:



Federal Register of Legislative Instruments F2015C00472

(i) is a contract:

(A) to which paragraph 1.05(11A)(a) applies; and

(B) that meets the standards of subregulation 1.05(11A); and

(ii) allows total payments (excluding payments by way of commutation, but including payments under a payment split) made in a financial year to amount to no more than 10% of the annuity account balance:

(A) on 1 July in the financial year in which the payment is made; or

(B) if that year is the year in which the annuity commences—on the commencement day;

unless the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and

(iii) complies with paragraphs (b) and (c) of the definition of ***non-commutable allocated annuity*** in subregulation 6.01AA(1), as if it were such an annuity; or

(b) a pension provided from a superannuation fund, the rules of which:

(i) are rules:

(A) to which paragraph 1.06(9A)(a) applies; and

(B) that meet the standards of subregulation 1.06(9A); and

(ii) allow total payments (excluding payments by way of commutation but including payments under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:

(A) on 1 July in the financial year in which the payment is made; or

(B) if that year is the year in which the pension commences—on the commencement day;

unless the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved

benefits and restricted non-preserved benefits is 'Nil'; and

(iii) comply with paragraph (b) of the definition of ***non-commutable allocated pension*** in subregulation 6.01AB(1), as if it were such a pension.

***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

(B) the person was in receipt of payments of that kind on the date of the written evidence; and



Federal Register of Legislative Instruments F2015C00472

(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) the amounts are undeducted contributions within the meaning that was given, before 1 July 2007, by subsection 27A(1) of the Tax Act; or

(b) for any other amounts—the amounts comprise member contributions:

(i) 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 former section 82AAT of the Tax Act.

(7) For the purposes of Schedule 1, the retirement of a person is taken to occur:



Federal Register of Legislative Instruments F2015C00472

(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 the age of 60—an arrangement under which the member was gainfully employed has come to an end, and either of the following circumstances apply:

(i) the person attained that age on or before the ending of the employment; or

(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.

(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.

## 6.01AA Meaning of *non-commutable allocated annuity*

(1) In this Part and Schedule 1, ***non-commutable allocated annuity*** means an annuity provided under a contract that:

(a) meets the standards of subregulation 1.05(4); and

(b) ensures that payments of benefits are made only in accordance with the rules set out in regulations 6.16, 6.18, 6.19 and 6.22A, as if:

(i) the annuity were a regulated superannuation fund; and

(ii) the annuitant were a member of the fund; and

(iii) the annuity provider were a trustee of the fund; and

(c) ensures that, if the annuity is commuted, the resulting superannuation lump sum cannot be cashed unless:



Federal Register of Legislative Instruments F2015C00472

(i) the purpose of the commutation is mentioned in subregulation (2); or

(ii) before commutation, the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is "Nil"; or

(iii) the purpose of the commutation is to satisfy an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(2) For subparagraph (1)(c)(i), the purpose is any of the following:

(a) to cash an unrestricted non-preserved benefit;

(b) to pay a superannuation contributions surcharge;

(c) to give effect to an entitlement of a non-member spouse under a payment split;

(d) to ensure that a payment may be made for the purpose of giving effect to a release authority under any of the following:

(i) section 292-415 of the 1997 Tax Act;

(ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

(iii) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*;

(iv) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*.

## 6.01AB Meaning of *non-commutable allocated pension*

(1) In this Part and Schedule 1, ***non-commutable allocated pension*** means a pension provided under rules of a superannuation fund that:

(a) meet the standards of subregulation 1.06(4); and

(b) ensure that, if the pension is commuted, the resulting superannuation lump sum cannot be cashed unless:



Federal Register of Legislative Instruments F2015C00472

(i) the purpose of the commutation is mentioned in subregulation (2); or

(ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is "Nil"; or

(iii) the purpose of the commutation is to satisfy an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(2) For subparagraph (1)(b)(i), the purpose is any of the following:

(a) to cash an unrestricted non-preserved benefit;

(b) to pay a superannuation contributions surcharge;

(c) to give effect to an entitlement of a non-member spouse under a payment split;

(d) to ensure that a payment may be made for the purpose of giving effect to a release authority under any of the following:

(i) section 292-415 of the 1997 Tax Act;

(ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

(iii) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*;

(iv) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*.

## 6.01A Meaning of *terminal medical condition*

For Schedule 1, a ***terminal medical condition*** exists in relation to a person at a particular time if the following circumstances exist:

(a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the ***certification period***) that ends not more than 12 months after the date of the certification;



Federal Register of Legislative Instruments F2015C00472

(b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
(c) for each of the certificates, the certification period has not ended.

### 6.01B Conditions of release for temporary residents

(1) This regulation applies to a member who is or was a temporary resident.

(2) This regulation does not apply to a member who:
(a) is an Australian citizen, a New Zealand citizen or a permanent resident; or
(b) is, at any time, the holder of a Subclass 405(Investor Retirement) visa or a Subclass 410(Retirement) visa described in Schedule 2 to the *Migration Regulations 1994*.

(3) The only conditions of release that can be satisfied in respect of a member to whom this regulation applies are:
(a) a condition of release that was satisfied by the member before 1 April 2009; and
(b) the conditions of release in items 102, 102A, 103, 103A, 103B, 109, 111A, 111B, 111C 112, 112A, 113A, 202, 202A, 203, 204, 204A, 208A, 208B, 208C, 209 and 209A of Schedule 1.

## 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:



Federal Register of Legislative Instruments F2015C00472

(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:



Federal Register of Legislative Instruments F2015C00472

(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.

### 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



Federal Register of Legislative Instruments F2015C00472

(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 RSA or an EPSSS 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



Federal Register of Legislative Instruments F2015C00472

EPSSS on or after the changeover day that are subject to indexation in that other fund, RSA or EPSSS;

(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 EPSSS; and

(b) were indexed amounts of restricted non-preserved benefits in that other fund, RSA or EPSSS;

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 EPSSS; and

(b) were restricted non-preserved contributions in that other fund, RSA or EPSSS;

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



Federal Register of Legislative Instruments F2015C00472

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

(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 EPSSS on and after 1 July 1999.

(2) However, if:

(a) on or after 1 July 1999, a deduction is allowed for the member under the former 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.



Federal Register of Legislative Instruments F2015C00472

## 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 that were received by the regulated superannuation fund before 1 July 2004; 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, as in force before 1 July 2007, 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:



Federal Register of Legislative Instruments F2015C00472

(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 the former 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 that were received by the approved deposit fund before 1 July 2004; 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



Federal Register of Legislative Instruments F2015C00472

(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, as in force before 1 July 2007, 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:

(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:



Federal Register of Legislative Instruments F2015C00472

(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

(1) 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.

(2) Benefits rolled over, transferred or allotted under Division 6.7 to an interest in a regulated superannuation fund held by, or created for,



Federal Register of Legislative Instruments F2015C00472

a receiving spouse are taken to be preserved benefits for the purposes of this Division.

## 6.15A Certain benefits taken to be unrestricted non-preserved benefits

(1) 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'.

(2) An investment earning in relation to a benefit of any kind is an unrestricted non-preserved benefit on a day if:



Federal Register of Legislative Instruments F2015C00472

(a) the benefit was cashed, before that day, in the form of a non-commutable life pension; and

(b) for a benefit that was commenced under the condition of release mentioned in item 110 or 208 of Schedule 1, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and

(c) the pension commenced to be paid before that day.

(3) An investment earning in relation to a benefit of any kind is an unrestricted non-preserved benefit on a day if:

(a) the benefit was cashed, before that day, in the form of a non-commutable life annuity; and

(b) for a benefit that was commenced under the condition of release mentioned in item 110 or 208 of Schedule 1, the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and

(c) the annuity commenced to be paid before that day.

(4) An investment earning in relation to a benefit is an unrestricted non-preserved benefit on a day if:

(a) the benefit is an unrestricted non-preserved benefit; and

(b) the benefit was cashed, before that day, in the form of a pension; and

(c) for a benefit that was commenced under the condition of release mentioned in item 110 or 208 of Schedule 1, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and

(d) the pension commenced to be paid before that day.

(5) An investment earning in relation to a benefit is an unrestricted non-preserved benefit on a day if:

(a) the benefit is an unrestricted non-preserved benefit; and

(b) the benefit was cashed, before that day, in the form of an annuity; and



Federal Register of Legislative Instruments F2015C00472

(c) for a benefit that was commenced under the condition of release mentioned in item 110 or 208 of Schedule 1, the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and

(d) the annuity commenced to be paid before that day.

## 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, subject to subregulation (3), 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.

(3) The trustee may alter the category of benefits in a fund from preserved benefits to unrestricted non-preserved benefits if:

(a) before the commencement of regulation 6.15A and 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) before the commencement of regulation 6.15A, both:

(i) the benefits were rolled over or transferred to the fund from:



Federal Register of Legislative Instruments F2015C00472

(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'.

## 6.16A 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

(b) second, against the member's restricted non-preserved benefits; and

(c) third (if required), against the member's unrestricted non-preserved benefits.



Federal Register of Legislative Instruments F2015C00472

# 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 standards set out in subregulations (2), (2A) and (2B) are applicable to the operation of regulated superannuation funds and approved deposit funds.

(2) A member's benefits in a fund:
  (a) may be paid:
    (i) by being cashed in accordance with Division 6.3; or
    (ii) by being rolled over or transferred in accordance with Division 6.4, 6.5 or 6.7; or
    (iii) by being allotted under Division 6.7; and
  (b) must not be paid in that way except when, and to the extent that, the fund is required or permitted under this Part to pay them; and
  (c) must be paid in that way when, and to the extent that, the fund is required under this Part to pay them.

(2A) A member's benefits in a fund:
  (a) may be paid:
    (i) by being cashed in accordance with Part 7A; or
    (ii) by being rolled over or transferred in accordance with Part 7A; and
  (b) must not be paid in that way except when, and to the extent that, the fund is required or permitted under Part 7A to pay them; and
  (c) must be paid in that way when, and to the extent that, the fund is required under Part 7A to pay them.

(2B) A member's benefits in a fund:
  (a) may be paid in a way that is not described in subregulations (2) and (2A):



Federal Register of Legislative Instruments F2015C00472

(i) as a consequence of the trustee taking action that, because of Division 2.2 of the *Family Law (Superannuation) Regulations 2001*, has the effect that a future payment in respect of the superannuation interest of the member spouse would not be a splittable payment; or

(ii) as a consequence of the operation of a fund's governing rules that, because of Division 2.2 of the *Family Law (Superannuation) Regulations 2001*, has the effect that a future payment in respect of the superannuation interest of the member spouse would not be a splittable payment; and

(b) must not be paid in that way except when, and to the extent that, the fund would be required or permitted under those Regulations to pay them; and

(c) must be paid in that way when, and to the extent that, the fund would be required under those regulations to pay them.

(2C) This regulation does not apply if, under a law of the Commonwealth, a State or a Territory mentioned in the table, a court makes a forfeiture order (however called) forfeiting part or all of the member's benefits in the fund to the Commonwealth, a State or a Territory.

| Item | Law | Provision(s) |
|---|---|---|
| ***Commonwealth*** | | |
| 1.1 | *Proceeds of Crime Act 2002* | Section 47 |
| | | Section 48 |
| | | Section 49 |
| | | Section 92 |
| ***New South Wales*** | | |
| 2.1 | *Confiscation of Proceeds of Crime Act 1989* | Subsection 18(1) |
| 2.2 | *Criminal Assets Recovery Act 1990* | Section 22 |
| ***Victoria*** | | |



Federal Register of Legislative Instruments F2015C00472

Regulation 6.17

| Item | Law | Provision(s) |
|---|---|---|
| 3.1 | **Confiscation Act 1997** | Division 1 of Part 3<br>Section 35<br>Part 4<br>Subsection 157(6) |
| ***Queensland*** | | |
| 4.1 | *Criminal Proceeds Confiscation Act 2002* | Section 58<br>Section 58A<br>Section 151<br>Part 5 of Chapter 3 |
| ***Western Australia*** | | |
| 5.1 | *Criminal Property Confiscation Act 2000* | Section 30, to the extent that it applies to confiscation under section 6 in satisfaction of a person's liability under section 20<br>Section 30, to the extent that it applies to confiscation under section 7 |
| ***South Australia*** | | |
| 6.1 | *Criminal Assets Confiscation Act 2005* | Section 47 |
| ***Tasmania*** | | |
| 7.1 | *Crime (Confiscation of Profits) Act 1993* | Section 16 |
| ***Australian Capital Territory*** | | |
| 8.1 | *Confiscation of Criminal Assets Act 2003* | Section 54<br>Section 58<br>Section 62<br>Section 67 |
| ***Northern Territory*** | | |



Federal Register of Legislative Instruments F2015C00472

| Item | Law | Provision(s) |
|---|---|---|
| 9.1 | *Criminal Property Forfeiture Act 2002* | Section 75 |
| | | Section 76 |
| | | Section 80 |
| | | Section 96 |
| | | Section 97 |
| | | Section 99 |

(3) For this regulation, a payment to which regulation 7.9.66 or 7.9.68 of the *Corporations Regulations 2001* relates is taken to be the payment of a benefit.

## 6.17A Payment of benefit on or after death of member(Act, s 59(1A))

(1) For subsections 31(1) and 32(1) of the Act, the standard set out in subregulation (4) is applicable to the operation of regulated superannuation funds and approved deposit funds.

(2) For subsection 59(1A) of the Act, the governing rules of a fund may permit a member of the fund to require the trustee to provide any benefits in respect of the member, on or after the death of the member, to the legal personal representative or a dependant of the member if the trustee gives to the member information under subregulation (3).

(3) The trustee must give to the member information that the trustee reasonably believes the member reasonably needs for the purpose of understanding the right of that member to require the trustee to provide the benefits.

(4) Subject to subregulation (4A), and regulations 6.17B, 7A.17 and 7A.18, if the governing rules of a fund permit a member of the fund to require the trustee to provide any benefits in accordance with subregulation (2), the trustee must pay a benefit in respect of the member, on or after the death of the member, to the person or persons mentioned in a notice given to the trustee by the member if:

(a) the person, or each of the persons, mentioned in the notice is the legal personal representative or a dependant of the member; and

(b) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice; and

(c) the notice is in accordance with subregulation (6); and

(d) the notice is in effect.

(4A) The trustee is not required to comply with subregulation (4) if the trustee:

(a) is subject to a court order that has the effect of restraining or prohibiting the trustee from paying a benefit in respect of the member in accordance with a notice of the kind described in that subregulation; or

(b) is aware that the member of the fund is subject to a court order that:

(i) requires the member to amend or revoke a notice of that kind that the member has given the trustee; or

(ii) has the effect of restraining or prohibiting the member from giving a notice of that kind.

(5) A member who gives notice under subregulation (4) may:

(a) confirm the notice by giving to the trustee a written notice, signed, and dated, by the member, to that effect; or

(b) amend, or revoke, the notice by giving to the trustee notice, in accordance with subregulation (6), of the amendment or revocation.

(6) For paragraphs (4)(c) and (5)(b), the notice:

(a) must be in writing; and

(b) must be signed, and dated, by the member in the presence of 2 witnesses, being persons:

(i) each of whom has turned 18; and

(ii) neither of whom is a person mentioned in the notice; and



Federal Register of Legislative Instruments F2015C00472

(c) must contain a declaration signed, and dated, by the witnesses stating that the notice was signed by the member in their presence.

(7) Unless sooner revoked by the member, a notice under subregulation (4) ceases to have effect:

(a) at the end of the period of 3 years after the day it was first signed, or last confirmed or amended, by the member; or

(b) if the governing rules of the fund fix a shorter period—at the end of that period.

## 6.17AA Payments prevented under *Family Law Act 1975*

If a trustee of a regulated superannuation fund or an approved deposit fund does not make a payment in accordance with the standard set out in subregulation 6.17(2) because the trustee is prevented from doing so:

(a) under subsection 90ML(4) of the *Family Law Act 1975*; or

(b) by an order made under subsection 90MU(1) of the *Family Law Act 1975*;

the trustee is not in breach of the standard.

Note: Subsection 90ML(4) of the *Family Law Act 1975* provides that while a payment flag is operating on a superannuation interest, the trustee must not make any splittable payment to any person in respect of the interest. Subsection 90MU(1) of the *Family Law Act 1975* provides that a court may make an order in relation to a superannuation interest directing the trustee not to make a splittable payment in respect of the interest without the leave of the court.

## 6.17B Duty to seek information

If an item of information given by a member in a notice under subregulation 6.17A(4) is not sufficiently clear to allow the trustee to pay the benefit, the trustee must seek from the member a written statement to clarify the item as soon as practicable after the trustee receives the notice.

Example: If the proportion of the benefit that will be paid to the person, or to each person, mentioned in the notice is not certain, or is not readily



Federal Register of Legislative Instruments F2015C00472

ascertainable from the notice given by the member, the trustee must seek a statement of that proportion from the member.

## 6.17C Payment and commutation of pension in breach of standards

If a regulated superannuation fund provides a pension under rules which meet the standards of subregulation 1.06(2), (7) or (8), the trustee must not:

(a) pay the pension in a way that does not meet the standards of the relevant subregulation; or

(b) allow the pension to be commuted except in accordance with the relevant subregulation.



Federal Register of Legislative Instruments F2015C00472

# 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.

Note: For conditions of release for temporary residents, see regulation 6.01B.

(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, unless the satisfied condition of release is the death of the member:

(a) a form (if any) specified in Schedule 1 as a cashing restriction relating to the condition of release; or

(b) if the specified cashing restriction is 'Nil'—any 1 or more of the following forms:

(i) 1 or more lump sums;

(ii) 1 or more pensions;

(iii) the purchase of 1 or more annuities.

Note: For the cashing requirement applying on the death of the member, see regulation 6.21.



Federal Register of Legislative Instruments F2015C00472

(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.

Note: For conditions of release for temporary residents, see regulation 6.01B.

(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, unless the satisfied condition of release is the death of the member:

(a) a form (if any) specified in Schedule 1 as a cashing restriction relating to the condition of release; or

(b) if the specified cashing restriction is 'Nil'—any 1 or more of the following forms:

(i) 1 or more lump sums;

(ii) 1 or more pensions;

(iii) the purchase of 1 or more annuities.

Note: For the cashing requirement applying on the death of the member, see regulation 6.21.



Federal Register of Legislative Instruments F2015C00472

(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 the Regulator 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 the Regulator determines.

(2) The Regulator 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 the Regulator is satisfied that:



Federal Register of Legislative Instruments F2015C00472

(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) The Regulator 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:

(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) The Regulator 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) The Regulator cannot be satisfied that money is required on the ground mentioned in paragraph (1)(b) unless the person gives to the Regulator 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.



Federal Register of Legislative Instruments F2015C00472

(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, unless the cashing occurs in consequence of the death of the member, any one or more of the following forms:

(a) one or more lump sums;

(b) one or more pensions;

(c) the purchase of one or more annuities.

Note: For the cashing requirement applying on the death of the member, see regulation 6.21.

(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).

## 6.20A Compulsory cashing of benefits in a regulated superannuation fund that is not an unfunded public sector superannuation scheme—temporary residents

(1) This regulation applies to a member's benefits in a regulated superannuation fund that is not an unfunded public sector superannuation scheme if:

(a) the member:

(i) was a temporary resident; and



Federal Register of Legislative Instruments F2015C00472

(ii) is not an Australian citizen, New Zealand citizen or permanent resident; and

(iii) has left Australia; and

(b) the member's visa has ceased to be in effect.

(1A) The member's benefits must be cashed if:

(a) the trustee of the fund receives a request from the member that the benefits be cashed; and

(b) subregulation (2) or (3) is complied with.

(2) If the member's withdrawal benefit in the fund is less than $5 000, the trustee of the fund must receive:

(a) a copy, or other evidence, of a visa showing that the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

(b) a copy of the member's passport showing that the member has left Australia.

Note: For the ways of giving evidence of a visa, see regulation 2.17 of the *Migration Regulations 1994*.

(3) The trustee of the fund must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:

(a) the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

(b) the member has left Australia.

(3A) For subregulation (3), the statement may be in electronic form.

(4) The benefits must be cashed in the period mentioned in subregulation (5):

(a) as a single lump sum that is at least the amount of the member's withdrawal benefit in the fund; or

(b) if the fund receives any combination of contributions, transfers and rollovers after cashing the benefits:

(i) in a way that ensures that an amount that is at least the amount of the member's withdrawal benefit in the fund is cashed; and



Federal Register of Legislative Instruments F2015C00472

(ii) without requiring an additional application from the member.

(5) For subregulation (4), the period is:

(a) if the trustee of the fund receives a request from the member not later than 31 October 2002—3 months after the request is lodged; and

(b) in any other case—28 days after the request is lodged.

Note: A payment made under this regulation is a ***departing Australia superannuation payment*** within the meaning of section 301-170 of the 1997 Tax Act.

## 6.20B Voluntary cashing of benefits in a regulated superannuation fund that is an unfunded public sector superannuation scheme—temporary residents

(1) This regulation applies to a member's benefits in a regulated superannuation fund that is an unfunded public sector superannuation scheme if:

(a) the member:

(i) was a temporary resident; and

(ii) is not an Australian citizen, New Zealand citizen or permanent resident; and

(iii) has left Australia; and

(b) the member's visa has ceased to be in effect.

(1A) The member's benefits may be cashed if:

(a) the trustee of the fund receives a request from the member that the benefits be cashed; and

(b) subregulation (2) or (3) is complied with.

(2) If the member's withdrawal benefit in the fund is less than $5 000, the trustee of the fund must receive:

(a) a copy, or other evidence, of a visa showing that the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

(b) a copy of the member's passport showing that the member has left Australia.

Note: For the ways of giving evidence of a visa, see regulation 2.17 of the *Migration Regulations 1994*.

(3) The trustee of the fund must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:

(a) the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

(b) the member has left Australia.

(3A) For subregulation (3), the statement may be in electronic form.

(4) If the benefits are cashed, the benefits must be cashed:

(a) as a single lump sum that is at least the amount of the member's withdrawal benefit in the fund; or

(b) if the fund receives any combination of contributions, transfers and rollovers after cashing the benefits:

(i) in a way that ensures that an amount that is at least the amount of the member's withdrawal benefit in the fund is cashed; and

(ii) without requiring an additional application from the member.

Note: A payment made under this regulation is a 'departing Australia superannuation payment' within the meaning of subsection 995-1(1) of the 1997 Tax Act.

## 6.20C Cashing of benefits in a regulated superannuation fund—payment to Commissioner of Taxation

If the trustee of a regulated superannuation fund is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for a person's superannuation interest in the fund, the amount must be cashed in favour of the Commissioner of Taxation as a lump sum.



Federal Register of Legislative Instruments F2015C00472

Note: An amount to be paid under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* must be paid by the time required under that Act.

## 6.21 Compulsory cashing of benefits in regulated superannuation funds

(1) Subject to subregulation (3), a member's benefits in a regulated superannuation fund must be cashed as soon as practicable after 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 the 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);

(b) subject to subregulations (2A) and (2B):

(i) 1 or more pensions;

(ii) the purchase of 1 or more annuities.

(2A) If a member dies on or after 1 July 2007, subparagraphs (2)(b)(i) and (ii) apply to an entitled recipient only if, at the time of the member's death, the entitled recipient:

(a) is a dependant of the member; and

(b) in the case of a child of the member:

(i) is less than 18 years of age; or

(ii) being 18 or more years of age:

(A) is financially dependent on the member and less than 25 years of age; or

(B) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*.



Federal Register of Legislative Instruments F2015C00472

(2B) If benefits in relation to a deceased member are being paid to a child of the deceased member in the form of a pension or an annuity in accordance with subregulation (2A), the benefits must be cashed as a lump sum on the earlier of:

(a) the day on which the annuity or pension is commuted, or the term of the annuity or pension expires (unless the benefit is rolled over to commence a new annuity or pension); and

(b) the day on which the child attains age 25;

unless the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under paragraph (2B)(a) or (b).

(3) For the purposes of subregulation (1), it is sufficient if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing.

## 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 subregulation (6) and regulations 6.22B, 7A.13, 7A.17 and 7A.18, 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:

(a) unless:

(i) the member has died; and

(ii) the conditions of subregulation (2) or (3) are satisfied; or

(b) unless the conditions of subregulation (4) or (5) 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:



Federal Register of Legislative Instruments F2015C00472

(a) the trustee has not, after making reasonable enquiries, found either a legal personal representative, or a dependant, of the member; and

(b) the person in whose favour benefits are cashed is an individual.

(4) The conditions of this subregulation are satisfied if:

(a) the superannuation provider has received a release authority in respect of the member under:

(i) section 292−410 or 292−420 of the 1997 Tax Act; or

(ii) section 96-10, 135-40 or 135-45 in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.

(5) The conditions of this subregulation are satisfied if the member's benefits are cashed in favour of the Commissioner of Taxation to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(6) This regulation does not apply if, under a law of the Commonwealth, a State or a Territory mentioned in the table, a court makes a forfeiture order (however called) forfeiting part or all of the member's benefits in the fund to the Commonwealth, a State or a Territory.

| Item | Law | Provision(s) |
|---|---|---|
| ***Commonwealth*** | | |
| 1.1 | *Proceeds of Crime Act 2002* | Section 47 |
| | | Section 48 |
| | | Section 49 |
| | | Section 92 |
| ***New South Wales*** | | |
| 2.1 | *Confiscation of Proceeds of Crime Act 1989* | Subsection 18(1) |



Federal Register of Legislative Instruments F2015C00472

Regulation 6.22

| Item | Law | Provision(s) |
|---|---|---|
| 2.2 | *Criminal Assets Recovery Act 1990* | Section 22 |
| ***Victoria*** | | |
| 3.1 | **Confiscation Act 1997** | Division 1 of Part 3<br>Section 35<br>Part 4<br>Subsection 157(6) |
| ***Queensland*** | | |
| 4.1 | *Criminal Proceeds Confiscation Act 2002* | Section 58<br>Section 58A<br>Section 151<br>Part 5 of Chapter 3 |
| ***Western Australia*** | | |
| 5.1 | *Criminal Property Confiscation Act 2000* | Section 30, to the extent that it applies to confiscation under section 6 in satisfaction of a person's liability under section 20<br>Section 30, to the extent that it applies to confiscation under section 7 |
| ***South Australia*** | | |
| 6.1 | *Criminal Assets Confiscation Act 2005* | Section 47 |
| ***Tasmania*** | | |
| 7.1 | *Crime (Confiscation of Profits) Act 1993* | Section 16 |
| ***Australian Capital Territory*** | | |
| 8.1 | *Confiscation of Criminal Assets Act 2003* | Section 54<br>Section 58<br>Section 62<br>Section 67 |
| ***Northern Territory*** | | |



Federal Register of Legislative Instruments F2015C00472

| Item | Law | Provision(s) |
|---|---|---|
| 9.1 | *Criminal Property Forfeiture Act 2002* | Section 75 |
| | | Section 76 |
| | | Section 80 |
| | | Section 96 |
| | | Section 97 |
| | | Section 99 |

### 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 the Regulator 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.



Federal Register of Legislative Instruments F2015C00472

## 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.

Note: For conditions of release for temporary residents, see regulation 6.01B.

(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).

### 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.



Federal Register of Legislative Instruments F2015C00472

(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).

### 6.24A Compulsory cashing of benefits in approved deposit funds—temporary residents

(1) This regulation applies to a member's benefits in an approved deposit fund if:

(a) the member:

(i) was a temporary resident; and

(ii) is not an Australian citizen, New Zealand citizen or permanent resident; and

(iii) has departed from Australia; and

(b) the member's visa has ceased to be in effect.

(1A) The member's benefits must be cashed if:

(a) the trustee of the fund receives a request from the member that the benefits be cashed; and

(b) subregulation (2) or (3) is complied with.

(2) If the member's withdrawal benefit in the fund is less than $5 000, the trustee of the fund must receive:

(a) a copy, or other evidence, of a visa showing that the member was a temporary resident but the member's temporary visa has ceased to be in effect; and

(b) a copy of the member's passport showing that the member has departed from Australia.

Note: For the ways of giving evidence of a visa, see regulation 2.17 of the *Migration Regulations 1994*.



Federal Register of Legislative Instruments F2015C00472

(3) The trustee of the fund must be satisfied, based on a written statement from the Department of Immigration and Citizenship, that:
  (a) the member was a temporary resident but the member's temporary visa has ceased to be in effect; and
  (b) the member has left Australia.

(3A) For subregulation (3), the statement may be in electronic form.

(4) The benefits must be cashed in the period mentioned in subregulation (5):
  (a) as a single lump sum that is at least the amount of the member's withdrawal benefit in the fund; or
  (b) if the fund receives any combination of transfers and rollovers after cashing the benefits:
    (i) in a way that ensures that an amount that is at least the amount of the member's withdrawal benefit in the fund is cashed; and
    (ii) without requiring an additional application from the member.

(5) For subregulation (4), the period is:
  (a) if the trustee of the fund receives a request from the member not later than 31 October 2002—3 months after the request is lodged; and
  (b) in any other case—28 days after the request is lodged.

Note: A payment made under this regulation is a ***departing Australia superannuation payment*** within the meaning of section 301-170 of the 1997 Tax Act.

## 6.24B Cashing of benefits in approved deposit funds—payment to Commissioner of Taxation

If the trustee of an approved deposit fund is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* for a person's superannuation interest in the fund, the amount must



Federal Register of Legislative Instruments F2015C00472

be cashed in favour of the Commissioner of Taxation as a lump sum.

Note: An amount to be paid under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* must be paid by the time required under that Act.

## 6.25 Compulsory cashing of benefits in approved deposit funds

(1) Subject to subregulation (3), a member's benefits in an approved deposit fund must be cashed as soon as practicable after 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) Subregulation (1) is satisfied if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing.

## 6.26 Limitation on cashing of benefits in approved de posit funds in favour of persons other than members or their legal personal representatives

(1) Subject to this regulation and regulations 7A.13, 7A.17 and 7A.18, 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:
    (i) the benefits are cashed in favour of the member's legal personal representative; or



Federal Register of Legislative Instruments F2015C00472

(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.

(2) A member's benefits in an approved deposit fund may be cashed if:

(a) the superannuation provider has received a release authority in respect of the member under:

(i) section 292−410 or 292−420 of the 1997 Tax Act; or

(ii) section 96-10, 135-40 or 135-45 in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.

(3) A member's benefits in an approved deposit fund may be cashed if the benefits are cashed in favour of the Commissioner of Taxation to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

## 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 unless the purpose of cashing the amount is:

(a) to close the member's account; or

(b) to cash the amount to give effect to a release authority under:

(i) section 292-415 of the *Income Tax Assessment Act 1997*; or

(ia) section 292-420 of the *Income Tax Assessment Act 1997*; or



Federal Register of Legislative Instruments F2015C00472

(ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

(iii) sections 96-20 and 96-25 in Schedule 1 to the *Taxation Administration Act 1953*; or

(iv) section 135-75 in Schedule 1 to the *Taxation Administration Act 1953*;

in respect of the member; or

(c) to pay an amount under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

## 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.



Federal Register of Legislative Instruments F2015C00472

# Division 6.4—General rules for 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 the Regulator as sufficient in the circumstances.

## 6.28 Rollover—regulated superannuation funds and approved deposit funds

(1) Except as otherwise provided by the Act, the *Corporations Act 2001*, the *Corporations Regulations 2001* 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, the approved deposit fund or the EPSSS; 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.

(2) The fund to which the money is to be rolled over must not be a registrable superannuation entity that:

(a) is a regulated superannuation fund or an approved deposit fund; and



Federal Register of Legislative Instruments F2015C00472

(b) has not been registered under Part 2B of the Act.

## 6.29 Transfer—funds

(1) Except as otherwise provided by the Act, the *Corporations Act 2001*, the *Corporations Regulations 2001* 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 the EPSSS; 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; or

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

(2) The fund to which the money is to be transferred must not be a registrable superannuation entity that:

(a) is a regulated superannuation fund or an approved deposit fund; and

(b) has not been registered under Part 2B of the Act.



Federal Register of Legislative Instruments F2015C00472

# Division 6.5—Compulsory rollover and transfer of superannuation benefits in regulated superannuation funds and approved deposit funds

## 6.30 Application

(1) This Division applies:
  (a) to a regulated superannuation fund, other than a fund mentioned in paragraph (2)(a) or (b); and
  (b) to an approved deposit fund.

(2) This Division does not apply:
  (a) to an unfunded public sector superannuation scheme; and
  (b) to a self-managed superannuation fund; and
  (c) in respect of a defined benefit component of a superannuation interest in a defined benefit fund, if the member who holds the interest is an employee of an employer-sponsor of the fund; and
  (d) to benefits that are being paid as a pension (other than an account-based pension, allocated pension or market linked pension).

## 6.31 Definitions for Division 6.5

*Defined benefit component*

(1) Subject to subregulation (2), a ***defined benefit component*** of a superannuation interest is a component of the interest in which the benefits are defined by reference to 1 or more of the following:
  (a) the amount of:
    (i) the member's salary at the date of the termination of the member's employment, the date of the member's retirement, or another date; or



Federal Register of Legislative Instruments F2015C00472

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

(iii) salary, or allowance in the nature of salary, payable to another person (for example, a judicial officer, a member of the Commonwealth or a State Parliament, a member of the Legislative Assembly of a Territory);

(b) a specified amount;

(c) specified conversion factors.

(2) A component of a superannuation interest is not a defined benefit component if the only benefits defined by reference to any of the amounts or factors mentioned in subregulation (1) are benefits payable on death or disability.

*Illiquid investment*

(3) An investment is an ***illiquid investment*** in relation to a member's interest in a superannuation fund if it is of a nature that produces either of the following outcomes:

(a) it cannot be converted to cash in less than the time required to rollover or transfer a withdrawal benefit under subregulation 6.34(3) or regulation 6.34A;

(b) converting it to cash within the time period specified in subregulation 6.34(3) or regulation 6.34A would be likely to have a significant adverse impact on the realisable value of the investment.

## 6.32 Superannuation data and payment matters

For subsection 34K(1) of the Act, regulations 6.33 to 6.38 prescribe matters to be complied with.

## 6.33 Request for rollover or transfer of withdrawal benefit

(1) A member of a regulated superannuation fund or approved deposit fund (the ***transferring fund***) may request, in writing, that the whole or a part of the member's withdrawal benefit in the



Federal Register of Legislative Instruments F2015C00472

transferring fund be rolled over or transferred to any of the following (the ***receiving fund***):

(a) a regulated superannuation fund;

(b) an approved deposit fund;

(c) an RSA provider.

Note: A member may also request that his or her withdrawal benefit be rolled over or transferred to an EPSSS.

(2) If the receiving fund is not a self managed superannuation fund, the member:

(a) may make the request to the transferring fund or the receiving fund; and

(b) if the request is to rollover or transfer an amount that is the whole of the member's withdrawal benefit—may use the form specified in Schedule 2A to make the request.

(3) If the receiving fund is a self managed superannuation fund, the member:

(a) must make the request to the transferring fund; and

(b) if the request is to rollover or transfer an amount that is the whole of the member's withdrawal benefit—may use the form specified in Schedule 2B to make the request.

Note: The forms in Schedules 2A and 2B deal with information about tax file numbers that is required in accordance with Part 25A of the Act, and approvals under that Part.

## 6.33A Action by receiving fund on receipt of request

(1) This regulation applies to the trustee of a fund (the ***receiving fund***) if the receiving fund receives a written request from a member to roll over or transfer, to the receiving fund, the whole or part of the member's:

(a) withdrawal benefit from a regulated superannuation fund or approved deposit fund; or

(b) withdrawal benefit in an RSA provided by an RSA provider.



Federal Register of Legislative Instruments F2015C00472

(2) The trustee of the receiving fund must tell the regulated superannuation fund, approved deposit fund or RSA provider (the ***transferring fund***) about the request and give the following details to the transferring fund:

(a) the member's full name;

(b) the member's date of birth;

(c) the member's sex;

(d) the member's residential address;

(e) the member's membership number, or account number, with the transferring fund;

(f) the receiving fund's name and ABN;

(g) the receiving fund's unique superannuation identifier for the rollover or transfer;

(h) the transferring fund's name and ABN;

(i) the transferring fund's unique superannuation identifier or unique RSA identifier for the rollover or transfer.

(3) However, subsection (2) does not apply if the trustee does not have all of the details mentioned in subsection (2).

(4) The trustee must also tell the transferring fund:

(a) whether the request is to rollover or transfer the whole or a part of the member's withdrawal benefit; and

(b) if the request is to rollover or transfer a part of the member's withdrawal benefit—the amount to be rolled over or transferred.

(5) The trustee must also give the tax file number to the transferring fund, unless, before the rollover or transfer, the member gives the trustee a written statement requesting the trustee not to inform any RSA provider or any other trustee of the member's tax file number.

Note: Standards made under subsection 34K(3) of the Act may set out how the information in subregulations (2) and (4) is to be given to the transferring fund (for example, electronically), and may set out additional information that must be given.



Federal Register of Legislative Instruments F2015C00472

(6) Before the trustee gives the information to the transferring fund, the trustee must reasonably believe that the member:

(a) is aware that the member may ask the trustee of the transferring fund for information that the member reasonably requires for the purpose of understanding any benefit entitlements that the member may have, including:

(i) information about any fees or charges that may apply to the proposed rollover or transfer; and

(ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the member may have; and

(b) either:

(i) has obtained any information the member reasonably requires; or

(ii) does not require such information.

Note: Under section 1017C of the *Corporations Act 2001*, a trustee of a fund must, on request by a member of the fund, give the member the information and documents mentioned in subsections 1017C(3) and (5). See also regulations 7.9.02, 7.9.45 and 7.9.47 of the *Corporations Regulations 2001*.

## 6.33B Transferring fund must electronically receive request

(1) This regulation applies to a regulated superannuation fund or approved deposit fund (the ***transferring fund***) if a member of the fund makes a request for the whole or part of the member's withdrawal benefit in the transferring fund to be rolled over or transferred to another regulated superannuation fund, approved deposit fund or RSA provider (the ***receiving fund***).

(2) The transferring fund must be able to electronically receive information in relation to the rollover or transfer sent to the transferring fund:

(a) by the receiving fund, in accordance with regulation 6.33A and any applicable Standards made under subsection 34K(3) of the Act; or



Federal Register of Legislative Instruments F2015C00472

(b) by the receiving fund in accordance with any applicable Standards made under subsection 45B(3) of the RSA Act; or

(c) by the member, in accordance with any Standards made under subsection 34K(3) of the Act or subsection 45B(3) of the RSA Act that apply in relation to requests for rollovers or transfers of withdrawal benefits; or

(d) by the Commissioner of Taxation under regulation 6A.03.

## 6.33C Trustee may request information if not provided

(1) Subregulation (2) applies if:

(a) a trustee of a regulated superannuation fund or approved deposit fund (the ***transferring fund***) receives:

(i) a request to roll over or transfer a member's withdrawal benefit to another regulated superannuation fund or approved deposit fund, an RSA provider or an EPSSS; or

(ii) the information mentioned in subregulation 6.33A(2) from a receiving fund; and

(b) the request is to rollover or transfer the whole of the member's withdrawal benefit; and

(c) the trustee requires further information in order to process the request; and

(d) one of the following applies:

(i) for a request to rollover or transfer to a self managed superannuation fund—the further information is mandatory information in the form in Schedule 2B;

(ii) in any other case—the further information is mandatory information in the form in Schedule 2A.

Note: If a request does not include all of the mandatory information in the form in Schedule 2A or 2B (whether or not the request is made using the form) the trustee may still roll over or transfer the amount without asking for the rest of the mandatory information.

(2) The trustee must ask the member for the mandatory information not later than 5 business days after receiving the request.



Federal Register of Legislative Instruments F2015C00472

(3) If:

(a) a trustee of a transferring fund receives:

(i) a request to roll over or transfer a member's withdrawal benefit to another regulated superannuation fund or approved deposit fund, an RSA provider or an EPSSS; or

(ii) the information mentioned in subregulation 6.33A(2) from a receiving fund; and

(b) the request is to rollover or transfer part of the member's withdrawal benefit; and

(c) the trustee requires further information that is necessary to process the request;

the trustee must ask the member for the information not later than 5 business days after receiving the request.

(4) If the trustee does not receive the information requested in subregulation (2) or (3) not later than 10 business days after making the request, the trustee must make reasonable further inquiries of the member to obtain the information.

## 6.33D Validation of member's details by transferring fund

(1) Subregulation (2) applies to the trustee of a regulated superannuation fund or approved deposit fund (the ***transferring fund***) if:

(a) the transferring fund receives:

(i) a request under regulation 6.33 to rollover or transfer the whole or a part of a member's withdrawal benefit from the transferring fund to another regulated superannuation fund (other than a self managed superannuation fund) or approved deposit fund, or an RSA provider; or

(ii) a request to rollover or transfer the whole or a part of a member's withdrawal benefit from the transferring fund to an EPSSS; and



Federal Register of Legislative Instruments F2015C00472

(b) the request was not given to the trustee by the Commissioner of Taxation; and

(c) the transferring fund has the member's tax file number.

(2) The trustee of the transferring fund must ask the Commissioner of Taxation, using an electronic interface provided by the Commissioner, for a notice under subsection 299TD(2) of the Act in relation to the member.

(3) However, subregulation (2) does not apply if the Commissioner has previously given the trustee a notice under subsection 299TD(2) of the Act stating that the Commissioner was able to validate the member's information given by the trustee.

(4) The trustee may ask the member for any proof of identity information on the form in Schedule 2B that the trustee reasonably requires to process the request if:

(a) the Commissioner of Taxation gives the trustee a notice under subsection 299TD(2) of the Act stating that the Commissioner is not able to validate the information mentioned in subsection (2); or

(b) the trustee does not have the member's tax file number.

(5) The trustee must ask for the proof of identity information under subregulation (4) not later than:

(a) for a trustee to whom paragraph (4)(a) applies—5 business days after receiving the Commissioner's notice; and

(b) for a trustee to whom paragraph (4)(b) applies—5 business days after receiving the request to rollover or transfer the whole or a part of the member's withdrawal benefit.

(6) If the trustee does not receive the information requested under subregulation (4) within 10 business days after making the request, the trustee must make reasonable further inquiries of the member to obtain the information.



Federal Register of Legislative Instruments F2015C00472

## 6.33E Verification of self managed superannuation fund and member's details

(1) This regulation applies to the trustee of a regulated superannuation fund or approved deposit fund (the ***transferring fund***) if the transferring fund receives a request under regulation 6.33 to rollover or transfer the whole or a part of a member's withdrawal benefit from the transferring fund to a self managed superannuation fund (the ***receiving fund***).

(2) The trustee of the transferring fund must:

(a) use an electronic service provided by the Australian government to verify:

(i) the ABN and name of the receiving fund; and

(ii) that the receiving fund is a regulated superannuation fund; and

(b) use an electronic service provided by the Commissioner of Taxation to validate that the member is a member of the receiving fund.

(3) If the trustee is unable to verify the information mentioned in paragraph (2)(a) or is unable to validate the information mentioned in paragraph (2)(b), using the electronic service, the trustee must ask the Commissioner of Taxation to verify or validate the information.

(4) The trustee must make the request under subregulation (3) not later than 5 business days after the trustee has been unable to verify or validate the information under subsection (2).

(5) If the Commissioner of Taxation is unable to verify or validate the information, the trustee must, within 10 days of being advised of that by the Commissioner, tell the member of the outcome of the Commissioner's enquiries.



Federal Register of Legislative Instruments F2015C00472

## 6.34 Rollover or transfer of withdrawal benefit

*Application of regulation*

(1) This regulation applies to the trustee of a regulated superannuation fund or approved deposit fund (the ***transferring fund***) if:

(a) the transferring fund receives a request to rollover or transfer the whole or part of a member's withdrawal benefit from the transferring fund to another regulated superannuation fund or approved deposit fund, an RSA provider or an EPSSS (the ***receiving fund***); and

(b) for a request to rollover or transfer the whole of member's withdrawal benefit—the transferring fund receives all information that is mandatory information in the form in Schedule 2A (if the receiving fund is not a self managed superannuation fund) or Schedule 2B (in any other case); and

(c) for a request to roll over or transfer part of the member's withdrawal benefit—the transferring fund receives:

(i) the information that would be required by the form specified in Schedule 2A (if the receiving fund is not a self managed superannuation fund) or Schedule 2B (in any other case); and

(ii) any other information that is reasonably required by the trustee of the fund to give effect to the rollover or transfer; and

(d) for a request to which subregulation 6.33D(4) applies—the trustee has received sufficient information, following the request, to reasonably enable the trustee to give effect to the rollover or transfer; and

(e) for a request to which subregulation 6.33E(3) applies, the trustee has received sufficient information, following the request, to reasonably enable the trustee to give effect to the rollover or transfer.

Note for paragraph (a): The request could come from the member, the receiving fund or the Commissioner of Taxation.



Federal Register of Legislative Instruments F2015C00472

*Trustee must rollover or transfer*

(2) Subject to regulations 6.35 and 6.38, the trustee must roll over or transfer the amount in accordance with the request.

Note: Standards made under subsection 34K(3) of the Act may set out how the amount is to be rolled over or transferred, and information that must accompany the rollover or transfer.

(3) The trustee must assign a payment reference number to the rollover or transfer, and include the payment reference number in the rollover or transfer.

(4) The payment reference number must be unique to:
  (a) the rollover or transfer; or
  (b) a number of rollovers or transfers made together on the same day by the transferring fund.

Note: Standards made under subsection 34K(3) of the Act may set out how the payment reference number is to be determined.

(5) Before the trustee rolls over or transfers the amount, the trustee must, unless the trustee received the request from the receiving fund under regulation 6.33A or the Commissioner for Taxation under Part 6A, reasonably believe that the member:
  (a) is aware that the member may ask the trustee for information that the member reasonably requires for the purpose of understanding any benefit entitlements that the member may have, including:
    (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
    (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the member may have; and
  (b) either:
    (i) has obtained any information the member reasonably requires; or
    (ii) does not require such information.



Federal Register of Legislative Instruments F2015C00472

Note: Under section 1017C of the *Corporations Act 2001*, a trustee of a fund must, on request by a member of the fund, give the member the information and documents mentioned in subsections 1017C(3) and (5). See also regulations 7.9.02, 7.9.45, and 7.9.47 of the *Corporations Regulations 2001*.

## 6.34A Timeframes for rollovers and transfers

(1) This regulation applies if a trustee of a transferring fund is required to rollover or transfer an amount to a receiving fund under regulation 6.34.

*Timeframe—standard*

(2) Subject to subregulations (3) to (6), a trustee required to roll over or transfer an amount under subregulation 6.34(2) must do so as soon as practicable, but in any case not later than 3 business days after:

(a) the trustee received the rollover or transfer request; or

(b) if the trustee seeks further information under regulation 6.33C or subregulation 6.33D (4) or 6.33E(3)—the date the trustee receives the information; or

(c) if there is a suspension or variation under regulation 6.36 or 6.37—the end of the period of the suspension or variation.

*Timeframe—non-standard*

(3) If the receiving fund is unable to receive the rollover or transfer in accordance with any applicable Standards made under subsection 34K(3) of the Act or subsection 45B(3) of the RSA Act, the trustee is required, subject to subregulations (4) to (6), to rollover or transfer the amount as soon as practicable, but in any case not later than 30 days after:

(a) the trustee received the rollover or transfer request; or

(b) if the trustee seeks further information under regulation 6.33C or subregulation 6.33D(4) or 6.33E(3)—the date the trustee receives the information; or



Federal Register of Legislative Instruments F2015C00472

(c) if there is a suspension or variation under regulation 6.36 or 6.37—the end of the period of the suspension or variation.

(4) If a member makes an investment choice between 1 July 2007 and 30 June 2013 under regulation 4.02, or after 1 July 2013 under regulation 4.02A or 4.02AA:

(a) the trustee is not required to rollover or transfer the amount within the period mentioned in subregulation (2) if:

(i) the trustee takes steps to redeem the investment as soon as practicable but in any case not later than 3 business days; and

(ii) the rollover or transfer is made as soon as practicable, and in any event not later than 3 business days, after the trustee receives the proceeds of the redemption; but

(b) the trustee must rollover or transfer the amount as soon as practicable and in any case not later than 30 days after:

(i) the trustee received the request; or

(ii) if the trustee seeks further information under regulation 6.33C, or subregulation 6.33D(4) or 6.33E(3)—the time the trustee receives the information; or

(iii) if there is a suspension or variation under regulation 6.36 or 6.37—the end of the period of the suspension or variation.

*Timeframe—illiquid investments*

(5) For an investment made before 1 July 2007, the trustee is not required to rollover or transfer the amount within the period mentioned in subregulation (2), (3) or (4) if:

(a) any part of the member's interest was an illiquid investment immediately before 1 July 2007; and

(b) the trustee informed the member, before 1 July 2008, of the nature of the illiquid investment, the impact of the investment on the portability of the member's interest, and the period



Federal Register of Legislative Instruments F2015C00472

within which the investment can be rolled over to another fund.

(6) If a member makes an investment choice between 1 July 2007 and 30 June 2013 under regulation 4.02, or after 1 July 2013 under regulation 4.02A or 4.02AA, the trustee is not required to rollover or transfer the amount within the period mentioned in subregulation (2), (3) or (4) if:

(a) for an investment choice made before 1 July 2013 where the investment strategy chosen is an illiquid investment—the trustee, before the member made the investment choice:

(i) informed the member of the effect of subregulation 6.34(5) of these Regulations as in force immediately before 1 July 2013, and of the maximum period in which a transfer was required to be effected under that subregulation; and

(ii) informed the member of the reasons why the investment is illiquid; and

(iii) obtained written consent that the member understands and accepts that a period longer than 30 days is required (in respect of the whole or part of the requested transfer amount) because of the illiquid nature of the investment; or

(b) for an investment choice made on or after 1 July 2013, where the investment strategy chosen is an illiquid investment—the trustee has, before the member made the investment choice:

(i) informed the member of the effect of paragraph 6.34A(4)(b) and of the maximum period in which a transfer is required to be effected under that paragraph; and

(ii) informed the member of the reasons why the investment is illiquid; and

(iii) obtained written consent that the member understands and accepts that a period longer than 30 days is required (in respect of the whole or part of the requested transfer amount) because of the illiquid nature of the investment.



Federal Register of Legislative Instruments F2015C00472

Note: The trustee may effect a rollover or transfer in more than 1 transaction to ensure that only the illiquid investment is rolled over or transferred outside the 3 day period.

## 6.34B Member details for rollover or transfer

(1) A trustee of a transferring fund who rolls over or transfers the whole or part of a member's withdrawal benefit under regulation 6.34 to a regulated superannuation fund, approved deposit fund or RSA provider (the ***receiving fund***) must give the following information to the receiving fund in relation to the rollover or transfer:

(a) the member's full name;

(b) the member's date of birth;

(c) the member's sex;

(d) the member's residential address;

(e) the payment reference number included with the rollover or transfer.

Note: See section 299M of the Act for requirements relating to the provision of the member's tax file number.

(2) However, the trustee is not required to give the information to the receiving fund if the member has not given the information to the transferring fund.

(3) The trustee must give the information to the receiving fund on the same day as the trustee makes the rollover or transfer.

Note: Standards made under subsection 34K(3) of the Act may set out how the information in subregulation (1) is to be given to the receiving fund (for example, electronically), and may require additional information to be given.

## 6.34C Receiving fund must electronically receive information and payment

(1) This regulation applies to a regulated superannuation fund or approved deposit fund (the ***receiving fund***) if:



Federal Register of Legislative Instruments F2015C00472

(a) another regulated superannuation fund or approved deposit fund, or an RSA provider (the ***transferring fund***) gives to the receiving fund in relation to a rollover or transfer:
  (i) the information mentioned in subregulation 6.34B(1); and
  (ii) a payment of the whole or a part of a member's withdrawal benefit being rolled over or transferred to the receiving fund; and
(b) the information is given, and the payment made, in accordance with the applicable Standards (if any) made under subsection 34K(3) of the Act or subsection 45B(3) of the RSA Act.

(2) The receiving fund must be able to receive the information and payment electronically.

Note: Standards made under subsection 34K(3) may set out additional requirements for how the fund is to receive the information and payment.

## 6.34D Receiving fund must allocate amount to member

(1) This regulation applies to the trustee of a regulated superannuation fund or approved deposit fund (the ***receiving fund***) if:
(a) the receiving fund receives a rollover or transfer of an amount that is the whole or a part of a member's withdrawal benefit from:
  (i) a regulated superannuation fund or approved deposit fund; or
  (ii) an RSA provider; or
  (iii) the Commissioner of Taxation; and
(b) for a rollover or transfer received from a regulated superannuation fund or approved deposit fund (the ***transferring fund***):
  (i) the transferring fund made the rollover or transfer in accordance with any applicable Standards specified under subsection 34K(3) of the Act; and



Federal Register of Legislative Instruments F2015C00472

(ii) the information required by subregulation 6.34B(1), and any applicable Standards specified under subsection 34K(3) of the Act, was sent in relation to the rollover or transfer; and

(iii) the information was sent in the way required by any applicable Standards made under subsection 34K(3) of the Act; and

(c) for a rollover or transfer received from the Commissioner of Taxation—the Commissioner made the rollover or transfer in accordance with any applicable Standards specified under subsection 34K(3) of the Act that would apply if the rollover or transfer were being made by a regulated superannuation fund or approved deposit fund; and

(d) for a rollover or transfer received from an RSA provider:

(i) the RSA provider made the rollover or transfer in accordance with any applicable Standards specified under subsection 45B(3) of the RSA Act; and

(ii) the information required by subregulation 4.35L(1) of the RSA Regulations and any applicable Standards made under subsection 45B(3) of the RSA Act, was sent in relation to the rollover or transfer; and

(iii) the information was sent in the way required by any applicable Standards made under subsection 45B(3) of the RSA Act.

(2) If the receiving fund accepts the rollover or transfer, and receives it in accordance with any applicable Standards made under subsection 34K(3) of the Act, the receiving fund must allocate the amount transferred or rolled over to the member's account as soon as possible, but in any case not later than 3 business days after the receiving fund has received:

(a) the rollover or transfer of the amount; and

(b) either:

(i) the information mentioned in subparagraph (1)(b)(ii), sent in accordance with any applicable Standards made under subsection 34K(3) of the Act; or



Federal Register of Legislative Instruments F2015C00472

(ii) the information mentioned in subparagraph (1)(d)(ii), sent in accordance with any applicable Standards made under subsection 45B(3) of the RSA Act.

## 6.35 When a trustee may refuse to roll over or transfer an amount

(1) A trustee may refuse to roll over or transfer an amount under regulation 6.34 if:

(a) the fund or RSA to which the member has requested the amount be rolled over or transferred will not accept the amount; or

(b) the amount to be rolled over or transferred is part only of the member's interest in the fund, and the effect of rolling over or transferring the amount would be that the member's interest in the fund from which the amount is to be rolled over or transferred would be less than $5 000; or

(c) the trustee has, under regulation 6.34, rolled over or transferred an amount of the member's interest within 12 months before the request is received; or

(d) the amount to be rolled over or transferred is a superannuation death benefit (within the meaning of the 1997 Tax Act) in the form of a pension and the roll over or transfer would be inconsistent with the governing rules of the fund applying in respect of the benefit.

(2) If a trustee refuses to roll over or transfer an amount under subregulation (1), the trustee must tell the member of the refusal in writing.

## 6.36 Suspension or variation of obligation to roll over or transfer amounts by APRA

(1) This regulation applies if APRA believes, on reasonable grounds, that a rollover or transfer of an amount by the trustee of a regulated superannuation fund or approved deposit fund under regulation 6.34 would have a significant adverse effect on:

(a) the financial position of the fund; or



Federal Register of Legislative Instruments F2015C00472

(b) the interests of other members of the fund.

(2) APRA may, by notice in writing to the trustee, suspend or vary an obligation of the trustee under regulation 6.34.

(3) A suspension or variation under subregulation (2) applies for the period specified by APRA in the notice.

## 6.37 Suspension or variation of obligation to roll over or transfer amounts by APRA—application by trustee

(1) This regulation applies if the trustee of a regulated superannuation fund or approved deposit fund applies to APRA for a suspension or variation of the trustee's obligation to roll over or transfer amounts under regulation 6.34.

(2) The application must contain information about the fund's financial position and the effect of any rollovers or transfers of amounts under regulation 6.34 on:
(a) the financial position of the fund; or
(b) the interests of other members of the fund.

(3) APRA may ask the trustee to provide further information in relation to the application within the period specified by APRA.

(4) If the trustee does not provide the further information within the specified period, APRA may treat the application as if it had been withdrawn by the trustee.

(5) APRA must consider the application and notify the trustee of its decision in writing, within 30 days after the later of:
(a) the day APRA receives the application; and
(b) the day APRA receives the further information.

(6) If APRA believes, on reasonable grounds, that a rollover or transfer of an amount under regulation 6.34 would have a significant adverse effect on:
(a) the financial position of the fund; or



Federal Register of Legislative Instruments F2015C00472

(b) the interests of other members of the fund;

APRA may, by notice in writing to the trustee, suspend or vary an obligation of the trustee under regulation 6.34.

(7) A suspension or variation under subregulation (6) applies for the period specified by APRA in the notice.

## 6.38 Trustee's obligations if APRA suspends or varies obligation to roll over or transfer amounts

(1) If, under regulation 6.36 or 6.37, APRA suspends a trustee's obligation to roll over or transfer amounts under regulation 6.34, the trustee must not roll over or transfer an amount under regulation 6.34 for the period of the suspension.

(2) If, under regulation 6.36 or 6.37, APRA varies a trustee's obligation to roll over or transfer amounts under regulation 6.34, the trustee may roll over or transfer an amount under regulation 6.34 only in accordance with the variation.



Federal Register of Legislative Instruments F2015C00472

# Division 6.6—Additional standards for eligible rollover funds

## 6.39 Obligations of trustees

The trustee of an eligible rollover fund must comply, as soon as practicable, with a request by a member:

(a) to pay a benefit of the member in the fund; or

(b) to pay a benefit in the form of a lump sum.



Federal Register of Legislative Instruments F2015C00472

# Division 6.7—Spouse contributions-splitting amounts

## 6.40 Interpretation

In this Division:

***allocated surplus contribution amount*** means an amount that is allocated from a regulated superannuation fund surplus, by a trustee, to meet an employer's liability to make contributions.

***applicant*** means a member who makes an application under subregulation 6.44(1).

***concessional contributions*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***concessional contributions cap*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***contributions segment*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***contributions-splitting superannuation benefit*** means a payment made in accordance subregulation 6.45(2).

***crystallised segment*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***defined benefit component*** has the meaning given by regulation 6.31.

***directed termination payment*** has the meaning given by section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

***element taxed in the fund*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***element untaxed in the fund*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.



Federal Register of Legislative Instruments F2015C00472

***foreign superannuation fund*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***maximum splittable amount***, in relation to a financial year, means:

(a) for taxed splittable contributions—the lesser of:
  (i) 85% of the concessional contributions for that financial year; and
  (ii) the concessional contributions cap for that financial year; and
(b) for untaxed splittable contributions—100% of the amount of the untaxed splittable contributions made in the financial year; and
(c) for untaxed splittable employer contributions—100% of the concessional contributions cap for that financial year.

***preservation age*** has the meaning given by regulation 6.01.

***relevant financial year***, in relation to an application made under:

(a) paragraph 6.44(1)(a), means the last financial year that ended before the date of the application; or
(b) paragraph 6.44(1)(b), means the financial year in which the application is made.

***splittable contribution*** has the meaning given by regulation 6.42.

***superannuation benefit*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***superannuation lump sum*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***superannuation interest*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***taxable component*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***taxed splittable contribution*** has the meaning given by regulation 6.41.



Federal Register of Legislative Instruments F2015C00472

***untaxed splittable contribution*** has the meaning given by regulation 6.41.

***untaxed splittable employer contribution*** has the meaning given by regulation 6.41.

## 6.41 Meaning of *taxed splittable contribution*, *untaxed splittable contribution* and *untaxed splittable employer contribution*

(1) Subject to subregulation (2), a ***taxed splittable contribution*** is:

(a) a contribution that will be included in the assessable income of an entity as:

(i) a taxable contribution for section 274 of the Tax Act; or

(ii) a contribution under Subdivision 295-C of the 1997 Tax Act; or

(c) an allocated surplus contribution amount.

(2) Each of the following is not a ***taxed splittable contribution***:

(a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;

(b) an amount allotted under this Division;

(c) a superannuation lump sum that is paid from a foreign superannuation fund.

(3) Subject to subregulation (4), an ***untaxed splittable contribution***:

(a) is a contribution made by a fund member or by another person to a regulated superannuation fund; but

(b) does not include a contribution of that kind that:

(i) is made after 5 April 2007; and

(ii) will not be included in the assessable income of an entity as:

(A) a taxable contribution for section 274 of the Tax Act; or

(B) a contribution under Subdivision 295-C of the 1997 Tax Act.

(4) Each of the following is not an ***untaxed splittable contribution***:



Federal Register of Legislative Instruments F2015C00472

(a) a payment made to a superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer;
(b) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
(c) an amount allotted under this Division;
(d) superannuation lump sum that is paid from a foreign superannuation fund.

(5) Subject to subregulation (6), an untaxed splittable employer contribution:
(a) is a contribution made by the Commonwealth, a State or a Territory to a public sector superannuation scheme; but
(b) does not include a contribution of that kind that will be included in the assessable income of an entity as:
(i) a taxable contribution for section 274 of the Tax Act; or
(ii) a contribution under Subdivision 295-C of the 1997 Tax Act.

(6) Each of the following is not an untaxed splittable employer contribution:
(a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
(b) an amount allotted under this Division;
(c) a superannuation lump sum that is paid from a foreign superannuation fund.

## 6.42 Meaning of *splittable contribution*

(1) Subject to subregulations (2) and (3), a ***splittable contribution*** is:
(a) a contribution to a regulated superannuation fund on or after 1 January 2006; or
(b) an allocated surplus contribution amount that is allocated on or after 1 January 2006.



Federal Register of Legislative Instruments F2015C00472

(2) Each of the following, received for a member of a regulated superannuation fund, is not a ***splittable contribution***:

(a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;

(b) an amount allotted under this Division;

(c) a superannuation lump sum that is paid from a foreign superannuation fund;

(d) a directed termination payment or an amount that would form part of the contributions segment of the superannuation interest.

(3) A contribution by the Commonwealth, a State or a Territory to a public sector superannuation scheme in relation to a benefit that accrued in a financial year that commenced before 1 July 2005 is not a splittable contribution.

## 6.43 Application of Division 6.7

(1) This Division applies to:

(a) an accumulation interest; and

(b) a defined benefit interest that is not a defined benefit component.

(2) This Division does not apply to an interest:

(a) that is subject to a payment split; or

(b) on which a payment flag (within the meaning of Part VIIIB of the *Family Law Act 1975*) is operating.

## 6.44 Application to roll over, transfer or allot an amount of contributions

(1) A member of a regulated superannuation fund may, in a financial year, apply to the trustee of the fund to roll over, transfer or allot an amount of benefits, for the benefit of the member's spouse, that is equal to an amount of the splittable contributions made to that fund by, for, or on behalf of the member in:

(a) the last financial year that ended before the application; or



Federal Register of Legislative Instruments F2015C00472

(b) the financial year in which the application is made—where the member's entire benefit is to be rolled over, transferred or cashed in that year.

Note: This arrangement applies at the request of the member, and is not an arrangement by which the member's superannuation interest is subject to a payment split under Part VIIIB of the *Family Law Act 1975*. Part 7A of these Regulations deals with those payment splitting arrangements.

(2) However, the application is taken to be invalid:

(a) if in the financial year in which it is made:

(i) the member has already made an application in respect of the relevant financial year; and

(ii) the trustee:

(A) is considering the application; or

(B) has given effect to that application; or

(b) if the amount of benefits to which the application relates exceeds the maximum splittable amount; or

(c) subject to subregulation (3), if, at the time of application:

(i) the member's spouse is aged 65 years or more; or

(ii) both:

(A) the member's spouse is aged between the relevant preservation age and 65 years; and

(B) the member's spouse satisfies the condition of release specified in item 101 of Schedule 1.

(3) Despite paragraph (2)(c), an application is not taken to be invalid under that paragraph if the application includes a statement by the member's spouse to the effect that, at the time of application, the spouse:

(a) is aged less than the relevant preservation age; or

(b) both:

(i) is aged between the relevant preservation age and 65 years; and

(ii) does not satisfy the condition of release specified in item 101 of Schedule 1.



Federal Register of Legislative Instruments F2015C00472

(4) The applicant must specify, in the application, the amount of the benefit from the following:

(a) the member's taxed splittable contributions;

(b) the member's untaxed splittable contributions;

(c) the member's untaxed splittable employer contributions;

that the member seeks to split for the benefit of the member's spouse.

Note: An amount rolled over, transferred or allotted under this Division is a contributions-splitting superannuation benefit.

## 6.45 Decision on application

(1) A trustee may accept an application made under subregulation 6.44(1) if all of the following conditions are satisfied:

(a) the application complies with regulation 6.44;

(b) the trustee has no reason to believe that the statement mentioned in subregulation 6.44(3) is untrue;

(c) the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.

Note: A superannuation fund trustee may voluntarily provide a service that allows a member to rollover, transfer or allot an amount to the applicant's spouse (a ***splittable contribution***). The fund is not required to offer the service.

(2) A trustee that accepts an application in accordance with subregulation (1) must as soon as practicable, and in any case within 30 days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.

(3) If the application requests a split of untaxed splittable contributions, the trustee may give effect to the application only if the amount specified in the application is no more than the crystallised segment that would form part of the superannuation interest that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.



Federal Register of Legislative Instruments F2015C00472

(4) If the application requests a split of taxed splittable contributions, the trustee may give effect to the application only if the amount specified in the application is no more than the element taxed in the fund of the taxable component that would form part of the superannuation benefit that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.

(5) If the application requests a split of untaxed splittable employer contributions, the trustee may give effect to the application only if the amount specified in the application is no more than the element untaxed in the fund of the taxable component that would form part of the superannuation benefit that would be payable if the member withdrew the member's entire benefits at the time of the trustee giving effect to the application.

## 6.46 Receiving spouse

For this Part, if a trustee accepts an application made under subregulation 6.44(1), the applicant's spouse is a ***receiving spouse***.



Federal Register of Legislative Instruments F2015C00472

# Division 6.8—Conditions for the use of tax file numbers to facilitate consolidation or rollover

## 6.47 Definitions for Division 6.8

In this Division:

***beneficiary*** means a person who quotes his or her tax file number to a trustee in accordance with subsection 299LA(1) of the Act, and that is:

(a) a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; or

(b) an applicant to become such a beneficiary.

***RSA provider or superannuation entity*** means an RSA provider, eligible superannuation entity or regulated exempt public sector superannuation scheme.

***trustee*** means a trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme.

## 6.48 Conditions for use of tax file numbers

For subsection 299LA(2) of the Act, this Division contains the conditions for the use of tax file numbers quoted by a beneficiary to a trustee in accordance with subsection 299LA(1) of the Act.

## 6.49 Consent to use beneficiary's tax file number

A trustee must obtain the consent of the beneficiary to use the beneficiary's tax file number in order to facilitate the consolidation of amounts for a beneficiary by undertaking either or both of the procedures in regulation 6.50.



Federal Register of Legislative Instruments F2015C00472

## 6.50 Procedure for searching for amounts to facilitate consolidation by rollover

In order to facilitate the consolidation of amounts for a beneficiary, a trustee must use either or both of the following procedures to determine whether amounts are held for the beneficiary by another RSA provider or superannuation entity:

(a) seeking superannuation information relating to the beneficiary using a facility provided by the Australian Taxation Office;

(b) contacting an RSA provider or superannuation entity to seek superannuation information relating to the beneficiary.



Federal Register of Legislative Instruments F2015C00472

# Part 6A—Portability forms

## 6A.01 Establishment of scheme

(1) The purpose of this Part is to establish a scheme under which:

(a) a member of a regulated superannuation fund or approved deposit fund may give the Commissioner of Taxation a request to roll over or transfer the member's withdrawal benefit held by the fund; and

(b) the Commissioner of Taxation may pass the request mentioned in paragraph (a) to the trustee of the fund.

(2) This Part is made for section 34A of the Act.

(3) Words and expressions in this Part have the same meaning as in Part 6.

## 6A.02 Request to rollover or transfer withdrawal benefit

(1) A member of a regulated superannuation fund or an approved deposit fund may give the Commissioner of Taxation a request to roll over or transfer the member's withdrawal benefit held by the fund if:

(a) Division 6.5 of Part 6 applies to the fund and withdrawal benefit; and

(b) the Commissioner of Taxation holds information about the member's interest in the regulated superannuation fund or approved deposit fund; and

(c) the request is to roll over or transfer an amount that is the whole of the member's withdrawal benefit to a complying superannuation fund.

(2) The request to the Commissioner of Taxation must:

(a) be in the approved form; and

(b) contain the information required by the Commissioner.



Federal Register of Legislative Instruments F2015C00472

## 6A.03 Verification of data

(1) The Commissioner of Taxation must:

(a) confirm the identity of the member and his or her membership of the complying superannuation fund to which the roll over or transfer is to be made; and

(b) confirm the ownership of the withdrawal benefit; and

(c) identify the account in the complying superannuation fund to which the roll over or transfer is to be made; and

(d) then give the request to the trustee of the fund that holds the member's withdrawal benefit.

(2) Despite subregulation (1), the Commissioner may decline to give the request to the trustee if:

(a) the request does not comply with the requirements mentioned in regulation 6A.02; or

(b) it appears to the Commissioner that conduct has been, is being, or is proposed to be, engaged in by a trustee or an investment manager of the complying superannuation fund to which the roll over or transfer is to be made that is likely to adversely affect the values of the interests of beneficiaries of that fund.



Federal Register of Legislative Instruments F2015C00472

# Part 7—Contribution and benefit accrual standards (regulated superannuation funds)

## Division 7.1—General

### 7.01 Interpretation

(1) In this Division, 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.

(1A) In this Division:

***child*** means an individual who is under age 18.

(2) Expressions used in this Division that are defined for the purposes of Part 5 have the same meanings respectively as in that Part.

(3) In this Part, a person is gainfully employed on a part-time basis during a financial year if the person was gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in that financial year.

Note: ***Gainfully employed*** is defined in regulation 1.03.

### 7.02 Application of Division 7.1

This Division 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 Division applies.



Federal Register of Legislative Instruments F2015C00472

(2) Except in accordance with this Division, a regulated superannuation fund must not:
  (a) accept contributions; or
  (b) grant an accrual of benefits.

## 7.03A Acceptance of contributions—registrable superannuation entities

(1) For paragraph 31(2)(d) of the Act, the standard stated in subregulation (2) is applicable to a registrable superannuation entity that is a regulated superannuation fund.

(2) A trustee of the registrable superannuation entity must not accept contributions unless the registrable superannuation entity is registered under Part 2B of the Act.

## 7.04 Acceptance of contributions—regulated superannuation funds

(1) A regulated superannuation fund may accept contributions only in accordance with the following table and subregulations (2), (3), (4) and (6).

| Item | If the member … | the fund may accept … |
|---|---|---|
| 1 | is under 65 | contributions that are made in respect of the member |
| 2 | is not under 65, but is under 70 | contributions that are made in respect of the member that are:<br>(a) mandated employer contributions; or<br>(b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made:<br>(i) employer contributions (except mandated employer contributions); or<br>(ii) member contributions; or<br>(c) payments from an FHSA of a kind mentioned in subparagraph 31(1)(b)(i) or (ii) of the FHSA Act |



Federal Register of Legislative Instruments F2015C00472

| Item | If the member … | the fund may accept … |
|---|---|---|
| 3 | is not under 70, but is under 75 | contributions that are made in respect of the member that are:<br>(a) mandated employer contributions; or<br>(b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made—contributions received on or before the day that is 28 days after the end of the month in which the member turns 75 that are:<br>(i) employer contributions (except mandated employer contributions); or<br>(ii) member contributions made by the member |
| 4 | is not under 75 | mandated employer contributions |

(2) In addition to subregulation (1), the regulated superannuation fund must not accept any member contributions if the member's tax file number has not been quoted (for superannuation purposes) to the trustee of the fund.

(3) In addition to subregulation (1), the regulated superannuation fund must not accept any fund-capped contributions in a financial year in respect of a member that exceed:

(a) if the member is 64 or less on 1 July of the financial year—three times the amount of the non-concessional contributions cap; or

(b) if the member is 65 but less than 75 on 1 July of the financial year—the non-concessional contributions cap.

(4) If a regulated superannuation fund receives an amount in a manner that is inconsistent with subregulation (1), (2) or (3):

(a) the fund must return the amount to the entity or person that paid the amount within 30 days of becoming aware that the amount was received in a manner that is inconsistent with subregulation (1), (2) or (3), unless:

(i) for an amount received in a manner that is inconsistent with subregulation (2)—the member's tax file number is



Federal Register of Legislative Instruments F2015C00472

quoted (for superannuation purposes) within 30 days of this amount being received by the trustee of the fund; or

(ii) for an amount received in a manner that is inconsistent with subregulation (3)—a valid notice under section 290-170 of the *Income Tax Assessment Act 1997* is received by the trustee of the fund within 30 days of this amount being received by the trustee of the fund; and

(b) the fund is also authorised to take any of the following action to the extent that the rules of the fund allow:

(i) if the price at which the interest could have been acquired on the day on which the amount is returned is less than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the entity or person that paid the amount may be reduced by the amount of the difference between the prices;

(ii) if the price at which the interest could have been acquired on the day of return of the amount is greater than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the entity or person that paid the amount may be increased by the amount of the difference between the prices;

(iii) if the price at which the interest could be acquired cannot be determined in accordance with the contract or legal relationship on the day on which the amount is returned, the price is to be determined:

(A) on the basis of the most recent day on which a price was calculated in accordance with the contract or legal relationship; or

(B) if there is no day of that kind—as soon as practicable after the decision is made to return the amount;

(iv) in addition to subparagraph (i), the amount that would, but for this subparagraph, be returned to the entity or person that paid the amount may be reduced to account



Federal Register of Legislative Instruments F2015C00472

for reasonable administration costs and transaction costs, incurred by the fund, that:

(A) are reasonably related to the acquisition of the interest and the return of the amount; and

(B) do not exceed the true cost of an arms' length transaction;

other than costs related to commissions or similar benefits;

(v) if:

(A) the interest is a risk insurance interest, or the part of an interest that is a risk insurance interest; and

(B) the interest has been issued for a specific period, or the premium for the interest has been paid in relation to cover for a specific period; and

(C) a proportion of the specific period has already passed when the decision is made to return the amount to the entity or person that paid the amount;

the amount that would otherwise be returned to the entity or person that paid the amount may be reduced by the sum of:

(D) that part of any amount received in a manner inconsistent with subregulation (1), (2) or (3) as has been paid by the fund to any person in connection with the risk insurance product and which is not recoverable by the fund from that person; and

(E) the proportion equal to the proportion of the period that has passed of the difference between the amount that would otherwise be returned and the amount referred to in (a).

(5) If a regulated superannuation fund acts under subregulation (4), the fund is taken not to have contravened the Act or these Regulations in relation to the acceptance of the amount or in relation to the



Federal Register of Legislative Instruments F2015C00472

return of the amount to the entity or person that paid the amount of the fund.

(6) 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 an item in the table in subregulation (1), the fund may accept the contribution in respect of that member, even though the contribution is actually made after that period.

(7) In this regulation:

***administration costs*** has the same meaning as in subregulation 5.01(1).

***employer contributions*** has the same meaning as in subregulation 1.03(1).

***FHSA*** has the meaning given by section 8 of the FHSA Act.

***mandated employer contributions*** has the same meaning as in subregulation 5.01(1).

***member contributions*** has the same meaning as in subregulation 5.01(1).

***fund-capped contributions*** means the member contributions described in the definition of that expression in subregulation 5.01(1), other than the following:

(a) a contribution to which a valid and acknowledged notice under section 290-170 of the *Income Tax Assessment Act 1997* relates;

(b) a contribution that meets the requirements of paragraph 292-95(1)(d) of the *Income Tax Assessment Act 1997*;

(c) a contribution that meets the requirements of subsection 292-100(9) of the *Income Tax Assessment Act 1997*;



Federal Register of Legislative Instruments F2015C00472

(d) a payment made by the Commissioner of Taxation under section 65 of the *Superannuation Guarantee (Administration) Act 1992*;

(e) a payment made by the Commissioner of Taxation under section 61 or 61A of the *Small Superannuation Accounts Act 1995*;

(f) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

(g) a contribution that is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

***non-concessional contributions cap*** means the amount mentioned in subsection 292-85(2) of the *Income Tax Assessment Act 1997*.

***quoted (for superannuation purposes)*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***superannuation provider*** means:

(a) the trustee of a complying superannuation fund; or

(b) the trustee of a constitutionally protected fund, within the meaning of the *Income Tax Assessment Act 1997*.

***tax file number*** has the meaning given by section 299W of the Act.

***transaction costs*** means any of the following:

(a) brokerage paid because of an investment transaction;

(b) a cost arising from maintenance of a property investment;

(c) stamp duty on an investment transaction.

## 7.04A Acceptance of contributions—public offer superannuation funds

(1) For paragraph 31(2)(d) of the Act, the standard mentioned in subregulation (2) applies to a regulated superannuation fund that is a public offer superannuation fund.



Federal Register of Legislative Instruments F2015C00472

(2) If:

(a) a person is a member of a standard employer-sponsored fund; and

(b) the person is employed by another employer (the ***new employer***) who is not a standard employer-sponsor of the fund;

the fund must not make its acceptance of contributions from the new employer in respect of the member conditional upon the new employer becoming a standard employer-sponsor of the fund.

## 7.05 Accrual of benefits—defined benefit funds

(1) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who is under age 65.

(2) Subject to subregulation (5), 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 has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

(3) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who has reached age 70 but not age 75 only if:

(a) the accrual is attributable to mandated employer contributions; or

(b) the accrual is attributable to:

(i) contributions made by the member in respect of the member; or

(ii) contributions made by the employer that are not mandated employer contributions;



Federal Register of Legislative Instruments F2015C00472

and the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

(4) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member who has reached age 75 only if the accrual is attributable to mandated employer contributions.

(5) 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), (2), (3) or (4), the fund may grant an accrual of benefits in respect of that member, even though the grant occurs after that period.



Federal Register of Legislative Instruments F2015C00472

# Division 7.2—Contributions to be allocated to members

## Subdivision 7.2.1—Superannuation data and payment matters

### 7.07 Superannuation data and payment matters

For subsection 34K(1) of the Act, regulations 7.07A to 7.07H prescribe matters to be complied with.

### 7.07AA Application

(1) This regulation is made for subitem 20(6) of Part 4 of Schedule 1 to the *Superannuation Legislation Amendment (Stronger Super) Act 2012* (the ***amending Act***).

(2) This subdivision applies in relation to a medium to large employer on 1 July 2014 in relation to conduct that occurs on or after 1 July 2014.

(3) This subdivision applies in relation to a small employer on 1 July 2015 in relation to conduct that occurs on or after 1 July 2015.

(4) In this regulation:

***medium to large employer*** has the meaning given by subitem 20(4) of Part 4 of Schedule 1 to the amending Act.

***small employer*** has the meaning given by subitem 20(4) of Part 4 of Schedule 1 to the amending Act.

### 7.07A Initial registration of employee

(1) This regulation applies to an employer if:
  (a) the employer makes a contribution for an employee to a regulated superannuation fund on or after the commencement of Part 3B; and
  (b) the employer has not previously made a contribution to the fund for the employee; and



Federal Register of Legislative Instruments F2015C00472

(c) the contribution is not to:
(i) a self managed superannuation fund; or
(ii) a fund chosen by the employee.

(2) The employer must, before or on the same day as the employer makes the first contribution, give the following information to the fund:
(a) the employee's full name;
(b) the employee's date of birth;
(c) the employee's tax file number;
(d) the employee's sex;
(e) the employee's residential address.

(3) However, subregulation (2) does not apply if the employer has made reasonable efforts to get the information from the employee but has been unable to do so.

Note: Standards made under subsection 34K(3) of the Act may set out how the information in subregulation (2) is to be given to the fund (for example, electronically), and may set out additional information that must be given.

## 7.07B Validation of initial registration information

(1) This regulation applies to the trustee of a regulated superannuation fund, other than a self managed superannuation fund, if:
(a) the fund receives the following information for a member from an employer in accordance with regulation 7.07A:
(i) full name;
(ii) tax file number;
(iii) date of birth; and
(b) the information is given to the fund in the way required by any applicable Standards made under subsection 34K(3) of the Act.

(2) The trustee must ask the Commissioner of Taxation, using an electronic interface provided by the Commissioner, for a notice under subsection 299TD(2) of the Act in relation to the member.



Federal Register of Legislative Instruments F2015C00472

(3) However, subregulation (2) does not apply if the Commissioner has previously given the trustee a notice under subsection 299TD(2) of the Act stating that the Commissioner was able to validate the member's information given by the trustee.

(4) The trustee must make the request not later than 3 business days after receiving the information.

## 7.07C Trustee may give membership or account number to Commissioner of Taxation

The trustee of a regulated superannuation fund may give the Commissioner of Taxation the membership number, or account number, for a member of the fund.

## 7.07D Invalid initial registration information

(1) This regulation applies to the trustee of a regulated superannuation fund, other than a self managed superannuation fund, if the Commissioner of Taxation gives the trustee a notice under subsection 299TD(2) of the Act stating that the Commissioner is not able to validate the information given to the Commissioner by the trustee under regulation 7.07B.

(2) The trustee must, not later than 5 business days after receiving the Commissioner's notice, ask the employer to confirm the following information for the member:
   (a) full name;
   (b) tax file number;
   (c) date of birth;
   (d) residential address.

(3) If an employer receives a request from a trustee under subregulation (2), the employer must make all reasonable efforts to give the trustee the complete or correct information for the employee not later than 10 business days after receiving the request.



Federal Register of Legislative Instruments F2015C00472

## 7.07E Employee details for contribution

(1) This regulation applies to an employer who makes a contribution for an employee to a regulated superannuation fund, unless:
  (a) the fund is a self managed superannuation fund; and
  (b) the employer is a related party of the fund.

(2) The employer must give the following information to the fund in relation to the contribution:
  (a) the employee's full name;
  (b) the employee's residential address;
  (c) the employee's tax file number;
  (d) the employee's telephone number.

(3) However, the employer is not required to give the information mentioned in subregulation (2) to the fund if:
  (a) the employee has not given the information to the employer, and the employer has made reasonable efforts to obtain the information from the employee; or
  (b) the fund is a self managed superannuation fund and the employer is a related party of the fund.

(4) The employer must give the information to the fund on the same day as the employer makes the contribution to the fund.

  Note: Standards made under subsection 34K(3) of the Act may set out how the information in subregulation (2) is to be given to the fund, additional information that must be given, and how the contribution must be made.

(5) The employer must assign a payment reference number to the contribution and include the payment reference number with the contribution.

## 7.07EA Employee details may be passed through default fund

(1) An employer may comply with regulation 7.07E by giving to a default fund for the employer information that would otherwise be required by that regulation to be given to any other regulated superannuation fund.



Federal Register of Legislative Instruments F2015C00472

(2) If the employer gives information as mentioned in subregulation (1), the employer:
  (a) must give the information on the same day that the information would otherwise be required to be given to the other regulated superannuation fund; and
  (b) in doing so, must comply with any applicable Standards made under subsection 34K(3) of the Act.

(3) The default fund must pass the information on to the other regulated superannuation fund and, in doing so, comply with any applicable Standards made under subsection 34K(3) of the Act.

(4) In this regulation:

***default fund***, in relation to an employer, means an RSE licensee:
  (a) authorised to offer a MySuper product under section 29T of the Act; and
  (b) to which the employer mentioned in subregulation (1) makes contributions for the benefit of any of its employees in compliance with subsection 32C(2) of the *Superannuation Guarantee (Administration) Act 1992*.

## 7.07F Information and contributions sent electronically

(1) A regulated superannuation fund must be able to receive the following electronically:
  (a) contributions sent to the fund by an employer;
  (b) information sent to the fund under regulation 7.07A in relation to a contribution;
  (c) information sent to the fund under regulation 7.07E or 7.07EA;
  (d) any other information relating to a contribution sent to the fund.

(2) Subregulation (1) does not apply if:
  (a) the fund is a self managed superannuation fund and the information or contribution is sent by a related party of the fund; or



Federal Register of Legislative Instruments F2015C00472

(b) the information or contribution is not sent in accordance with any applicable Standards made under subsection 34K(3) of the Act.

Note: Standards made under subsection 34K(3) of the Act may set out additional requirements for how information and contributions are to be received by the fund.

## 7.07G Incomplete contribution information

(1) This regulation applies to the trustee of a regulated superannuation fund, other than a self managed superannuation fund, if:

(a) the fund receives a contribution from an employer for a member of the fund; and

(b) either or both of the following applies:

(i) the contribution is the first contribution received by the fund for the member from the employer, and the employer, before or with the contribution, did not provide any of the information mentioned in subregulation 7.07A(2);

(ii) the contribution is not accompanied by all of the information mentioned in subregulation 7.07E(2); and

(c) the contribution is not being made to a defined benefit interest.

(2) The trustee must, not later than 5 business days after receiving the contribution, ask the employer to give the trustee the correct and complete information mentioned in subregulation 7.07A(2) or 7.07E(2) for the member.

(3) If an employer receives a request from a trustee under subregulation (2), the employer must make all reasonable efforts to give the trustee the complete or correct information for the member not later than 10 business days after receiving the request.

(4) If the trustee is still unable to allocate the contribution to a member, the trustee must refund the contribution to the employer not later than 20 business days after receiving the contribution.



Federal Register of Legislative Instruments F2015C00472

(5) If a contribution is refunded under subregulation (4), the contribution is taken not to have been made to the fund by the employer.

## 7.07H Contributions to be allocated to member

(1) This regulation applies to the trustee of a superannuation fund, other than a self managed superannuation fund, if:

(a) all of the following apply:

(i) the fund receives a contribution from an employer for a member;

(ii) the contribution is not required to be allocated in accordance with regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*;

(iii) the contribution was made in accordance with any applicable Standards made under subsection 34K(3) of the Act;

(iv) the information mentioned in subregulation 7.07E(2) for the employee was given by the employer to the fund;

(v) the information was given in accordance with any applicable Standards made under subsection 34K(3) of the Act; or

(b) both of the following apply:

(i) the fund receives a contribution from the Commissioner of Taxation for a member;

(ii) the Commissioner made the contribution in accordance with any applicable Standards specified under subsection 34K(3) of the Act that would apply if the contribution were being made by an employer.

(2) If the trustee accepts the contribution, and receives it in accordance with any applicable Standards made under subsection 34K(3) of the Act, the trustee must allocate the contribution to the member as soon as practicable, but in any case not later than 3 business days after both the contribution and the information mentioned in subregulation 7.07E(2) have been received by the trustee.



Federal Register of Legislative Instruments F2015C00472

Note: Regulation 7.08 provides an operating standard for the allocation of contributions to which this regulation and subregulation 7.07G(4) do not apply.

## Subdivision 7.2.2—Operating standards

### 7.07J Application

(1) This regulation is made for subitem 20(6) of Part 4 of Schedule 1 to the *Superannuation Legislation Amendment (Stronger Super) Act 2012* (the ***amending Act***).

(2) Regulations 7.07 and 7.08, as in force immediately before 1 July 2013, apply in relation to contributions made by a medium to large employer before 1 July 2014.

(3) Regulations 7.07 and 7.08, as in force immediately before 1 July 2013, apply in relation to contributions made by a small employer before 1 July 2015.

(4) In this regulation:

***medium to large employer*** has the meaning given by subitem 20(4) of Part 4 of Schedule 1 to the amending Act.

***small employer*** has the meaning given by subitem 20(4) of Part 4 of Schedule 1 to the amending Act.

### 7.08 Contributions to be allocated to members

(1) This regulation applies to the trustee of a regulated superannuation fund if:
  (a) the trustee receives a contribution in a month; and
  (b) regulation 7.07H and subregulation 7.07G(4) do not apply to the trustee in relation to the contribution; and
  (c) the trustee is not required to allocate the contribution in accordance with regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*.



Federal Register of Legislative Instruments F2015C00472

(2) For subsection 31(1) of the Act, the trustee must allocate the contribution to a member of the fund:

(a) not later than 28 days after the end of the month; or

(b) if it is not reasonably practicable to allocate the contribution to the member of the fund not later than 28 days after the end of the month—within such longer period as is reasonable in the circumstances.



Federal Register of Legislative Instruments F2015C00472

# Division 7.3—Contributions to be allocated to members—certain other regulated superannuation funds

## 7.09 Application of Division 7.3

This Division applies only to a regulated superannuation fund that is required to allocate contributions in accordance with regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*.

## 7.10 Operating standard

For subsection 31(1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds that are required to allocate contributions in accordance with regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*.

## 7.11 Contributions to be allocated to members

If a trustee is required to allocate a contribution in a month in accordance with regulation 292-170.03 of the *Income Tax Assessment Regulations 1997*, the trustee must allocate the contribution to a member of the fund:

(a) within 28 days after the end of the month; or

(b) if it is not reasonably practicable to allocate the contribution to the member of the fund within 28 days after the end of the month—within such longer period as is reasonable in the circumstances.



Federal Register of Legislative Instruments F2015C00472

# Part 7A—Superannuation interests subject to payment split

## Division 7A.1—General

### 7A.01 Purpose of Part 7A

The purpose of this Part is:

(a) to facilitate the payment splitting arrangements established under Part VIIIB of the *Family Law Act 1975*; and

(b) to provide for additional options that may be exercised in relation to superannuation interests that are subject to a payment split under that Act.

### 7A.01A Relevant condition of release

In this Part:

(a) ***relevant condition of release*** means a condition of release mentioned in item 101, 102, 103, 106, 201, 202, 203 or 206 of Schedule 1; and

(b) a non-member spouse satisfies a relevant condition of release if the event specified in the condition has occurred in relation to the non-member spouse; and

(c) in the application of item 101, 103, 201 or 203 of Schedule 1 to a non-member spouse, a reference to a member in:

(i) the definition of ***permanent incapacity*** in subregulation 6.01(2); or

(ii) the definition of ***retirement*** in subregulations 6.01(2) and (7);

is taken to be a reference to the non-member spouse.



Federal Register of Legislative Instruments F2015C00472

## 7A.02 Operating standards

For subsections 31(1) and 32(1) of the Act, the standards set out in this Part are applicable to the operation of regulated superannuation funds and approved deposit funds.

## 7A.03 Trustee to give payment split notice

(1) If an interest in a regulated superannuation fund or an approved deposit fund becomes subject to a payment split, the trustee of the fund must notify the member spouse and the non-member spouse in relation to the interest that the interest is subject to a payment split.

(2) The notice must:
  (a) be in writing; and
  (b) state the date on which it is given.

(3) The notice must be given:
  (a) for a payment split under a superannuation agreement or flag lifting agreement—within 28 days after the operative time for the payment split; and
  (b) for a payment split under a splitting order—by the later of:
    (i) the end of 28 days after the operative time for the payment split; and
    (ii) the end of 28 days after the trustee receives a copy of the order.

(4) Despite subregulation (1), the trustee is not required to give a payment split notice in respect of an interest if the interest ceases to be subject to a payment split:
  (a) before the end of the period applying under subregulation (3); and
  (b) for a reason other than the creation of a non-member spouse interest under regulation 7A.03B.

Note: A non-member spouse may also be entitled to information under section 1017C of the *Corporations Act 2001*, Division 2.5 and Division 2.5A.



Federal Register of Legislative Instruments F2015C00472

# Division 7A.1A—Options for trustee in relation to interests

## 7A.03A Application of Division 7A.1A

(1) This Division applies in relation to a superannuation interest (the ***original interest***) in a regulated superannuation fund, if:
  (a) the original interest is subject to a payment split; and
  (b) an allocated pension, market linked pension or account-based pension is being paid in respect of the original interest; and
  (c) the trustee:
    (i) has not received a request under regulation 7A.05, 7A.06 or 7A.07; and
    (ii) has not taken an action under regulation 7A.10 in relation to the original interest.

(2) Subject to subregulation (3), this Division also applies in relation to a superannuation interest (the ***original interest***) in a regulated superannuation fund, if:
  (a) the original interest is subject to a payment split; and
  (b) the original interest is an accumulation interest in the growth phase; and
  (c) the trustee:
    (i) has not received a request under regulation 7A.05, 7A.06 or 7A.07; and
    (ii) has not taken an action under regulation 7A.10 in relation to the original interest.

(3) This Division does not apply to an accumulation interest:
  (a) if:
    (i) the interest is a partially vested accumulation interest; and
    (ii) the transferable benefits in relation to the accumulation interest would be greater than the withdrawal benefit in relation to the member spouse; or



Federal Register of Legislative Instruments F2015C00472

(b) if the interest is determined by reference to a traditional life insurance policy.

### 7A.03B Trustee may create a new interest

(1) The trustee may, at or after the operative time for the payment split, create a new interest for the non-member spouse (the ***non-member spouse interest***) in the regulated superannuation fund.

(2) If a trustee creates a non-member spouse interest under subregulation (1), the person known as the non-member spouse at the operative time will continue to be a non-member spouse for the purposes of Part 7A until the trustee takes an action under regulation 7A.03H, 7A.03I, 7A.03J or 7A.03K.

(3) Subject to subregulation (4), the value of the benefits in the non-member spouse interest must be:

(a) if:

(i) the payment split is a base amount payment split; and

(ii) an adjusted base amount applies in relation to the non-member spouse when the interest is created;

the adjusted base amount allocated to the non-member spouse less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(b) if:

(i) the payment split is a base amount payment split; and

(ii) an adjusted base amount does not apply in relation to the non-member spouse when the interest is created;

the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(c) if the payment split is a percentage payment split:

(i) for an entitlement in respect of an interest in a self-managed superannuation fund—the amount in

relation to the interest at the time when the new interest is created, determined by a method that a court might use if the court were acting under paragraph 90MT(2)(b) of the *Family Law Act 1975*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(ii) for an entitlement in respect of an accumulation interest in the growth phase, other than a partially-vested accumulation interest, to which subparagraph (i) does not apply—the amount in relation to the interest at the time when the new interest is created, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(iii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time when the new interest is created, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split.

(4) The value of the benefits in the non-member spouse interest must not be more than the value of the withdrawal benefit in relation to the member spouse and the original interest immediately before the new interest is created.

(5) The value of the benefits that the member spouse has in his or her interest must be reduced by the sum of:

(a) the value of the benefits that the non-member spouse has in the new interest; and



Federal Register of Legislative Instruments F2015C00472

(b) the amount of any fees payable by the non-member spouse in respect of the payment split.

(6) In creating the new interest:

(a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and

(b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the new interest was created.

(6A) The benefits held in the non-member spouse interest are:

(a) if the original interest is in the growth phase—unrestricted non-preserved benefits, restricted non-reserved benefits or preserved benefits in accordance with the character that they had in the member spouse's interest; and

(b) if the original interest is an allocated pension, market linked pension or account-based pension—unrestricted non-preserved benefits.

(7) At the time that the payment split notice is given or, if a payment split notice is not required, within 28 days after the later of:

(a) the operative time; and

(b) the time when the trustee creates the non-member interest;

the trustee must give to the member spouse and the non-member spouse a written notice stating:

(c) that the new interest has been created; and

(d) that the value of the original interest has been reduced; and

(e) the amount of the non-member spouse interest.

## 7A.03C Request to retain a non-member spouse interest

The non-member spouse may request the trustee to retain in the regulated superannuation fund the non-member spouse's benefits in the non-member spouse interest.



Federal Register of Legislative Instruments F2015C00472

## 7A.03D Request to roll over or transfer benefits

(1) The non-member spouse may request the trustee to roll over or transfer the withdrawal benefit from the non-member spouse interest to another regulated superannuation fund, or to an approved deposit fund, EPSSS or RSA, specified in the request, to be held for the benefit of the non-member spouse.

(2) If the original interest is in a self-managed superannuation fund, the non-member spouse or the member spouse may request the trustee to roll over or transfer the withdrawal benefit from the non-member spouse interest to another regulated superannuation fund, or to an approved deposit fund, EPSSS or RSA, specified in the request, to be held for the benefit of the non-member spouse.

## 7A.03E Request for lump sum payment

If:

(a) the non-member spouse has satisfied a relevant condition of release; or

(b) the original interest:

(i) is an allocated pension, market linked pension or account-based pension; or

(ii) comprises only unrestricted non-preserved benefits;

the non-member spouse may request the trustee to pay the withdrawal benefit from the non-member spouse interest to the non-member spouse as a lump sum.

## 7A.03F Requirements for requests

(1) A request by a person under this Division must be made:

(a) before the end of 28 days after the trustee gives a payment split notice to the person; or

(b) if the trustee allows a longer period, before the end of the longer period allowed.

(2) The request must be made by written notice given to the trustee.



Federal Register of Legislative Instruments F2015C00472

(3) The notice must:
  (a) be signed by the person making the request; and
  (b) state the date when it is given to the trustee; and
  (c) include the name, date of birth and postal address of the person making the request; and
  (d) for a request made by the member spouse, include a written nomination by the non-member spouse of the regulated superannuation fund, approved deposit fund, EPSSS or RSA specified in the request.

(4) The trustee may allow the request to be withdrawn.

## 7A.03G Giving effect to a request

(1) This regulation applies if a trustee receives a request under this Division within the time allowed under subregulation 7A.03F(1).

(2) The trustee must give effect to the request unless:
  (a) the trustee has received an earlier request under this Division in respect of the same interest and the earlier request has not been withdrawn; or
  (b) for a request under regulation 7A.03C:
    (i) the regulated superannuation fund in which the non-member spouse interest is held has fewer than 5 members; or
    (ii) the governing rules of the regulated superannuation fund in which the non-member spouse interest is held do not allow the non-member spouse to retain an interest in the fund; or
  (c) for a request under regulation 7A.03D—the regulated superannuation fund, approved deposit fund, EPSSS or RSA specified in the request does not accept the rollover or transfer of benefits for the non-member spouse.

(3) If subparagraph (2)(b)(i) applies in relation to a request, the trustee must:
  (a) retain the new interest in accordance with the request; or



Federal Register of Legislative Instruments F2015C00472

(b) roll over or transfer the withdrawal benefits to:

(i) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or

(ii) an eligible rollover fund.

(3A) If subparagraph (2)(b)(ii), or paragraph (2)(c), applies in relation to a request, the trustee must roll over or transfer the withdrawal benefits to:

(a) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or

(b) an eligible rollover fund.

(4) If the amount is rolled over or transferred to an eligible rollover fund under paragraph (3)(b) or (3A)(b), the trustee must give to the non-member spouse, within 28 days, a written notice stating:

(a) that the benefits have been rolled over or transferred to an eligible rollover fund; and

(b) the name and contact details of the fund; and

(c) the amount that was rolled over or transferred.

## 7A.03H Trustee's options if no request is received

(1) If a trustee does not receive a request under this Division within the time allowed under subregulation 7A.03F(1), the trustee may:

(a) subject to subregulation (2), roll over or transfer the withdrawal benefit from the non-member spouse interest to another regulated superannuation fund, or to an approved deposit fund, EPSSS or RSA, nominated by the non-member spouse (subject to the governing rules of the other regulated superannuation fund, the approved deposit fund or EPSSS or the terms and conditions of the RSA) to be held for the benefit of the non-member spouse; or

(b) if the trustee does not, within the 28-day period specified in paragraph (2)(a), receive from the non-member spouse a written notice nominating a regulated superannuation fund,



Federal Register of Legislative Instruments F2015C00472

approved deposit fund, EPSSS or RSA to which the withdrawal benefit from the non-member spouse interest may be rolled over or transferred—roll over or transfer the withdrawal benefit from the non-member spouse interest to an eligible rollover fund.

(2) Subject to subregulation (3A), before rolling over or transferring the amount to a regulated superannuation fund, approved deposit fund, EPSSS or RSA under paragraph (1)(a), the trustee must give to the non-member spouse a written notice stating that:

(a) the non-member spouse has 28 days from the date of the notice in which to nominate, by written notice to the trustee, a regulated superannuation fund, approved deposit fund, EPSSS or RSA to which the withdrawal benefit from the non-member spouse interest may be rolled over or transferred; and

(b) if the non-member spouse does not, within the 28-day period, nominate a regulated superannuation fund, approved deposit fund, EPSSS or RSA for that purpose, the trustee will roll over or transfer the amount to an eligible rollover fund.

(3) A notice given by the trustee under subregulation (2) must state the name and contact details of the eligible rollover fund to which the amount may be rolled over or transferred.

(3A) If a trustee:

(a) has made reasonable attempts to obtain sufficient information about a non-member spouse to be able to give a payment split notice; and

(b) has been unable to obtain sufficient information about the non-member spouse;

the trustee is permitted to act under paragraphs (1)(a) and (b) as if those paragraphs did not require the giving of the payment split notice or the notice under subregulation (2).

Example for paragraph (a): The trustee may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

(3B) If a trustee:



Federal Register of Legislative Instruments F2015C00472

(a) proposes to give a non-member spouse a notice under subregulation (2); and

(b) has made reasonable attempts to obtain sufficient information about the non-member spouse to be able to give the notice; and

(c) has been unable to obtain sufficient information about the non-member spouse;

the trustee is not required to give the notice, and is permitted to act under paragraphs (1)(a) and (b) as if those paragraphs did not require the giving of the notice.

Example for paragraph (b): The trustee may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

(4) If the trustee does not take an action under subregulation (1), the trustee must give to the non-member spouse a written notice:

(a) confirming that the non-member spouse has an interest in the fund; and

(b) informing the non-member spouse of the relevant cooling-off arrangements.

(5) The trustee must take an action under subregulation (1) or (4) within 6 months after the later of:

(a) the operative time; and

(b) the time when the trustee creates the non-member interest.

Note: After the new interest in the fund is confirmed, it is no longer a non-member spouse interest.

## 7A.03I Confirming that the non-member spouse has an interest in the fund

(1) This regulation applies:

(a) if:

(i) a trustee receives a request under regulation 7A.03C within the time allowed under subregulation 7A.03F(1); and

(ii) paragraph 7A.03G(2)(b) does not apply to the request; or



Federal Register of Legislative Instruments F2015C00472

(b) if:

(i) a trustee receives a request under regulation 7A.03C within the time allowed under subregulation 7A.03F(1); and

(ii) the trustee has, under paragraph 7A.03G(3)(a), retained the new interest in accordance with the request.

(2) The trustee must give to the non-member spouse a written notice:

(a) confirming that the non-member spouse has an interest in the fund; and

(b) informing the non-member spouse of the relevant cooling-off arrangements.

Note: After the new interest in the fund is confirmed, it is no longer a non-member spouse interest.

## 7A.03J Rolling over or transferring the non-member spouse's interest

(1) This regulation applies if a trustee rolls over or transfers the withdrawal benefit from the non-member spouse interest:

(a) to give effect to a request under regulation 7A.03D; or

(b) on the trustee's initiative under subregulation 7A.03H(1).

(2) The trustee must roll over or transfer the amount as follows:

(a) if the rollover or transfer is to give effect to a request under regulation 7A.03D, it must be done within:

(i) 30 days after receiving the request; or

(ii) any longer period allowed by the Regulator;

(b) if the rollover or transfer is to be done on the trustee's initiative under paragraph 7A.03H(1)(a), it must be done within 30 days after the trustee receives the nomination from the non-member spouse under subregulation 7A.03H(2);

(c) if the rollover or transfer is to be done on the trustee's initiative under paragraph 7A.03H(1)(b), it must be done within 30 days after the end of the 28-day period mentioned in subregulation 7A.03H(2).



Federal Register of Legislative Instruments F2015C00472

(3) The trustee must give a notice to the non-member spouse, within 28 days after the amount is rolled over or transferred, stating:
  (a) that the benefits have been rolled over or transferred; and
  (b) if the rollover or transfer was done on the trustee's initiative under paragraph 7A.03H(1)(b)—the name and contact details of the fund to which the amount was rolled over or transferred; and
  (c) the amount that was rolled over or transferred.

## 7A.03K Paying a lump sum

(1) This regulation applies if a trustee pays to a non-member spouse, as a lump sum, the withdrawal benefit from the non-member spouse interest to give effect to a request under regulation 7A.03E.

(2) The trustee must pay the lump sum within:
  (a) 30 days after receiving the request under regulation 7A.03E; or
  (b) any longer period allowed by the Regulator.

(3) The trustee must give to the non-member spouse, within 28 days after the lump sum is paid, a written notice stating:
  (a) that the lump sum has been paid; and
  (b) the amount that was paid.



Federal Register of Legislative Instruments F2015C00472

# Division 7A.2—Options available for certain superannuation interests

## 7A.04 Application of Division 7A.2

(1) This Division applies in relation to a superannuation interest (the ***original interest***) in a regulated superannuation fund, or an approved deposit fund, if:

(a) the original interest is subject to a payment split; and

(b) either:

(i) the original interest is an accumulation interest that is in the growth phase; or

(ii) an allocated pension, market linked pension or account-based pension is being paid in respect of the original interest.

(2) This Division does not apply to an accumulation interest:

(a) if:

(i) the interest is a partially vested accumulation interest; and

(ii) the transferable benefits in relation to the accumulation interest would be greater than the withdrawal benefit in relation to the member spouse; or

(b) if the interest is determined by reference to a traditional life insurance policy.

(3) This Division does not apply to an original interest if the trustee has created a non-member spouse interest under regulation 7A.03B.

(4) In this regulation:

***partially vested accumulation interest*** has the meaning given by regulation 9 of the *Family Law (Superannuation) Regulations 2001*.



Federal Register of Legislative Instruments F2015C00472

## 7A.05 Request for new interest

The non-member spouse may request the trustee to create a new interest for the non-member spouse in the regulated superannuation fund or approved deposit fund in which the original interest is held.

## 7A.06 Request for transfer of benefits

(1) The non-member spouse may request the trustee to roll over or transfer the transferable benefits to another regulated superannuation fund or approved deposit fund, or to an EPSSS or RSA, specified in the request, to be held for the benefit of the non-member spouse.

(2) If the original interest is in a self managed superannuation fund, the non-member spouse, or the member spouse, may request the trustee to roll over or transfer the transferable benefits to another regulated superannuation fund or approved deposit fund, or to an EPSSS or RSA, specified in the request, to be held for the benefit of the non-member spouse.

## 7A.07 Request for lump sum payment

(1) This regulation applies:
   (a) if a non-member spouse has satisfied a relevant condition of release at the operative time for the payment split; or
   (b) if an allocated pension, market linked pension or account-based pension is being paid in respect of the original interest; or
   (c) if the non-member spouse's interest derives from an original interest that comprises only unrestricted non-preserved benefits.

(2) The non-member spouse may request the trustee to pay to the non-member spouse, as a lump sum, the amount to which the non-member spouse is entitled under the payment split.



Federal Register of Legislative Instruments F2015C00472

## 7A.08 Requirements for requests

(1) A request by a person under this Division must be made:
  (a) before the end of 28 days after the trustee gives a payment split notice to the person; or
  (b) if the trustee allows a longer period, before the end of the longer period allowed.

(2) The request must be made by written notice given to the trustee.

(3) The notice must:
  (a) be signed by the person making the request; and
  (b) state the date when it is given to the trustee; and
  (c) for a request by the non-member spouse, include his or her name, date of birth and postal address; and
  (d) for a request by the member spouse, include a written nomination by the non-member spouse of the regulated superannuation fund, approved deposit fund, EPSSS or RSA specified in the request.

(4) The trustee may allow the request to be withdrawn.

## 7A.09 Giving effect to request

(1) This regulation applies if a trustee receives a request under this Division within the time allowed under regulation 7A.08.

(2) The trustee must give effect to the request unless:
  (a) the trustee has received an earlier request under this Division in respect of the same interest and the earlier request has not been withdrawn; or
  (b) for a request under regulation 7A.05:
    (i) the regulated superannuation fund in which the non-member spouse interest is held has fewer than 5 members; or
    (ii) the governing rules of the regulated superannuation fund or approved deposit fund in which the original



Federal Register of Legislative Instruments F2015C00472

interest is held do not allow a new interest to be created for the non-member spouse in the fund; or

(c) for a request under regulation 7A.06—the regulated superannuation fund, approved deposit fund, EPSSS or RSA specified in the request does not accept the rollover or transfer of benefits for the non-member spouse.

(3) If subparagraph (2)(b)(i) applies in relation to a request, the trustee must:

(a) create the new interest in accordance with the request; or

(b) roll over or transfer the transferable benefits to:

(i) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or

(ii) an eligible rollover fund.

(3A) If subparagraph (2)(b)(ii), or paragraph (2)(c), applies in relation to a request, the trustee must roll over or transfer the transferable benefits to:

(a) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or

(b) an eligible rollover fund.

## 7A.10 Trustee options if no request received

(1) If the trustee does not receive a request under this Division within the time allowed under regulation 7A.08, the trustee may:

(a) create a new interest for the non-member spouse in the regulated superannuation fund or approved deposit fund in which the original interest is held; or

(b) subject to subregulation (2), roll over or transfer the transferable benefits to another regulated superannuation fund or approved deposit fund, or to an EPSSS or an RSA, nominated by the non-member spouse (subject to the governing rules of the other regulated superannuation fund, approved deposit fund or EPSSS or the terms and conditions



Federal Register of Legislative Instruments F2015C00472

of the RSA), to be held for the benefit of the non-member spouse; or

(c) if the trustee does not, within the 28-day period specified in paragraph (2)(a), receive from the non-member spouse a written notice nominating a regulated superannuation fund, approved deposit fund, EPSSS or RSA to which the transferable benefits may be rolled over or transferred, roll over or transfer the transferable benefits to an eligible rollover fund.

(2) Subject to subregulation (4), before rolling over or transferring the transferable benefits to a regulated superannuation fund, approved deposit fund, EPSSS or RSA under paragraph (1)(b), the trustee must give to the non-member spouse a written notice stating that:

(a) the non-member spouse has 28 days from the date of the notice in which to nominate, by written notice to the trustee, a regulated superannuation fund, approved deposit fund, EPSSS or RSA to which the transferable benefits may be rolled over or transferred; and

(b) if the non-member spouse does not, within that 28-day period, nominate a regulated superannuation fund, approved deposit fund, EPSSS or RSA for that purpose, the trustee will roll over or transfer the transferable benefits to an eligible rollover fund.

(3) A notice given by the trustee under subregulation (2) must state the name and contact details of the eligible rollover fund to which the non-member spouse's transferable benefits may be rolled over or transferred.

(4) If a trustee:

(a) has made reasonable attempts to obtain sufficient information about a non-member spouse to be able to give a payment split notice; and

(b) has been unable to obtain sufficient information about the non-member spouse;



Federal Register of Legislative Instruments F2015C00472

the trustee is permitted to act under subregulation (1) as if the subregulation did not require the giving of the payment split notice or the notice under subregulation (2).

Example for paragraph (a): The trustee may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

(5) If a trustee:

(a) proposes to give a non-member spouse a notice under subregulation (2); and

(b) has made reasonable attempts to obtain sufficient information about the non-member spouse to be able to give the notice; and

(c) has been unable to obtain sufficient information about the non-member spouse;

the trustee is not required to give the notice, and is permitted to act under paragraphs (1)(b) and (c) as if those paragraphs did not require the giving of the notice.

Example for paragraph (b): The trustee may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

## 7A.11 Creating a new interest

(1) This regulation applies if the trustee creates a new interest for the non-member spouse in the regulated superannuation fund or approved deposit fund in which the original interest is held:

(a) to give effect to a request under regulation 7A.05; or

(b) on the trustee's initiative under paragraph 7A.10(1)(a).

(2) Subject to subregulations (3) and (4), the value of the benefits that the non-member spouse has in the new interest must be:

(a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse when the new interest is created—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member



Federal Register of Legislative Instruments F2015C00472

spouse when the new interest is created—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(c) if the payment split is a percentage payment split:

(i) for an entitlement, in respect of an accumulation interest in the growth phase that is not a partially vested accumulation interest, to which subparagraph (ii) does not apply—the amount in relation to the interest at the time when the new interest is created, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(ii) for an entitlement in respect of an interest in a self-managed superannuation fund—the amount in relation to the interest at the time when the new interest is created, determined by a method that a court might use if the court were acting under paragraph 90MT(2)(b) of the *Family Law Act 1975*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(iii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time when the new interest is created, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split.

(3) If the payment split is a base amount payment split, and a splittable payment becomes payable in respect of the member spouse's



Federal Register of Legislative Instruments F2015C00472

interest before the new interest is created, the value of the benefits that the non-member spouse has in the new interest must be the amount applying under subregulation (2) less the amount the non-member spouse is entitled to be paid in respect of the splittable payment.

(4) The value of the benefits that the non-member spouse has in the new interest must not be more than the value of the withdrawal benefit in relation to the member spouse and the original interest immediately before the new interest is created.

(5) The value of the benefits that the member spouse has in his or her interest must be reduced by the sum of:
  (a) the value of the benefits that the non-member spouse has in the new interest; and
  (b) the amount of any fees payable by the non-member spouse in respect of the payment split.

(6) In creating the new interest:
  (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  (b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the new interest was created.

(7) The benefits held in the new interest are unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that they had in the member spouse's interest.

(8) A new interest created to give effect to a request under regulation 7A.05 is taken to be created on the day when the trustee receives the request in accordance with regulation 7A.08.

(9) A new interest created on the trustee's initiative under paragraph 7A.10(1)(a) is taken to be created on the twenty-ninth day after the date when the payment split notice in relation to the payment split was given by the trustee.



Federal Register of Legislative Instruments F2015C00472

(10) The trustee must give to the member spouse and the non-member spouse, within 28 days after the new interest is created, a written notice stating:

(a) that the new interest has been created; and

(b) the amount allocated to the non-member spouse in the new interest; and

(c) if the payment split is a base amount payment split, the amount of any adjustment that has been made to the base amount since:

(i) if the trustee had previously provided information to the non-member spouse under regulation 2.36D—the end of the last completed reporting period; or

(ii) in any other case—the operative time.

## 7A.12 Rolling over or transferring transferable benefits

(1) This regulation applies if the trustee rolls over or transfers transferable benefits:

(a) to give effect to a request under regulation 7A.06; or

(b) on the trustee's initiative under paragraph 7A.10(1)(b) or (c); or

(c) under subregulation 7A.09(3) or (3A).

(2) The value of the benefits that the member spouse has in his or her interest must be reduced by the sum of:

(a) the value of:

(i) the transferable benefits; or

(ii) if paragraph (3A)(c) applies—the benefits that are rolled over or transferred; and

(b) the amount of any fees payable by the non-member spouse in respect of the payment split.

(3) If the payment split is a base amount payment split, and a splittable payment becomes payable in respect of the member spouse's interest before the trustee rolls over or transfers the transferable benefits, the amount rolled over or transferred for the non-member spouse must be the transferable benefits less the amount the

non-member spouse is entitled to in respect of the splittable payment.

(3A) In rolling over or transferring the transferable benefits:

(a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and

(b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the benefits were rolled over or transferred; and

(c) the trustee must ensure that the total amount that is rolled over or transferred does not exceed the withdrawal benefit of the member spouse immediately before that amount is rolled over or transferred.

(3B) The benefits held in the new interest are unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that the benefits had in the member spouse's interest.

(4) The trustee must roll over or transfer the transferable benefits as follows:

(a) if the rollover or transfer is to give effect to a request under regulation 7A.06, it must be done within:

(i) 30 days after receiving the request; or

(ii) any longer period allowed by the Regulator;

(b) if the rollover or transfer is to be done on the trustee's initiative under paragraph 7A.10(1)(b), it must be done within 30 days after the trustee receives the nomination from the non-member spouse under subregulation 7A.10 (2);

(c) if the rollover or transfer is to be done on the trustee's initiative under paragraph 7A.10(1)(c), it must be done within 30 days after the end of the 28-day period mentioned in subregulation 7A.10(2).



Federal Register of Legislative Instruments F2015C00472

(5) The trustee must give to the member spouse and the non-member spouse, within 28 days after the transferable benefits are rolled over or transferred, a written notice stating:
  (a) that the benefits have been rolled over or transferred; and
  (b) the amount that was transferred or rolled over; and
  (c) if the payment split is a base amount payment split, the amount of any adjustment that has been made to the base amount since:
    (i) if the trustee had previously provided information to the non-member spouse under regulation 2.36D—the end of the last completed reporting period; or
    (ii) in any other case—the operative time; and
  (d) if the benefits are rolled over or transferred to an eligible rollover fund—the name and contact details of the fund.

## 7A.13 Paying a lump sum

(1) This regulation applies if, to give effect to a request under regulation 7A.07, the trustee pays to the non-member spouse, as a lump sum, the amount to which the non-member spouse is entitled under the payment split.

(2) Subject to subregulations (3) and (4), the value of the lump sum to be paid to the non-member spouse must be:
  (a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse at the date of the payment—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  (b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse at the date of the payment—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  (c) if the payment split is a percentage payment split:



Federal Register of Legislative Instruments F2015C00472

(i) for an entitlement, in respect of an accumulation interest in the growth phase that is not a partially vested accumulation interest, to which subparagraph (ii) does not apply—the amount in relation to the interest at the date of the payment, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(ii) for an entitlement in respect of an interest in a self-managed superannuation fund—the amount in relation to the interest at the date of the payment, determined by a method that a court might use if the court were acting under paragraph 90MT(2)(b) of the *Family Law Act 1975*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(iii) for an entitlement in respect of any other interest—the amount in relation to the interest at the date of the payment, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the specified percentage, less the amount of any fees payable by the non-member spouse in respect of the payment split.

(3) If the payment split is a base amount payment split, and a splittable payment becomes payable in respect of the member spouse's interest before the lump sum is paid to the non-member spouse, the value of the lump sum to be paid to the non-member spouse must be the amount applying under subregulation (2) less the amount the non-member spouse is entitled to be paid in respect of the splittable payment.

(4) The value of the lump sum to be paid to the non-member spouse must not be more than the value of the withdrawal benefit in



Federal Register of Legislative Instruments F2015C00472

relation to the member spouse and the original interest immediately before the lump sum is paid.

(5) The value of the benefits that the member spouse has in his or her interest must be reduced by the sum of:
  (a) the value of the lump sum paid to the non-member spouse; and
  (b) the amount of any fees payable by the non-member spouse in respect of the payment split.

(6) In paying the lump sum to the non-member spouse:
  (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  (b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the payment was made.

(7) The trustee must pay the lump sum within:
  (a) 30 days after receiving the request under regulation 7A.07; or
  (b) any longer period allowed by the Regulator.

(8) The trustee must give to the member spouse and the non-member spouse, within 28 days after the lump sum is paid, a written notice stating:
  (a) that the lump sum has been paid; and
  (b) the amount that was paid; and
  (c) if the payment split is a base amount payment split, the amount of any adjustment that has been made to the base amount since:
    (i) if the trustee had previously provided information to the non-member spouse under regulation 2.36D—the end of the last completed reporting period; or
    (ii) in any other case—the operative time.



Federal Register of Legislative Instruments F2015C00472

# Division 7A.3—Splittable payments—payment standards for non-member spouse entitlements

## 7A.14 Application of Division 7A.3

(1) This Division applies if:

(a) an interest (the ***original interest***) in a regulated superannuation fund or approved deposit fund is subject to a payment split; and

(b) the non-member spouse is entitled to be paid an amount from the original interest because a splittable payment in respect of the interest has become payable; and

(c) a new interest has not been created for the non-member spouse, or the transferable benefits of the non-member spouse have not been transferred or rolled out of the fund, as a result of a payment split.

(2) However, if an amount under the Act would be a superannuation death benefit (within the meaning of subsection 995-1(1) of the 1997 Tax Act) if it were paid to the non-member spouse, a requirement in this Division:

(a) to pay the amount; or

(b) to roll over or transfer the amount to another regulated superannuation fund, an RSA, an approved deposit fund or an EPSSS, to be held for the benefit of the non-member spouse; or

(c) to allocate the amount to an interest that the trustee creates for the non-member spouse in the regulated superannuation fund or approved deposit fund;

is taken to be a requirement to pay the amount to the non-member spouse in cash.

## 7A.16 Preservation of non-member spouse entitlements

(1) Subject to regulation 7A.17, this regulation applies if:



Federal Register of Legislative Instruments F2015C00472

(a) the non-member spouse has not satisfied a relevant condition of release at the time of the splittable payment; and

(b) the splittable payment does not derive from an allocated pension, market linked pension or account-based pension.

(2) The trustee of the regulated superannuation fund or approved deposit fund in which the original interest is held must:

(a) allocate the amount to an interest that the trustee creates for the non-member spouse in the regulated superannuation fund or approved deposit fund; or

(b) roll over or transfer the amount to another regulated superannuation fund, an RSA, an approved deposit fund or an EPSSS, to be held for the benefit of the non-member spouse.

(2A) The trustee must preserve the amount mentioned in subregulation (2).

(3) If the non-member spouse's entitlement under the payment split is to be paid as a lump sum, the trustee must allocate, roll over or transfer the lump sum within:

(a) 30 days after the splittable payment becomes payable; or

(b) any longer period allowed by the Regulator.

(4) If the non-member spouse's entitlement derives from a pension being paid to the member spouse (other than a pension to which regulation 7A.17 applies, an allocated pension, market linked pension or account-based pension), the trustee must allocate, roll over or transfer the amounts to which the non-member spouse is entitled:

(a) if the governing rules of the fund provide for the frequency with which pension payments are to be made to the member spouse—in accordance with those rules; or

(b) in any other case—at least annually.

(5) Subject to subregulation (6), the amount must not be allocated, rolled over or transferred unless the trustee of the transferor fund:



Federal Register of Legislative Instruments F2015C00472

(a) has received, from the non-member spouse, consent to the allocation, rollover or transfer; or

(b) in the case of a rollover or transfer—believes, on reasonable grounds, that:

(i) the trustee of the receiving regulated superannuation fund, approved deposit fund or EPSSS; or

(ii) the receiving RSA provider;

has received from the non-member spouse consent to the rollover or transfer.

(6) If the trustee of the transferor fund believes, on reasonable grounds and after making reasonable inquiries, that the non-member spouse has not given a consent mentioned in subregulation (5):

(a) the trustee must:

(i) allocate the amount to an interest that the trustee creates for the non-member spouse in the regulated superannuation fund or approved deposit fund; or

(ii) apply, under subsection 243(2) of the Act, for the issue to the non-member spouse of an interest in an eligible rollover fund that is a regulated superannuation fund; and

(b) if subparagraph (a)(ii) applies—the amount must be rolled over or transferred to that fund.

(7) The consent of the member spouse to a rollover or transfer under this regulation is not required.

(8) In subregulation (5):

***consent*** means:

(a) written consent; or

(b) any other form of consent determined by the Regulator as sufficient in the circumstances.

## 7A.17 Payment of non-member spouse entitlements from pension

(1) This regulation applies if:



Federal Register of Legislative Instruments F2015C00472

(a) the non-member spouse has not satisfied a relevant condition of release at the time of the splittable payment; and

(b) the member spouse was being paid a pension (other than an allocated pension, market linked pension or account-based pension) in respect of the original interest on or before the operative time for the payment split.

(2) When the splittable payment becomes payable, the trustee of the regulated superannuation fund or approved deposit fund in which the original interest is held must pay the amount to which the non-member spouse is entitled to the non-member spouse.

(3) However, if the amount to be paid to the non-member spouse is a lump sum payable as the result of the commutation of a pension, the non-member spouse may request the trustee:

(a) to allocate the amount to an interest that the trustee creates for the non-member spouse in the regulated superannuation fund or approved deposit fund; or

(b) to roll over or transfer the amount to another regulated superannuation fund, an RSA, an approved deposit fund or an EPSSS, to be held for the benefit of the non-member spouse.

(4) The trustee must give effect to the request unless:

(a) for a request under paragraph (3)(a):

(i) the regulated superannuation fund in which the non-member spouse interest is held has fewer than 5 members; or

(ii) the governing rules of the regulated superannuation fund or approved deposit fund in which the original interest is held do not allow a new interest to be created for the non-member spouse in the fund; or

(b) for a request under paragraph (3)(b)—the regulated superannuation fund, approved deposit fund, EPSSS or RSA specified in the request does not accept the rollover or transfer of benefits for the non-member spouse.



Federal Register of Legislative Instruments F2015C00472

(5) If subparagraph (4)(a)(i) applies:
  (a) the trustee may give effect to the request; or
  (b) if the trustee does not give effect to the request, the trustee must:
    (i) if the non-member spouse asks the trustee to pay the amount to which the non-member spouse is entitled to the non-member spouse—pay the amount; or
    (ii) in any other case—roll over or transfer the amount to which the non-member spouse is entitled to:
      (A) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or
      (B) an eligible rollover fund.

(6) If subparagraph (4)(a)(ii) or paragraph (4)(b) applies, the trustee must:
  (a) if the non-member spouse asks the trustee to pay the amount to which the non-member spouse is entitled to the non-member spouse—pay the amount; or
  (b) in any other case—roll over or transfer the amount to which the non-member spouse is entitled to:
    (i) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or
    (ii) an eligible rollover fund.

## 7A.18 Cashing of non-member spouse entitlements

(1) This regulation applies if:
  (a) the non-member spouse has satisfied a relevant condition of release at the time of the splittable payment; or
  (b) the splittable payment derives from an allocated pension, market linked pension or account-based pension.

(2) When the splittable payment becomes payable, the trustee must:



Federal Register of Legislative Instruments F2015C00472

(a) pay the amount to which the non-member spouse is entitled; or

(b) if the splittable payment is not a pension payment, and the non-member spouse asks the trustee to allocate the amount to which the non-member spouse is entitled to an interest the trustee is to create for the non-member spouse in the regulated superannuation fund or approved deposit fund in which the original interest is held—give effect to the request unless:

(i) the regulated superannuation fund in which the non-member spouse interest is held has fewer than 5 members; or

(ii) the governing rules of the regulated superannuation fund or approved deposit fund in which the original interest is held do not allow a new interest to be created for the non-member spouse in the fund; or

(c) if the splittable payment is not a pension payment, and the non-member spouse asks the trustee to roll over or transfer the amount to which the non-member spouse is entitled to another regulated superannuation fund, an RSA, an approved deposit fund or an EPSSS, nominated by the non-member spouse, to be held for the benefit of the non-member spouse—give effect to the request unless the regulated superannuation fund, approved deposit fund, EPSSS or RSA specified in the request does not accept the rollover or transfer of benefits for the non-member spouse.

(3) If subparagraph (2)(b)(i) applies:

(a) the trustee may give effect to the request; or

(b) if the trustee does not give effect to the request, the trustee must:

(i) if the non-member spouse asks the trustee to pay the amount to which the non-member spouse is entitled to the non-member spouse—pay the amount to which the non-member spouse is entitled; or



Federal Register of Legislative Instruments F2015C00472

(ii) in any other case—roll over or transfer the amount to which the non-member spouse is entitled to:

(A) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or

(B) an eligible rollover fund.

(4) If subparagraph (2)(b)(ii) or paragraph (2)(c) applies, the trustee must:

(a) if the non-member spouse asks the trustee to pay the amount to which the non-member spouse is entitled to the non-member spouse—pay the amount to which the non-member spouse is entitled; or

(b) in any other case—roll over or transfer the amount to which the non-member spouse is entitled to:

(i) another regulated superannuation fund, approved deposit fund, EPSSS or RSA nominated by the non-member spouse; or

(ii) an eligible rollover fund.



Federal Register of Legislative Instruments F2015C00472

# Division 7A.4—Superannuation interest split under the Family Law (Superannuation) Regulations 2001

## 7A.19 Application

This Division applies if a trustee of a superannuation fund:

(a) creates a new interest in the fund for a non-member spouse to satisfy regulation 14G of the *Family Law (Superannuation) Regulations 2001*; or

(b) transfers or rolls over to another superannuation fund or RSA an amount, to be held for the benefit of a non-member spouse to satisfy regulation 14G of the *Family Law (Superannuation) Regulations 2001*; or

(c) pays an amount to a non-member spouse to satisfy regulation 14G of the *Family Law (Superannuation) Regulations 2001*.

## 7A.20 Creating a new interest

(1) This regulation applies if the trustee creates a new interest in the fund for the non-member spouse.

(2) In creating the new interest:

(a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and

(b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the interest was created.

(3) The benefits held in the new interest are unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that they had in the member spouse's interest.



Federal Register of Legislative Instruments F2015C00472

## 7A.21 Rolling over or transferring benefits

(1) This regulation applies if the trustee rolls over or transfers to another superannuation fund or RSA an amount to be held for the benefit of the non-member spouse.

(2) In rolling over or transferring the transferable benefits:
  (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  (b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the amount was rolled over or transferred.

(3) The benefits held in the new interest are unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that the benefits had in the member spouse's interest.

## 7A.22 Paying an amount

(1) This regulation applies if the trustee pays an amount to the non-member spouse.

(2) In paying the amount to the non-member spouse:
  (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  (b) the proportion taken from each category of benefits must be the same as the category bears to the member spouse's interest immediately before the amount was paid.



Federal Register of Legislative Instruments F2015C00472

# Part 8—Financial reporting

## 8.01 Accounts—statement of financial position and financial statement

(1) For the purposes of paragraphs 35B(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:



Federal Register of Legislative Instruments F2015C00472

(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.

## 8.02 Accounts and statements that must be prepared

(1) This regulation is made for the purposes of paragraph 35B(1)(c) of the Act.

(2) Where, because of subregulation 8.01(3), paragraphs 35B(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.

## 8.02A Period within which an auditor must be appointed

For subsection 35C(1) of the Act, the prescribed period is not later than 45 days before the day by which section 35D of the Act requires a return to be lodged for the fund.

Note: See regulation 8.03 for the period within which a report mentioned in subsection 35C(6) of the Act must be provided.



Federal Register of Legislative Instruments F2015C00472

## 8.02B Asset must be valued at market value

For subsection 35B(2) of the Act, for the year of income 2012–13 and any later year of income, when preparing accounts and statements required by subsection 35B(1) of the Act, an asset must be valued at its market value.

Note: ***Market value*** is defined in subsection 10(1) of the Act.

## 8.03 Period within which audit report must be given

For subsection 35C(6) of the Act, the period within which a report mentioned in that subsection must be given is 28 days after the trustee of the fund has provided all documents relevant to the preparation of the report to the auditor.

# 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.



Federal Register of Legislative Instruments F2015C00472

# 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.

## 9.02A Interpretation

A reference in this Division to:

(a) benefits vested in a member of a fund; or
(b) aggregate benefit accounts of a member of a fund; or
(c) benefits accrued to a member of a fund; or
(d) obligations of a fund in respect of a member;

includes any amounts that would be payable to the member's spouse or former spouse under a payment split.

## 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.



Federal Register of Legislative Instruments F2015C00472

(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 a superannuation actuary—on the actuary's reasonable expectations; and

(b) if the person considering the matter is a superannuation auditor—on the reasonable expectation of a superannuation 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 a superannuation 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 a superannuation auditor in the course of performing a function for an entity under the Act or these regulations obtains sufficient information to enable the superannuation 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.

## 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:



Federal Register of Legislative Instruments F2015C00472

(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.



Federal Register of Legislative Instruments F2015C00472

# Division 9.2A—Size of defined benefit funds

## 9.04A Application

(1) This Division applies to:

(a) a defined benefit fund established after the commencement of this Division; and

(b) a fund that is converted to a defined benefit fund after the commencement of this Division; and

(c) a defined benefit fund that wishes to accept a new defined benefit member after the commencement of this Division; and

(d) a defined benefit fund that wishes to convert a member of the fund to a defined benefit member after the commencement of this Division.

(2) This Division does not apply to a fund that is part of:

(a) the scheme established by the *Superannuation Act 1976*; or

(b) the scheme established under the provisions of the *Superannuation Act 1990*; or

(c) the Military Superannuation and Benefits Scheme; or

(d) an exempt public sector superannuation scheme.

## 9.04B Sub-funds to be treated as funds

A sub-fund within a defined benefit fund is taken, for the purposes of this Division, to be a defined benefit fund if the sub-fund satisfies the following conditions:

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

(b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund.



Federal Register of Legislative Instruments F2015C00472

## 9.04C Operating standard

For subsection 31(1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds that are defined benefit funds.

## 9.04D Size of defined benefit funds

(1) A defined benefit fund established after the commencement of this Division must have at least 50 defined benefit members.

(2) A fund that is converted to a defined benefit fund after the commencement of this Division must have at least 50 defined benefit members.

(3) A defined benefit fund may accept a new defined benefit member after the commencement of this Division only if the fund will have at least 50 defined benefit members after accepting the new defined benefit member.

(4) A defined benefit fund may convert a member of the fund to a defined benefit member after the commencement of this Division only if the fund will have at least 50 defined benefit members after converting the member to a defined benefit member.



Federal Register of Legislative Instruments F2015C00472

# Division 9.2B—Provision of defined benefit pensions

## 9.04E Definition for Division 9.2B

In this Division:

***defined benefit pension*** means a pension under section 10 of the Act, other than:

(a) a pension wholly determined by reference to policies of life assurance purchased or obtained by the trustee of a regulated superannuation fund solely for the purposes of providing benefits to members of that fund; or

(b) an allocated pension; or

(c) a market linked pension; or

(d) an account-based pension.

## 9.04F Application of Division 9.2B

(1) This Division applies to:

(a) a regulated superannuation fund established after the commencement of this Division, the governing rules of which provide for the payment of a defined benefit pension; and

(b) a regulated superannuation fund established before the commencement of this Division, the governing rules of which are amended after the commencement of this Division to provide for the payment of a defined benefit pension.

(2) This Division does not apply to a fund that is part of:

(a) the scheme established by the *Superannuation Act 1976*; or

(b) the scheme established under the provisions of the *Superannuation Act 1990*; or

(c) the Military Superannuation and Benefits Scheme; or

(d) an exempt public sector superannuation scheme.



Federal Register of Legislative Instruments F2015C00472

## 9.04G Sub-funds to be treated as funds

A sub-fund within a regulated superannuation fund is taken, for the purposes of this Division, to be a regulated superannuation fund if the sub-fund satisfies the following conditions:

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

(b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund.

## 9.04H Operating standard

For subsection 31(1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds.

## 9.04I Provision of defined benefit pensions

(1) Subject to subregulation (3), a regulated superannuation fund that has less than 50 members must not provide a defined benefit pension.

(2) Subregulation (1) has effect despite anything in the governing rules of the fund.

(3) A regulated superannuation fund that has less than 50 members may provide a defined benefit pension only:

(a) to a person:

(i) who, on 11 May 2004, was a member of the fund; and

(ii) who, before 1 January 2006:

(A) retires (within the meaning of subregulation 6.01(7)) on or after attaining age 55; or

(B) attains age 65; and

(iii) who, after 11 May 2004 and before 1 January 2006, becomes entitled to be paid a defined benefit pension; and



Federal Register of Legislative Instruments F2015C00472

(b) if the first pension payment is made within 12 months after the day when the person became entitled to the pension.



Federal Register of Legislative Instruments F2015C00472

# 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;
  (iv) the scheme established under the *Superannuation (State Public Sector) Act 1990* (Qld); 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 a superannuation 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.



Federal Register of Legislative Instruments F2015C00472

***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

(aa) the receipt by a trustee of the fund of a written direction from the Regulator under subregulation 9.09(1A); or

(b) an event identified by a superannuation 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 responsible actuary so certifies; and

(b) in any other case—on the date 5 years after the declared date.

***responsible actuary***, in relation to a defined benefit fund, means a superannuation 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



Federal Register of Legislative Instruments F2015C00472

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 superannuation actuary under paragraph 9.10(1)(g).

(4) If, under paragraph 9.10(1)(g), a superannuation 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 superannuation actuary as the date on which the instalment must be paid.

(5) If the superannuation 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 a



Federal Register of Legislative Instruments F2015C00472

superannuation actuary a funding and solvency certificate in relation to the fund.

(1A) The Regulator may direct the trustee of the fund, in writing, to obtain from a superannuation actuary a new or replacement funding and solvency certificate if the Regulator considers, on reasonable grounds, that to do so would be:

(a) in the prudential interests of the fund; and

(b) in the best interests of the members of the fund.

(1B) The trustee of the fund must comply with a written direction under subregulation (1A).

(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.

## 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, a superannuation 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 superannuation 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



Federal Register of Legislative Instruments F2015C00472

(f) certify the minimum contributions reasonably expected by the superannuation 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 superannuation 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 superannuation 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 superannuation actuary signs the certificate but must not be more than 12 months earlier than that



Federal Register of Legislative Instruments F2015C00472

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 superannuation 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 superannuation actuary signs the certificate.

(4) If the effective date of a funding and solvency certificate is earlier than the date on which the superannuation actuary signs the certificate, the superannuation actuary must only sign the certificate if the superannuation 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 superannuation actuary, in the performance of his or her



Federal Register of Legislative Instruments F2015C00472

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:
   (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 a superannuation actuary at the request of the trustee, being whichever of the following kinds is considered by the superannuation 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 superannuation actuary;
   (c) a new funding and solvency certificate unrelated to the lapsed certificate and relying upon new calculations to be made by the superannuation actuary.

(5) The date on which a new funding and solvency certificate obtained under subregulation (2), because of the occurrence of a notifiable



Federal Register of Legislative Instruments F2015C00472

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.

(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



Federal Register of Legislative Instruments F2015C00472

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:

$$\frac{NRV - BEF}{FMRB}$$

(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:

$$\frac{NRV - BEF}{MRB}$$

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 (including any amount that would be payable out of those interests to the spouse, or former spouse, of the former member under a payment split) 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



Federal Register of Legislative Instruments F2015C00472

(b) the value of the post-initial date component of the MRB.

***initial date*** means whichever is the earlier of the following dates:

(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 (including any amount that would be payable out of those benefits to the member's spouse or former spouse under a payment split) 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 a superannuation 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 superannuation actuary must, as soon as practicable:

(a) declare, in writing signed by the superannuation 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.



Federal Register of Legislative Instruments F2015C00472

## 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 a superannuation actuary to return the fund to a position that would enable the superannuation 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).

(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.



Federal Register of Legislative Instruments F2015C00472

(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, a superannuation 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 superannuation 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 superannuation 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.



Federal Register of Legislative Instruments F2015C00472

(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.

## 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 a superannuation 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 responsible actuary must, if practicable, inform the Regulator 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)



Federal Register of Legislative Instruments F2015C00472

and must inform the Regulator of the change in the fund's responsible actuary.



Federal Register of Legislative Instruments F2015C00472

# 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



Federal Register of Legislative Instruments F2015C00472

(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.

(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:



Federal Register of Legislative Instruments F2015C00472

(a) the fund fails to comply with regulations 9.17, 9.18 or 9.19 during the period of technical insolvency; or

(b) the superannuation 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 the Regulator formulates a scheme for the winding-up of the fund.

## 9.24 Alternative programs approved by the Regulator

(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 responsible actuary's recommendations, must, within 21 days after receiving the recommendations, forward a copy of the recommendations to the Regulator, together with a request that the Regulator approve the recommendations.

(2) If the Regulator approves the responsible actuary's recommendations, and notifies the trustee in writing of the approval, the trustee must follow the specified course of action as recommended.

## 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



Federal Register of Legislative Instruments F2015C00472

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.



Federal Register of Legislative Instruments F2015C00472

# 9.5—Actuarial standards relating to defined benefit funds that are self-managed superannuation funds

## 9.26 Application

This Division applies to a defined benefit fund that is a self-managed superannuation fund.

## 9.27 Interpretation

In this Division:

***accrued benefits***, in relation to a member of a defined benefit fund or a defined benefit sub-fund:

(a) 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 or sub-fund; and

(b) includes any amount that would be payable out of the benefits mentioned in paragraph (a) to the member's spouse or former spouse under a payment split.

***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 or sub-fund, means the date on which an investigation required under regulation 9.29 or 9.29A was carried out in relation to the fund or sub-fund.



Federal Register of Legislative Instruments F2015C00472

## 9.28 Prescription of standards

For the purposes of subsection 31(1) of the Act, the standards contained in regulations 9.29, 9.29A and 9.30 are prescribed as standards applicable to the operation of defined benefit funds that are self managed superannuation funds.

## 9.29 Actuarial investigation standard

(1) Subject to regulation 9.29A, a trustee of a defined benefit fund must require an initial actuarial investigation (the ***first actuarial investigation***) to be made in relation to the fund as a whole or each defined benefit sub-fund in the fund.

(2) If the first actuarial investigation is in relation to the fund as a whole it must be made:
  (a) for a defined benefit fund in operation on 30 June 1994—at a date no later than 3 years after:
    (i) the date at which the last actuarial investigation of the fund as a whole was made; or
    (ii) if no actuarial investigation has been made—the date of establishment of the fund or conversion of the fund to a defined benefit fund; or
  (b) for a new fund—at the date of establishment or conversion of the fund.

(3) If the first actuarial investigation is in relation to a defined benefit sub-fund in the fund it must be made:
  (a) for a defined benefit sub-fund in operation on 30 June 1994—at a date no later than 3 years after:
    (i) the date at which the last actuarial investigation of the sub-fund was made; or
    (ii) if no actuarial investigation was made—the date of establishment of the sub-fund or conversion of the sub-fund to a defined benefit sub-fund; or
  (b) for a new defined benefit sub-fund—at the date of establishment or conversion of the sub-fund.



Federal Register of Legislative Instruments F2015C00472

(4) A trustee of a defined benefit fund or sub-fund must, after the first actuarial investigation has been made in relation to the fund or sub-fund, require regular actuarial investigations to be made in relation to the fund or sub-fund at least every 3 years.

(5) The Commissioner of Taxation may direct the trustee of the fund or sub-fund, in writing, to require an actuarial investigation to be made in relation to the fund or sub-fund, if the Commissioner of Taxation considers, on reasonable grounds, that to do so would be:
  (a) in the prudential interests of the fund or sub-fund; and
  (b) in the best interests of the members or beneficiaries of the fund or sub-fund.

(6) The trustee of the fund or sub-fund must comply with a written direction under subregulation (5).

## 9.29A Actuarial investigation standard—exemption

(1) Regulation 9.29 does not apply to a defined benefit fund or a defined benefit sub-fund to which this regulation applies.

(2) This regulation applies to a defined benefit fund or a defined benefit sub-fund that pays a defined benefit pension to at least one member.

(3) The trustee must require annual actuarial investigations to be made in relation to the fund or sub-fund, starting from the day that is 1 year after the day on which the fund or sub-fund made the first defined benefit pension payment.

## 9.30 Actuarial reporting standard

(1) A trustee of a defined benefit fund or a defined benefit sub-fund must obtain an actuarial report in accordance with this regulation in relation to each investigation that is required to be made under regulation 9.29 or 9.29A in relation to the fund or sub-fund.



Federal Register of Legislative Instruments F2015C00472

(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 or sub-fund.

(3) The actuarial report must contain the information mentioned in regulation 9.31.

## 9.31 Contents of actuarial report

(1) For regulation 9.30, an actuarial report must contain, in addition to any other required information:

(a) a statement of the value of the assets of the fund or sub-fund at the valuation date; and

(b) a statement of the SMSF actuary's opinion on whether, at the valuation date, the value of the fund's or sub-fund's assets is adequate to meet the value of the fund or sub-fund's liabilities in relation to the accrued benefits of members of the fund or sub-fund; and

(c) for a regulated superannuation fund that has at least one defined benefit member who is being paid a defined benefit pension from the fund, but which has no defined benefit sub-funds—a statement of the SMSF actuary's opinion on whether, at the valuation date, there is a high degree of probability that the defined benefit fund will be able to pay the pension as required under the fund's governing rules; and

(d) for a defined benefit sub-fund from which at least one defined benefit member is being paid a defined benefit pension—a statement of the SMSF actuary's opinion on whether, at the valuation date, there is a high degree of probability that the defined benefit sub-fund will be able to pay the pension as required under the fund's governing rules.

(e) a statement recommending, in relation to the 3-year period immediately following the valuation date:

(i) the rate at which, or the range of rates within which, the SMSF actuary considers employer contributions should be made; or



Federal Register of Legislative Instruments F2015C00472

(ii) if the SMSF 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—those rates or ranges of rates; and

(f) a statement, made in accordance with subregulations (3) and (4), regarding the financial position of the fund or the sub-fund; and

(g) if the fund or sub-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 SMSF actuary's opinion regarding the likelihood of an actuary being able to certify the solvency of the fund or sub-fund in any funding and solvency certificate that may be required under these regulations during the 3-year period immediately following the valuation date; and

(h) if a prescribed event for paragraph 342(4)(a) has occurred in relation to the grant or transfer of a pre-1 July 1988 funding credit—a statement that the prescribed event has occurred.

(2) In forming an opinion mentioned in paragraph (1)(b), (1)(c) or (1)(d), the SMSF actuary must consider:

(a) the position of the fund or sub-fund at the valuation date; and

(b) the likely future position of the fund or sub-fund during the 3 years immediately following the valuation date, based on the SMSF actuary's reasonable expectations.

(3) In making a statement regarding financial position under paragraph (1)(f), the SMSF actuary must indicate whether the financial position of the fund or sub-fund, is treated as unsatisfactory under regulation 9.04 and whether that position may, in the SMSF actuary's opinion, be about to become unsatisfactory, taking into consideration the matters referred to in regulation 9.03.



Federal Register of Legislative Instruments F2015C00472

(4) If, in a statement made under paragraph (1)(f), the SMSF actuary considers that the stated financial position of the fund or sub-fund is dependent on certain actions being taken, or certain schemes being implemented, the SMSF actuary must indicate this and must include in the statement a detailed description of those actions or schemes.



Federal Register of Legislative Instruments F2015C00472

# 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 a superannuation 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; and

(c) any minimum benefits of the member under regulation 5.06B, that are not included in paragraph (a) or (b).

***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.



Federal Register of Legislative Instruments F2015C00472

***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.

## 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



Federal Register of Legislative Instruments F2015C00472

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 a superannuation 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 a superannuation actuary for the fund, who must, as soon as practicable, design a program of the kind referred to in



Federal Register of Legislative Instruments F2015C00472

paragraph 9.38(1)(a) or subregulation 9.38(2) (whichever is applicable) and inform the trustee of the requirements of that program.

(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.



Federal Register of Legislative Instruments F2015C00472

# 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 a superannuation 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.



Federal Register of Legislative Instruments F2015C00472

(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.

## 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 the Regulator formulates a scheme for the winding-up of the fund.



Federal Register of Legislative Instruments F2015C00472

## 9.44 Alternative programs approved by the Regulator for accumulation funds

(1) If, as an alternative to commencing winding-up proceedings, the 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 the Regulator, together with a request that the Regulator approve the recommendations.

(2) If the Regulator 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.

(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



Federal Register of Legislative Instruments F2015C00472

bears to the total of minimum guaranteed benefits in respect of all the members of the fund at the winding-up date.



Federal Register of Legislative Instruments F2015C00472

# Part 9A—Requirements relating to MySuper products

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

(1) For subsection 29SAA(3) of the Act, the RSE licensee must give the member a notice in writing in accordance with subregulation (3) at least 90 days before the attribution of the accrued default amount or the transfer of the accrued default amount to another fund.

(2) However, this regulation does not apply to the RSE licensee if the attribution or transfer will not result in any of the following:
- (a) an increase in a fee or charge that applies to the amount;
- (b) a reduction in an insured benefit that is attributable to the member;
- (c) an increase in an insurance premium that is attributable to the member;
- (d) a change in the investment strategy that relates to the amount.

(3) For subregulation (1), the notice must mention the following:
- (a) the amount that is attributable to the member at the time the notice is sent;
- (b) the name of the MySuper product to which the amount will be attributed or transferred;
- (c) how the member can elect, in writing, to opt out of the attribution or transfer;
- (d) how the member may obtain a product disclosure statement for the MySuper product;
- (e) any change to a fee or charge that applies to the amount;
- (f) any change to the member's insured benefits as a result of the attribution or transfer;



Federal Register of Legislative Instruments F2015C00472

(g) any change to the investment strategy applicable to the amount as a result of the attribution or transfer;

(h) any other information that the member needs to understand the attribution or transfer.

(4) For paragraph (3)(e), the fee or charge must be stated in dollars.

(5) However, ASIC may determine that the fee or charge be stated another way if, in ASIC's opinion, there is a compelling reason why it is not possible to state the fee or charge in dollars.

(6) A determination under subregulation (5) must be published in the *Gazette*.

## 9.46A Notification—periodic statements

(1) This regulation is made for subsection 29SAA(3) of the Act.

(2) An RSE licensee of a regulated superannuation fund that has made an election in accordance with section 29SAA of the Act must give a member of the fund mentioned in paragraph 29SAA(3)(a) or (b) of the Act a notice in writing.

(3) The notice must mention the following:

(a) the RSE licensee's obligation to:

(i) move the accrued default amount by 30 June 2017; and

(ii) promote the financial interests of the member in relation to a MySuper product held by the member; and

(b) the accrued default amount; and

(c) either:

(i) if the RSE licensee has identified a MySuper product, either within the fund or in another regulated superannuation fund, to which the RSE licensee proposes to move the accrued default amount—the name of the MySuper product, and when the proposed move will occur; or



Federal Register of Legislative Instruments F2015C00472

(ii) if the RSE licensee has not identified such a MySuper product—why the RSE licensee has not done so, and what the RSE licensee has done, and will do, to do so.

(4) The notice must be given to the member with:

(a) the first periodic statement sent to the member after the RSE licensee has identified the accrued default amount; and

(b) each subsequent periodic statement sent to the member until the accrued default amount is moved to a MySuper product.

## 9.47 Other factors that may be used for a lifecycle MySuper product

For paragraph 29TC(2)(b) of the Act, the factors are:

(a) the member's:

(i) account balance; and

(ii) contribution rate; and

(iii) current salary; and

(iv) gender; and

(b) the time remaining, in the opinion of the trustee, before the member could be expected to retire.

## 9.48 Limitation imposed by governing rules

(1) For paragraph 29TC(3)(a) of the Act, the following limitations on the source or kind of contributions made by or on behalf of a person who holds a MySuper product offered by a regulated superannuation fund are prescribed:

(a) a limitation on a contribution, by way of transfer, from a fund that is, at the time the transfer is made:

(i) a foreign superannuation fund; or

(ii) a fund that is similar to a foreign superannuation fund;

(b) a limitation on the contribution of an asset in a form other than money;

(c) a limitation in relation to a contribution by a non-associated employer to:

(i) a MySuper product that is authorised because section 29TB of the Act is satisfied; or

(ii) a corporate MySuper product.

(2) In this regulation:

***corporate MySuper product*** has the meaning given by subsection 23A(3) of the *Fair Work Act 2009*.

***foreign superannuation fund*** has the meaning given by section 995-1 of the 1997 Tax Act.

***non-associated employer*** means a person who is not:

(a) an employer of the person who holds the MySuper product; or

(b) an employer associated with the employer of the person who holds the MySuper product.

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

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

(a) be placed with an insurer at a reasonable cost; or

(b) be provided on an opt-out basis.



Federal Register of Legislative Instruments F2015C00472

# Part 9A—Approved SMSF auditors

## 9A.01 Qualifications

(1) For subparagraph 128B(1)(a)(i) of the Act, each of the following subregulations sets out a qualification.

(2) A degree, diploma or certificate in accounting of not less than 3 years, which includes a course in audit, from either of the following bodies (a ***relevant body***):

(a) a university mentioned in Part 1 of the table in regulation 9.2.02 of the *Corporations Regulations 2001*;

(b) the institution mentioned in Part 2 of the table in regulation 9.2.02 of the *Corporations Regulations 2001*.

(3) Both:

(a) a degree, diploma or certificate in accounting of not less than 3 years, which does not include a course in audit, from a relevant body; and

(b) satisfactory completion of a course in audit (a ***relevant course***) mentioned in regulation 9A.02.

(4) Both:

(a) a degree, diploma or certificate in accounting of not less than 3 years, which does not include a course in audit, from a relevant body; and

(b) satisfactory completion of the self managed superannuation fund specialist auditor program conducted by the SMSF Professionals' Association of Australia Limited.

(5) A qualification or combination of qualifications which the Regulator regards as equivalent to the degree, diploma or certificate mentioned in subregulation (2), (3) or (4).

Note: The applicant need only have a qualification mentioned in subregulation 9A.01(2), (3), (4) or (5).



Federal Register of Legislative Instruments F2015C00472

## 9A.02 Relevant courses

For paragraph 9A.01(3)(b), the relevant courses are:

(a) the following courses conducted by the Institute of Chartered Accountants in Australia:

(i) Audit and Assurance in the CA Program;

(ii) Financial Reporting and Assurance in the CA Program;

(iii) Accounting 2 in the Professional Year Program;

(iv) Audit and EDP Module in the Professional Year Program;

(v) an audit module in the Professional Year Program conducted before 1986 that is equivalent to a course mentioned in subparagraph (i), (ii), (iii) or (iv); and

(b) the following courses in the CPA Program conducted by CPA Australia:

(i) Assurance Services and Auditing;

(ii) Advanced Audit and Assurance; and

(c) the following courses conducted by, or on behalf of, the Institute of Public Accountants:

(i) Issues in Auditing and Professional Practice in the Graduate Certificate in Professional Accounting, offered by the University of New England in conjunction with the Institute of Public Accountants;

(ii) Issues in Auditing and Professional Practice in the Degree of Master of Commerce (Professional Accounting), offered by the University of New England in conjunction with the Institute of Public Accountants.

## 9A.03 Practical experience

For subparagraph 128B(1)(a)(ii) of the Act, each of the following is practical experience:

(a) at least 300 hours of work auditing self managed superannuation funds under the direction of an approved SMSF auditor in the 3 years immediately before applying to be an approved SMSF auditor;



Federal Register of Legislative Instruments F2015C00472

(b) practical experience that the Regulator regards as equivalent to the practical experience mentioned in paragraph (a).

Note: The applicant need only have the practical experience mentioned in paragraph 9A.03(a) or (b).

## 9A.04 Continuing professional development requirements

(1) For paragraph 128F(a) of the Act, the requirements in this regulation form the continuing professional development requirement.

(2) The approved SMSF auditor must undertake at least 120 hours of continuing professional development every 3 years.

(3) The development must:

(a) include 30 hours of development about superannuation at least 8 hours of which is development about auditing of self managed superannuation funds; and

(b) be development that could reasonably be expected to enhance an approved SMSF auditor's technical skills or professional service delivery.

(4) The approved SMSF auditor must keep a written record of the development undertaken by the approved SMSF auditor for at least 3 years after the end of the financial year in which the development occurred.

## 9A.05 Professional indemnity requirements

(1) For paragraph 128F(b) of the Act, each of the following subregulations sets out a level of professional indemnity insurance.

(2) The level that is set under a limitation of liability scheme provided by a professional organisation mentioned in Schedule 1AAA.

(3) The level that:

(a) is adequate to ensure that the amount of coverage in relation to a single claim or in aggregate is at least $500,000; and

(b) is adequate because other terms of the policy will indemnify the auditor against civil liability that may arise from an act, error or omission in connection with audits of self managed superannuation funds.

Note: The applicant need only have the level of professional indemnity insurance mentioned in subregulation 9A.05(2) or (3).

## 9A.06 Auditor independence requirements

For paragraph 128F(d) of the Act, the auditor independence requirements produced by the Accounting Professional and Ethical Standards Board Limited and set out in the APES 110 Code of Ethics for Professional Accountants are prescribed for all approved SMSF auditors.

Note: At the commencement of this regulation, a copy of the APES 110 Code of Ethics for Professional Accountants was available at www.apesb.org.au.

## 9A.07 When fees must be paid

For subsection 128L(3) of the Act, the table sets out when fees imposed under the *Superannuation Auditor Registration Imposition Act 2012* are due and payable.

| Item | A fee payable for ... | is due and payable ... |
|---|---|---|
| 1 | applying for registration as an approved SMSF auditor | when the application is submitted |
| 2 | undertaking a competency examination in accordance with section 128C of the Act | when applying to sit the examination |
| 3 | giving to the Regulator a statement under section 128G of the Act | when the statement is submitted |
| 4 | giving to the Regulator a statement under section 128G of the Act within 1 month after it fell due (in addition to the fee payable because of item 3) | when the statement is submitted |
| 5 | giving to the Regulator a statement under section 128G of the Act more than 1 month after it fell due (in addition to the fee payable because of | when the statement is submitted |

| Item | A fee payable for ... | is due and payable ... |
|---|---|---|
| | item 3) | |
| 6 | giving to the Regulator particulars under section 128H of the Act within 1 month after they fell due | when the particulars are submitted |
| 7 | giving to the Regulator particulars under section 128H of the Act more than 1 month after they fell due | when the particulars are submitted |
| 8 | inspecting or searching a register that the Regulator keeps under Division 1A of the Act | when the request is made |

# Part 10—Eligible rollover funds

## 10.01 Application for authority to operate eligible rollover fund

For subsection 242A(1) of the Act, the following may apply to APRA for authority to operate a regulated superannuation fund as an eligible rollover fund:

(a) the class of RSE licensee that holds a public offer entity licence;

(b) the class of RSE licensee that holds an extended public offer entity licence.

Note: For extended public offer entity licences, see regulation 3A.03.

## 10.02 Payment of benefit to eligible rollover fund

(1) For 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 paragraph 243(1)(c) of the Act, the condition is that the beneficiary is not a non-member spouse whose entitlement under a payment split is to be dealt with under regulation 7A.16.

(3) For paragraph 243(3)(b) of the Act, the amount of the consideration for the issue of a superannuation interest:

(a) is the amount of the beneficiary's withdrawal benefit in the transferor fund; and

(b) does not include any amount that would be payable to the member's spouse or former spouse under a payment split.

Note: Section 243 of the Act sets out the circumstances in which the trustee of a fund may apply to an eligible rollover fund, on behalf of a beneficiary of the fund, for the issue of a superannuation interest in the eligible rollover fund to the beneficiary.



Federal Register of Legislative Instruments F2015C00472

## 10.03 Operating standard—eligible rollover funds

(1) For subsection 31(1) of the Act, this standard applies to the trustee of an eligible rollover fund.

(2) The trustee must accept payment of benefits, other than pension benefits, paid from a superannuation fund, other than an eligible rollover fund.



Federal Register of Legislative Instruments F2015C00472

# 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.

## 11.02A Service of contravention notice (Act s 252B)

(1) For subsection 252B(1) of the Act, a contravention notice may be served on the trustee of a fund by:
  (a) delivering it personally to the trustee; or
  (b) leaving it at the trustee's address for service; or
  (c) sending it by facsimile transmission:
    (i) to the trustee; or
    (ii) to another person who would, in the ordinary course of events, give the notice to the trustee; or
  (d) sending it by prepaid letter post, addressed to the trustee at the trustee's address for service.

(2) For paragraphs (1)(b) and (d), a trustee's address for service is:
  (a) if the trustee told APRA or the Commissioner of Taxation of the fund's registered address or address for service—that address; or
  (b) in any other case—any address that whichever of APRA or the Commissioner of Taxation is serving the notice reasonably believes is the trustee's address.

(3) In the absence of proof to the contrary, a contravention notice served on a trustee in accordance with subregulation (1) is taken to have been served:



Federal Register of Legislative Instruments F2015C00472

(a) in the case of service in accordance with paragraph (1)(a), (b), or (c)—when the notice or document is delivered, left or transmitted; and

(b) in the case of service in accordance with paragraph (1)(d)—when the notice or document would, in the ordinary course of post, have arrived at the place to which it was addressed.

## 11.03 Period for giving information to the Regulator, 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, registered address and telephone number of the trustee, 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:

(i) the date of establishment of the fund; and

(ii) a statement as to whether:



Federal Register of Legislative Instruments F2015C00472

(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) a self managed 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 a self managed superannuation fund—a statement as to whether, in the trustee's opinion, the fund is likely to be a self managed 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 and telephone number; and

(ii) the name of each director of the trustee; and

(c) the following fund information:



Federal Register of Legislative Instruments F2015C00472

(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
(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 and telephone number; and
(ii) the name of each director of the trustee; and
(c) the date of establishment of the trust.

## 11.06A Specified person or body (Act s 254(1))

For subsection 254(1) of the Act, the Commissioner of Taxation is specified.

## 11.07 Operating standard—disclosure of certain information (funds other than self managed superannuation funds)

(1) This standard:
(a) is made for subsections 31(1), 32(1) and 33(1) of the Act; and
(b) applies to a superannuation entity other than a self managed superannuation fund.

(2) The trustee of the entity must give written notice to the Regulator of any change in the following:



Federal Register of Legislative Instruments F2015C00472

(a) the name of the entity;
(b) the postal address, registered address or address for service of notices of the entity;
(c) details of the contact person for the entity, and contact telephone and facsimile numbers;
(d) the RSE licensee of the entity.

(3) The notice for subregulation (2) must be given:
(a) for a superannuation entity that is an eligible rollover fund—immediately after the change; or
(b) in any other case—within 28 days of the change.

(4) An RSE licensee who is an incoming trustee of the entity must give written notice of that fact to the Regulator.

(5) The notice for subregulation (4) must be given:
(a) as soon as practicable after the RSE licensee becomes a trustee of the entity; and
(b) no later than 5 days after the date on which the RSE licensee becomes a trustee of the entity.

(6) The trustee of the entity must give written notice to the Regulator of a decision or resolution:
(a) to wind up the entity; or
(b) to retire as a trustee of the entity.

(7) The notice for subregulation (6) must be given
(a) as soon as practicable after the making of the decision or resolution; and
(b) before the winding up has commenced or the trustee has retired.

(8) The trustee of the entity must give written notice to the Regulator of a change in class of the RSE.

(9) The notice for subregulation (8) must be given before, or as soon as practicable after, the change in the class.



Federal Register of Legislative Instruments F2015C00472

## 11.07AA Operating standard—disclosure of certain information (self managed superannuation funds)

(1) This standard is made for subsection 31(1) of the Act.

(2) The trustee of a self managed superannuation fund must give written notice to the Regulator of any change in the following:
  (a) the name of the fund;
  (b) the postal address, registered address or address for service of notices of the fund;
  (c) details of the contact person for the fund, and contact telephone and facsimile numbers;
  (d) the membership of the fund;
  (e) the trustees of the fund;
  (f) the directors of the fund's corporate trustee.

(3) The notice for subregulation (2) must be given:
  (a) using the approved form; and
  (b) within 28 days after the change.

## 11.07A Operating standard—disclosure on change of status

(1) For subsection 31(1) of the Act, the requirement in subregulation (3) is a standard applicable to the operation of a regulated superannuation fund.

(2) The standard applies to the trustee of a superannuation fund that:
  (a) is a self managed superannuation fund and:
    (i) ceases to be such a superannuation fund; or
    (ii) ceases to exist; or
  (b) is not a self managed superannuation fund and becomes such a superannuation fund.

(3) Within 28 days after the trustee first has knowledge of such a change, the trustee must tell the Commissioner of Taxation in writing:
  (a) the fund's name; and



Federal Register of Legislative Instruments F2015C00472

(b) its ABN; and
(c) the name of an individual who is able to act as a contact person, and his or her telephone and facsimile numbers; and
(d) the date on which the change occurred; and
(e) if the fund has not ceased to exist—whether it has become a self managed superannuation fund; and
(f) if the fund has become a self managed superannuation fund:
(i) for any trustee of the fund that is an individual—his or her name, date of birth and sex; or
(ii) for any trustee that is a corporation—its name and its ABN; and
(g) if the fund has not ceased to exist, but is not a self managed superannuation fund after the change—the trustee's name and its ABN.

(4) In subregulation (3):

***ABN***, for an entity, means the Australian Business Number given to the entity under the *A New Tax System (Australian Business Number) Act 1999*.

## 11.08 Operating standard—disclosure of successor fund transfer

(1) For subsections 31(1) and 32(1) of the Act, it is a standard applicable to the operation of a superannuation entity, other than a pooled superannuation trust or a self managed superannuation fund, that the trustee must give notice in writing to the Regulator, in accordance with subregulation (2), of a decision to transfer a member's benefits from the fund, without the member's consent.

(2) Notice under subregulation (1) must be given:
(a) as soon as practicable after the making of the decision to transfer the member's benefits from the fund; or
(b) if the fund is being wound up—before the winding up is commenced.



Federal Register of Legislative Instruments F2015C00472

# Part 11A—Register to be kept by APRA

## 11A.01 Source of power for this Part

This Part is made for subsection 353(1) of the Act.

Note: See subsection 353(2) of the Act.

## 11A.02 Definition

In this Part:

***Register*** means the register kept by APRA under this Part.

## 11A.03 APRA must keep register

(1) APRA must keep a register of:
  (a) registrable superannuation entities that have been registered under Part 2B of the Act; and
  (b) the RSE licensees of those entities.

(2) APRA may determine the form and manner in which the Register is kept.

Note: The form of register determined by APRA must be a form that would allow the register to be inspected and copied under subregulation (3).

(3) A person may:
  (a) inspect the Register; and
  (b) make a copy of, or take extracts from, the Register.

## 11A.04 Regulated superannuation funds

The Register must contain the following information for each registrable superannuation entity that is a regulated superannuation fund:
  (a) the name of the entity;
  (b) the postal address of the entity;



Federal Register of Legislative Instruments F2015C00472

(c) the registered address of, or an address for service of notices on, the entity;
(d) a contact person and contact telephone and facsimile numbers for the entity;
(e) the status of the entity under section 42 of the Act;
(f) the Australian Business Number (the ***ABN***) of the entity;
(g) the class of RSE licence held by the RSE licensee;
(h) for each MySuper product of the entity:
  (i) the name of the MySuper product; and
  (ii) the unique identifier of the MySuper product; and
  (iii) whether the type of MySuper authorisation held by the entity is generic, large employer or goodwill; and
  (iv) for an entity that has a large employer authorisation, for each MySuper product authorised—the name and ABN of each associated large employer;
(i) whether the entity is an eligible rollover fund;
(j) for an RSE licensee that is a body corporate—the RSE licensee's:
  (i) name; and
  (ii) registered address; and
  (iii) telephone number; and
  (iv) ABN;
(k) for an RSE licensee that is a group of individual trustees:
  (i) the ABN of the RSE licensee; and
  (ii) the name of each individual trustee who is a member of the group.

## 11A.05 Approved deposit funds

The Register must contain the following information for each registrable superannuation entity that is an approved deposit fund:
(a) the name of the entity;
(b) the postal address of the entity;
(c) the registered address of, or an address for service of notices on, the entity;



Federal Register of Legislative Instruments F2015C00472

(d) a contact person and contact telephone and facsimile numbers for the entity;
(e) the status of the entity under section 43 of the Act;
(f) the ABN of the entity;
(g) the class of RSE licence held by the RSE licensee;
(h) the RSE licensee's:
  (i) name; and
  (ii) registered address; and
  (iii) telephone number; and
  (iv) ABN.

## 11A.06 PSTs

The Register must contain the following information for each registrable superannuation entity that is a PST:

(a) the name of the entity;
(b) the postal address of the entity;
(c) the registered address of, or an address for service of notices on, the entity;
(d) a contact person and contact telephone and facsimile numbers for the entity;
(e) the status of the entity under section 44 of the Act;
(f) the ABN of the entity;
(g) the class of RSE licence held by the RSE licensee;
(h) the RSE licensee's:
  (i) name; and
  (ii) registered address; and
  (iii) telephone number; and
  (iv) ABN.



Federal Register of Legislative Instruments F2015C00472

# 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 credits available*** has the meaning given by subsection 295-265(2) of the 1997 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



Federal Register of Legislative Instruments F2015C00472

(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

(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) $$\left\{\left[\text{value A of accrued benefits} - \begin{array}{c}\text{actuarially}\\ \text{determined}\\ \text{value of}\\ \text{fund assets}\end{array}\right] \times \frac{\begin{array}{c}\text{net}\\ \text{market value}\\ \text{of assets}\end{array}}{\begin{array}{c}\text{actuarially}\\ \text{determined}\\ \text{value of}\\ \text{fund assets}\end{array}}\right\};$$



Federal Register of Legislative Instruments F2015C00472

(b) $\left\{ \begin{matrix} \text{value B of} \\ \text{accrued benefits} \end{matrix} - \begin{matrix} \text{net} \\ \text{market value} \\ \text{of assets} \end{matrix} \right\}$.

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:

(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



Federal Register of Legislative Instruments F2015C00472

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;



Federal Register of Legislative Instruments F2015C00472

(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 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, a superannuation actuary must submit to APRA in writing the elements that the superannuation 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



Federal Register of Legislative Instruments F2015C00472

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;

(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, a superannuation 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*.

## 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



Federal Register of Legislative Instruments F2015C00472

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 a superannuation 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:

$$P_1 \times \text{Net present value} \times P_2$$

where:

***P1*** is the probability, determined by the superannuation 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 superannuation 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:

$$\frac{\text{completed period of fund membership in relation to the member at 30 June 1988}}{\text{completed period of fund membership in relation to the member at the members date of exit from the fund}}$$

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.

## 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:

$$0.002 \times \text{the amount of the PJFC};$$

(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.



Federal Register of Legislative Instruments F2015C00472

## 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:

$$\begin{pmatrix}\text{PJFC}\\ \text{originally}\\ \text{granted}\\ \text{to the fund}\end{pmatrix} + \begin{pmatrix}\text{any PJFCs}\\ \text{transferred}\\ \text{to the fund}\end{pmatrix} - \begin{pmatrix}\text{any PJFCs}\\ \text{transferred}\\ \text{from the fund}\end{pmatrix}$$

(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 Subdivision 960-M 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.

(2) The notice must have with it:

(a) a statement of an amount that is certified by a superannuation actuary as the amount by which the pre-1 July 88 funding credits available in 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.



Federal Register of Legislative Instruments F2015C00472

(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 credits available 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:



Federal Register of Legislative Instruments F2015C00472

(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

(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 credits available 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) a superannuation 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

(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 credits available in the transferor fund; and



Federal Register of Legislative Instruments F2015C00472

(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) a superannuation 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

A superannuation 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.



Federal Register of Legislative Instruments F2015C00472

# Part 12A—Trans-Tasman retirement savings portability

## Division 1—General

### 12A.01 Purpose of Part 12A

This Part sets out matters to implement the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009.

Note 1: The Arrangement does not cover all complying superannuation funds. A number of types of superannuation funds and schemes are excluded (for example, self managed superannuation funds and defined benefit interests in defined benefit funds): see regulation 12A.03.

Note 2: Amounts covered by the Arrangement are:

(a) payments received by complying superannuation funds from KiwiSaver schemes on or after the day the Arrangement comes into force for Australia; and

(b) superannuation benefits paid to KiwiSaver scheme providers by complying superannuation funds on or after the day the Arrangement comes into force for Australia; and

(c) amounts paid between participating Australian funds if the member's benefits include any New Zealand-sourced amount; and

(d) superannuation benefits paid to an individual from an interest that includes any New Zealand-sourced amount.

See regulation 12A.03.

Note 3: The matters in this Part are also relevant to Division 312 of Part 3-30 of the *Income Tax Assessment Act 1997*, which provides for the taxation treatment of retirement savings to which the Arrangement relates.

### 12A.02 Definitions for Part 12A

In this Part:



Federal Register of Legislative Instruments F2015C00472

***Arrangement*** means the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009.

***Australian-sourced amount*** means an amount that:

(a) was originally accrued in a complying superannuation fund; and

(b) is subsequently received by a KiwiSaver scheme; and

(c) is identified by the receiving KiwiSaver scheme as an amount described in paragraph (a).

Note: As part of trans-Tasman retirement savings portability, an Australian-sourced amount may eventually be received by the same complying superannuation fund in which it originally accrued or another complying superannuation fund. It will still be an Australian-sourced amount at that time.

***KiwiSaver scheme*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***KiwiSaver scheme provider*** has the meaning given by subsection 995-1 (1) of the 1997 Tax Act.

***New Zealand-sourced amount*** means an amount that:

(a) was originally accrued in a KiwiSaver scheme; and

(b) is subsequently received by a complying superannuation fund; and

(c) is identified by the complying superannuation fund as an amount described in paragraph (a).

***returning New Zealand-sourced amount*** means a New Zealand-sourced amount that has been received by the same, or another, complying superannuation fund for the second or subsequent time.

Note 1: As part of trans-Tasman retirement savings portability, a New Zealand-sourced amount may eventually be received by the same KiwiSaver scheme in which it originally accrued or another KiwiSaver scheme. It will still be a New Zealand-sourced amount at that time.



Federal Register of Legislative Instruments F2015C00472

Note 2: If retirement savings move between Australia and New Zealand on more than one occasion, it is likely that:

(a) a part of the savings will be a New Zealand-sourced amount because that part was originally accrued in a KiwiSaver scheme; and

(b) a part of the savings will be an Australian-sourced amount because that part was originally accrued in a complying superannuation fund.

***tax free component of an Australian-sourced amount*** means an amount that:

(a) is, or is part of, an Australian-sourced amount; and

(b) was, or was included in, the tax free component of the member's former superannuation interest in Australia before the Australian-sourced amount was paid to a KiwiSaver scheme.

Note: The Act defines other expressions used in this Part.

## 12A.03 Payments to which this Part applies

(1) This Part applies in relation to:

(a) a payment made between a complying superannuation fund and a KiwiSaver scheme; and

(b) a payment made between complying superannuation funds that includes a New Zealand-sourced amount; and

(c) a payment between complying funds if:

(i) the member has an interest in the complying superannuation fund that is, or includes, a New Zealand-sourced amount; and

(ii) the payment does not include a New Zealand-sourced amount.

(2) However, this Part does not apply in relation to the following:

(a) a defined benefit interest in a defined benefit fund;

(b) an unfunded public sector superannuation scheme;

(c) a self managed superannuation fund.

(3) Also, this Part does not apply in relation to:



Federal Register of Legislative Instruments F2015C00472

(a) a payment made by a complying superannuation fund to the extent that the payment contains an element untaxed in the fund (within the meaning given by subsection 995-1(1) of the 1997 Tax Act); and

(b) benefits that are being paid as a pension.



Federal Register of Legislative Instruments F2015C00472

# Division 2—New Zealand-sourced amounts

## 12A.04 Application of Division 2

This Division applies in relation to:

(a) a New Zealand-sourced amount received by a complying superannuation fund from a KiwiSaver scheme; and

(b) the treatment of a New Zealand-sourced amount in a complying superannuation fund.

## 12A.05 Treatment of New Zealand-sourced amounts

For the purposes of implementing the Arrangement:

(a) Part 1 of these Regulations applies in relation to a New Zealand-sourced amount received by a complying superannuation fund from a KiwiSaver scheme; and

(b) the application of Part 1 is modified to the extent necessary to ensure that the Part describes concepts, processes and other matters sufficiently to implement the Arrangement.

## 12A.06 Benefit protection standards

(1) For the purposes of implementing the Arrangement, Part 5 of these Regulations, as affected by subregulations (2) to (4), applies in relation to:

(a) a New Zealand-sourced amount received by a complying superannuation fund; and

(b) the treatment of a New Zealand-sourced amount in a complying superannuation fund.

Note: In order to implement the Arrangement, it is appropriate to treat a New Zealand-sourced amount as an amount that is subject to Australia's benefit protection standards, apart from any differences required by the Arrangement.



Federal Register of Legislative Instruments F2015C00472

*Reduction of amount of benefits*

(2) The application of Part 5 is modified to the extent necessary to ensure that, if the trustee of a complying superannuation fund is required to reduce a member's benefits in the complying superannuation fund by a particular amount, the trustee must:

(a) first charge the amount to the member's benefits that are not New Zealand-sourced amounts; and

(b) if the full amount cannot be charged under paragraph (a)— then charge the remainder to the member's New Zealand-sourced amounts to the extent possible.

Note: In accordance with the Arrangement, the intention is that any decrements to retirement savings balances would first be applied to host country retirement savings before being applied to retirement savings transferred from the source country.

*Separate identification of New Zealand-sourced amount*

(3) The application of Part 5 is modified to the extent necessary to ensure that the trustee of a complying superannuation fund is, at all times, required to administer a member's interest in the complying superannuation fund in a way that allows any New Zealand-sourced amount in the fund to be identified separately.

*Minimum benefit*

(4) The application of Part 5 is modified to the extent necessary to ensure that a New Zealand-sourced amount in a complying superannuation fund is treated as a minimum benefit in the same way as other amounts in the fund would be treated as minimum benefits.

## 12A.07 Payment standards

(1) For the purposes of implementing the Arrangement, Part 6 of these Regulations, as affected by subregulations (2) to (8):

(a) applies in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds; and

(b) applies in relation to an amount to be paid from a complying superannuation fund to a KiwiSaver scheme to the extent necessary to allow the amount to be paid.

Note: In order to implement the Arrangement, it is appropriate to treat a New Zealand-sourced amount as an amount that is subject to Australia's payment standards, apart from any differences required by the Arrangement.

*No payments to self managed superannuation funds*

(2) The application of Part 6 in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds is modified to the extent necessary to prohibit the rollover or transfer of a New Zealand-sourced amount from a complying superannuation fund to a self managed superannuation fund.

*No obligation to receive amount*

(3) The application of Part 6 in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds is modified to the extent necessary to ensure that it does not require the trustee of a complying superannuation fund, in any circumstances, to receive the amount.

Note: In accordance with the Arrangement, arrangements to enhance trans-Tasman portability will be voluntary for providers as to whether they will accept transferred retirement savings.

*Separate identification of New Zealand-sourced amount*

(4) The application of Part 6 in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds is modified to the extent necessary to ensure that the trustee of a complying superannuation fund is, at all times, required to administer a member's interest in the complying superannuation fund in a way that allows any New Zealand-sourced amount in the fund to be identified separately.



Federal Register of Legislative Instruments F2015C00472

*Condition of release*

(5) The application of Part 6 in relation to an amount to be paid from a complying superannuation fund to a KiwiSaver scheme is modified to the extent necessary to ensure that the amount is to be paid if the condition of release mentioned in item 113A of Schedule 1 is satisfied, and is to be paid:

(a) as a single lump sum that is at least the amount of the member's withdrawal benefit in the fund; or

(b) if the fund receives any combination of contributions, transfers and rollovers after cashing the benefits:

(i) in a way that ensures that an amount that is at least the amount of the member's withdrawal benefit in the fund is cashed; and

(ii) without requiring an additional application from the member.

*Division 6.7 (spouse contributions-splitting amounts)*

(6) Division 6.7 does not apply to a New Zealand-sourced amount.

*Reduction of amount of benefits*

(7) The application of Part 6 is modified to the extent necessary to ensure that, if the trustee of a complying superannuation fund is required to reduce a member's benefits in the complying superannuation fund by a particular amount, the trustee must:

(a) first charge the amount to the member's benefits that are not New Zealand-sourced amounts; and

(b) if the full amount cannot be charged under paragraph (a)— then charge the remainder to the member's benefits that are New Zealand-sourced amounts to the extent possible.

Note: In accordance with the Arrangement, the intention is that any decrements to retirement savings balances would first be applied to host country retirement savings before being applied to retirement savings transferred from the source country.



Federal Register of Legislative Instruments F2015C00472

*Preserved benefits*

(8) The application of Part 6 is modified to the extent necessary to ensure that a New Zealand-sourced amount in a complying superannuation fund is treated as preserved benefits in the same way as other amounts in the fund would be treated as preserved benefits.

## 12A.08 Contribution and benefit accrual standards

(1) For the purposes of implementing the Arrangement, Part 7 of these Regulations, as affected by subregulations (2) to (7), applies in relation to a request to a complying superannuation fund to receive an amount from a KiwiSaver scheme.

Note: In order to implement the Arrangement, it is appropriate to treat a New Zealand-sourced amount as an amount that is subject to Australia's contribution and benefit accrual standards, apart from any differences required by the Arrangement.

*Additional information*

(2) The application of Part 7 is modified to the extent necessary to ensure that, if a request is made to a complying superannuation fund to receive an amount from a KiwiSaver scheme:

(a) the trustee of the complying superannuation fund may request the following information (in addition to other information that the trustee may require under Part 7):

(i) details of any New Zealand sourced amount, returning New Zealand-sourced amount or Australian-sourced amount that forms part of the amount to be received;

(ii) the amount of any tax free component of an Australian-sourced amount;

(iii) any amounts that were restricted non-preserved benefits or unrestricted non-preserved benefits;

(iv) any other information the trustee reasonably requires; and



Federal Register of Legislative Instruments F2015C00472

(b) the KiwiSaver scheme or the member may give the trustee of the complying superannuation fund any details requested under paragraph (a); and

(c) any information requested under paragraph (a), or provided by the KiwiSaver scheme provider or the member under paragraph (b), is given to the trustee of the complying superannuation fund before the trustee decides whether to receive the amount from the KiwiSaver scheme.

*Separate identification of New Zealand-sourced amount*

(3) The application of Part 7 is modified to the extent necessary to ensure that the trustee of a complying superannuation fund is, at all times, required to administer a member's interest in the complying superannuation fund in a way that allows any New Zealand-sourced amount in the fund to be identified separately.

*No obligation to receive amount*

(4) The application of Part 7 is modified to the extent necessary to ensure that it does not require the trustee of a complying superannuation fund, in any circumstances, to receive an amount from a KiwiSaver scheme.

Note: In accordance with the Arrangement, arrangements to enhance trans-Tasman portability will be voluntary for providers as to whether they will accept transferred retirement savings.

*Member contribution*

(5) The application of Part 7 is modified to the extent necessary to ensure that an amount received by a complying superannuation fund from a KiwiSaver scheme is treated as a contribution and a member contribution.

*Fund-capped contributions*

(6) The application of Part 7 is modified to the extent necessary to ensure that if an amount (other than a returning New Zealand-sourced amount or an Australian-sourced amount) that

would be received by a complying superannuation fund from a KiwiSaver scheme exceeds the amounts specified for the member in subregulation 7.04(3), the trustee of the fund must ensure that none of the amount is received.

(7) The application of Part 7 is modified to the extent necessary to ensure that:

(a) a returning New Zealand-sourced amount that is received by a complying superannuation fund is not treated as a fund-capped contribution; and

(b) an Australian-sourced amount that forms part of an amount received by a complying superannuation fund from a KiwiSaver scheme is not treated as a fund-capped contribution.



Federal Register of Legislative Instruments F2015C00472

# Division 3—Payment of amount to KiwiSaver scheme

## 12A.09 Application of Division 3

This Division applies in relation to an amount to be paid to a KiwiSaver scheme by a complying superannuation fund.

## 12A.10 Payment

(1) The application of these Regulations in relation to the payment is modified to the extent necessary to ensure that they do not prevent the payment from being made in the manner described in this regulation.

Note: In accordance with the Arrangement, arrangements to enhance trans-Tasman portability will be voluntary for individuals as to whether they transfer their retirement savings between Australia and New Zealand.

*Payment of whole of withdrawal benefit*

(2) The application of these Regulations is modified to the extent necessary to ensure that they:
  (a) permit the trustee of a complying superannuation fund to pay the whole of a member's withdrawal benefit to a KiwiSaver scheme; and
  (b) prohibit the trustee, in any circumstances, from paying only a part of a member's withdrawal benefit to a KiwiSaver scheme.

*Information before payment can be made*

(3) The application of these Regulations is modified to the extent necessary to ensure that they prevent the trustee of a complying superannuation fund, in any circumstances, from paying an amount to a KiwiSaver scheme until the trustee is satisfied about the following matters:
  (a) the member has emigrated permanently to New Zealand;



Federal Register of Legislative Instruments F2015C00472

(b) the member has given the trustee:
(i) a statutory declaration stating that the member has emigrated permanently to New Zealand; and
(ii) proof of residence at an address in New Zealand following the member's emigration to New Zealand;
(c) the member has requested and consented to the payment of the whole of the member's withdrawal benefit;
(d) the member has opened a KiwiSaver scheme account;
(e) the trustee has been given details of the KiwiSaver scheme and the account number to which the amount is to be paid;
(f) the KiwiSaver scheme provider will accept the amount.

(4) For subregulation (3), the application of these Regulations is modified to the extent necessary to ensure that the trustee may require that a document or other evidence or information is verified by oath, affirmation or statutory declaration.

*Payment within 30 days*

(5) The application of these Regulations is modified to the extent necessary to ensure that the trustee must pay the amount no later than 30 days after the trustee is satisfied about all of the matters mentioned in subregulation (3).

(6) A reference in paragraph (3)(b) or subregulation (4) to a statutory declaration includes a reference to an equivalent declaration (however described) made under a law of New Zealand.



Federal Register of Legislative Instruments F2015C00472

# Division 4—Conditions of release of benefits

## 12A.11 Application of Division 4

This Division applies in relation to a New Zealand-sourced amount in a complying superannuation fund.

## 12A.12 Conditions of release

(1) For the purposes of implementing the Arrangement, Schedule 1 to these Regulations, as affected by this regulation, applies in relation to a New Zealand-sourced amount in a complying superannuation fund in the same way it would apply to any other amount in the fund.

Note: In order to implement the Arrangement, it is appropriate that a New Zealand-sourced amount in a complying superannuation fund is subject to Australia's conditions of release, apart from any differences required by the Arrangement.

(2) The application of Schedule 1 is modified to the extent necessary to ensure that:

(a) the New Zealand-sourced amount is not subject to the conditions of release in items 101 and 110 of the Schedule; and

(b) item 106 of the Schedule applies to the New Zealand-sourced amount as if the reference in the item to a person's age were the age specified in subsection 7(1) of the *New Zealand Superannuation and Retirement Income Act 2001* of New Zealand.



Federal Register of Legislative Instruments F2015C00472

# Part 13—Miscellaneous

## Division 13.1A—Transitional arrangements arising out of the Superannuation Legislation Amendment Act (No. 3) 1999

### 13.10A Transitional arrangement—preserved OSS Act provisions

(1) In this regulation:

***OSS Act*** means the *Occupational Superannuation Standards Act 1987*, as in force on 30 June 1994.

***preserved OSS Act provisions*** means the following provisions of the OSS Act that, despite amendment or repeal by the *Occupational Superannuation Standards Amendment Act 1993* (the ***Amendment Act***), have continued to apply under subsection 16(1) of the Amendment Act:

(a) sections 4, 5, 6 and 6A;
(b) Part II;
(c) sections 10 to 15CA inclusive;
(d) Part IIIAA;
(e) the remaining provisions of the OSS Act in so far as they relate to any or all of the provisions mentioned in the preceding paragraphs of this definition.

***superannuation standards officer*** has the meaning given by the OSS Act.

(2) If a preserved OSS Act provision provides that a thing must, or may, be done by the Insurance and Superannuation Commissioner, and the thing is to be done in respect of a self managed superannuation fund, the thing is validly done if done by the Commissioner of Taxation.



Federal Register of Legislative Instruments F2015C00472

(3) If a preserved OSS Act provision provides that an action, must, or may, be taken in relation to the Insurance and Superannuation Commissioner and a superannuation fund, and the fund in relation to which the action is to be taken is a self managed superannuation fund, the action is validly taken if taken in relation to the fund and the Commissioner of Taxation.

(4) If a preserved OSS Act provision imposes an obligation on the Insurance and Superannuation Commissioner, and the obligation is to be carried out in relation to a self managed superannuation fund, the obligation is taken to be imposed on the Commissioner of Taxation, and may be carried out by a member of the Commissioner of Taxation's staff.

(5) If a preserved OSS Act provision grants an immunity or privilege to the Insurance and Superannuation Commissioner or a superannuation standards officer, the immunity or privilege is taken, in relation to a self managed superannuation fund, to be an immunity or privilege of the Commissioner of Taxation and a member of the Commissioner of Taxation's staff.

## 13.10B Outstanding annual returns

(1) This regulation applies to the trustee of a fund if subsection 252G(1) of the Act requires the trustee to give an annual return, a report, or information to the Commissioner of Taxation.

(2) Despite subsection 252G(1) of the Act, the trustee continues, until 30 June 2000, to be under an obligation to give the annual return, report or information to APRA rather than to the Commissioner.

## 13.10C Outstanding amounts

(1) This regulation applies to the trustee of a fund if subsection 252G(3) of the Act requires the trustee of the fund to pay an amount to the Commissioner of Taxation.



Federal Register of Legislative Instruments F2015C00472

(2) Despite subsection 252G(3) of the Act, the trustee continues, until 30 June 2000, to be under an obligation to pay the amount to APRA rather than to the Commissioner.

## 13.10D Certain annual returns and amounts for1999-2000 year of income

(1) This regulation is made for section 252H of the Act.

(2) If the trustee of a superannuation entity that was a self managed superannuation fund at any time during the 1999-2000 year of income of the entity gives an annual return for that year of income of the entity before 1 July 2000, and the Act requires the return to be given to the Commissioner of Taxation, the trustee is taken to have complied with the requirement if the trustee gives the return to APRA.

(3) If the trustee of a superannuation entity mentioned in subregulation (1) pays, under a prescribed Act, an amount before 1 July 2000 in respect of the 1999-2000 year of income of the entity, and the Act requires the amount to be paid to the Commissioner of Taxation, the trustee is taken to have complied with the requirement if the trustee pays the amount to APRA rather than to the Commissioner.

(4) In subregulation (3):

***prescribed Act*** has the same meaning as in section 252G of the Act.



Federal Register of Legislative Instruments F2015C00472

# 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.



Federal Register of Legislative Instruments F2015C00472

(3) A payment split in respect of a member's interest in a superannuation fund is not a charge over or in relation to the member's benefits for subregulation (1).

(4) This regulation does not apply to a charge imposed under the *Public Officers Superannuation Benefits Recovery Act 1988* (Qld) in relation to a member's benefits in the scheme established under the *Superannuation (State Public Sector) Act 1990* (Qld).

## 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.

## 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



Federal Register of Legislative Instruments F2015C00472

(c) the fund has in place a derivatives risk 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 derivatives risk statement.

(2) In this regulation:

***approved body*** means a body mentioned in Schedule 4.

***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 options contract or a futures contract relating to any right, liability or thing.

## 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:



Federal Register of Legislative Instruments F2015C00472

(i) subject to subregulation (3), written consent to the alteration has been given by:

(A) the beneficiary; and

(B) if the benefits are subject to a payment split, the non-member spouse; or

(ii) the Regulator 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:

(i) the Act, the *Income Tax Act 1986*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the Tax Act or the 1997 Tax Act

(ii) regulations made under any of those Acts; 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) the Regulator 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*



Federal Register of Legislative Instruments F2015C00472

*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; or

(f) the alteration is made:

(i) to give effect to a payment split; or

(ii) as a consequence of the trustee taking action that, because of Division 2.2 of the *Family Law (Superannuation) Regulations 2001*, has the effect that a future payment in respect of the superannuation interest of the member spouse would not be a splittable payment; or

(iii) as a consequence of the operation of a fund's governing rules that, because of Division 2.2 of the *Family Law (Superannuation) Regulations 2001*, has the effect that a future payment in respect of the superannuation interest of the member spouse would not be a splittable payment; or

(g) the alteration enables the trustee to be reimbursed for an amount paid, or to be paid, under section 24 of the Co-contribution Act.

(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:

(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



Federal Register of Legislative Instruments F2015C00472

(iii) provides any other information that the trustee reasonably believes a beneficiary would expect to be told about the proposed alteration; and

(ab) if the benefits are subject to a payment split, the trustee has given a copy of the notice to the non-member spouse; and

(b) the beneficiary, and the non-member spouse (if any), have 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 the Regulator; 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.



Federal Register of Legislative Instruments F2015C00472

(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.

(6) In deciding whether to consent to an alteration under subparagraph (2)(a)(ii), the Regulator must consider the effect that the alteration would have on the value of benefits that may become payable to a person who is the non-member spouse in relation to an interest in the fund that is subject to a payment split.

## 13.17 Approved deposit funds—restrictions on loans and investments

(1) For subsection 32(1) of the Act, it is a standard applicable to the operation of approved deposit funds that, except so far as permitted by subregulation (2), a trustee of a fund must not, in that capacity, invest in:

(a) the trustee itself; or

(b) a related body corporate.

(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

(c) in any other case—if:



Federal Register of Legislative Instruments F2015C00472

(i) the body corporate is an ADI 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 subsection 31(1) of the Act, it is a standard applicable to the operation of public offer superannuation funds that, except so far as permitted by subregulation (2), a trustee of a fund must not, in that capacity, invest in:

(a) the trustee itself; or

(b) a related body corporate.

(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 anADI; or

(c) in any other case—if:

(i) the related body corporate is an ADI 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:

***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, 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



Federal Register of Legislative Instruments F2015C00472

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.



Federal Register of Legislative Instruments F2015C00472

## 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.



Federal Register of Legislative Instruments F2015C00472

# 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.

## 13.18AA Self managed superannuation funds—investment in collectables and personal use assets

(1) For section 62A of the Act, this regulation applies to investments involving any of the following (***section 62A items***):

(a) artwork (within the meaning of the *Income Tax Assessment Act 1997*);
(b) jewellery;
(c) antiques;
(d) artefacts;
(e) coins, medallions or bank notes;
(f) postage stamps or first day covers;
(g) rare folios, manuscripts or books;
(h) memorabilia;
(i) wine or spirits;
(j) motor vehicles;
(k) recreational boats;
(l) memberships of sporting or social clubs.

*Asset must not be leased to related party*

(2) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:

(a) the fund holds an investment involving a section 62A item; and
(b) either:
(i) an interest in the item is leased to a related party of the fund; or

(ii) a trustee of the fund enters a lease arrangement with a related party of the fund in relation to the item.

Penalty: 10 penalty units.

Note: ***Lease arrangement*** and ***related party*** are defined in subsection 10(1) of the Act.

*Item must not be stored in private residence of related party*

(3) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:

(a) the fund holds an investment involving a section 62A item; and

(b) the item is stored in the private residence of a related party of the fund.

Penalty: 10 penalty units.

Note: ***Related party*** is defined in subsection 10(1) of the Act.

*Decision on storage of item must be documented*

(4) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:

(a) the fund holds an investment involving a section 62A item; and

(b) the trustee or trustees of the fund make a decision relating to the storage of the item; and

(c) either:

(i) a written record of the reasons for the decision is not made; or

(ii) if a written record of the reasons is made—the record is not kept for at least 10 years after the decision.

Penalty: 10 penalty units.

*Item must be insured in fund's name*

(5) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:



Federal Register of Legislative Instruments F2015C00472

(a) the fund owns a section 62A item, other than a membership of a sporting or social club; and
(b) it is more than 7 days since the fund acquired the item; and
(c) the item is not insured in the name of the fund.

Penalty: 10 penalty units.

*Item must not be used by related party*

(6) Each trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
(a) the fund holds an investment involving a section 62A item; and
(b) a related party of the fund uses the item.

Penalty: 10 penalty units.

Note: ***Related party*** is defined in subsection 10(1) of the Act.

*Transfer of asset to related party requires independent valuation*

(7) A trustee of a regulated superannuation fund that is a self managed superannuation fund commits an offence if:
(a) the trustee realises an investment held by the fund involving a section 62A item; and
(b) a related party of the fund receives an interest in the item because of the realisation; and
(c) the realisation was not at a market price determined by a qualified independent valuer.

Penalty: 10 penalty units.

Note: ***Related party*** is defined in subsection 10(1) of the Act.

*Offences are strict liability offences*

(8) An offence against any of subregulations (2) to (7) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.



Federal Register of Legislative Instruments F2015C00472

*Transitional period for existing assets*

(9) Subregulations (2) to (7) do not apply in relation to an investment in a section 62A item that was held by the fund on 30 June 2011.

(10) However, subregulation (9) ceases to be in force on 1 July 2016.

## 13.18A Conditional offer of goods or services—exemptions

(1) For subsections 68A(2) and (4) of the Act, the following kinds of goods and services are prescribed:

(a) the supply of a business loan to a person by a trustee, or an associate of a trustee, of a regulated superannuation fund, that is supplied:

(i) on condition that the person be a member of the fund; and

(ii) on a commercial arm's length basis;

(b) a service that is supplied by a trustee, or an associate of a trustee, of a regulated superannuation fund to a person for the forwarding of superannuation contributions and information:

(i) to other funds or RSAs; and

(ii) on behalf of the person; and

(iii) in relation to employees of the person who have chosen those funds;

(c) an advice or administration service that relates to the payment of superannuation contributions to a regulated superannuation fund, that is supplied by a trustee, or an associate of a trustee, of the fund to:

(i) a person; or

(ii) the employees of the person;

(d) the supply or offer to supply goods or services to a person by a trustee, or an associate of a trustee, of a regulated superannuation fund, only if:

(i) the supply or offer is available to the employees of the person who are members of the fund; and

(ii) the terms of the supply or offer to each employee are not less than the terms supplied or offered to the person.



Federal Register of Legislative Instruments F2015C00472

(2) Paragraph (1)(a) does not apply to the supply of a business loan that is supplied on the condition that a person other than the person receiving the loan be a member of the regulated superannuation fund.

## 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.

## 13.19A Disqualification by Federal Court—matters to take into account

(1) For paragraph 126H(6)(a) of the Act, the matters set out in this regulation are specified.

(2) In relation to subsection 126H(3) of the Act, the matters are:
   (a) whether the individual is, or has been, a disqualified person under Part 15 of the Act, as applied by Division 2 of Part 7 of the FHSA Act; and
   (b) whether the individual has contravened the FHSA Act (including provisions of the Act applied by Division 2 of Part 7 of the FHSA Act) on one or more occasions; and
   (c) the number, nature and seriousness of any contraventions of the FHSA Act (including applied provisions of the Act).

(3) In relation to subsection 126H(4) of the Act, the matters are:
   (a) whether the individual is, or has been, a responsible officer of a trustee, investment manager or custodian that is, or has been, a disqualified person under Part 15 of the Act, as applied by Division 2 of Part 7 of the FHSA Act; and
   (b) whether the individual is, or has been, a responsible officer of a trustee, investment manager or custodian that has contravened the FHSA Act (including provisions of the Act applied by Division 2 of Part 7 of the FHSA Act) on one or more occasions; and



Federal Register of Legislative Instruments F2015C00472

(c) the number, nature and seriousness of any contraventions of the FHSA Act (including applied provisions of the Act).

(4) In relation to subsection 126H(5) of the Act, the matters are:

(a) whether the individual has engaged in conduct that relates to FHSA trusts within the meaning of the FHSA Act on one or more occasions; and

(b) whether any conduct of that kind makes it reasonable to conclude that the individual is not a fit and proper person to be a person referred to in subsection 126H(2) of the Act.

## 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;



Federal Register of Legislative Instruments F2015C00472

(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.

## 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.



Federal Register of Legislative Instruments F2015C00472

# Division 13.3A—In-house assets of superannuation funds

## 13.22A Definitions for Division 13.3A

In this Division:

***business real property*** has the meaning given in subsection 66(5) of the Act.

***lease arrangement*** means any agreement, arrangement or understanding in the nature of a lease (except a lease) under which one party is to use, or control the use of, property of another party, whether or not the agreement, arrangement or understanding is enforceable, or intended to be enforceable, by legal proceedings.

***trustee***, of a unit trust, means a trustee acting in the capacity of trustee.

## 13.22B Assets held at commencement of Division 13.3A (Act s 71)

(1) This regulation applies to an asset of a superannuation fund that:
  (a) is an investment in a company or unit trust; and
  (b) was acquired by the fund before the commencement of this Division; and
  (c) is not affected by subregulation 13.22D(3).

(2) For subparagraph 71(1)(j)(ii) of the Act, the asset is not an in-house asset of the superannuation fund if, when this Division commences:
  (a) the superannuation fund has fewer than 5 members; and
  (b) the company, or a trustee of the unit trust, is not a party to a lease with a related party of the superannuation fund, unless the lease relates to business real property; and
  (c) the company, or a trustee of the unit trust, is not a party to a lease arrangement with a related party of the superannuation fund, unless the lease arrangement:
    (i) is legally binding; and



Federal Register of Legislative Instruments F2015C00472

(ii) relates to business real property; and

(d) the company, or a trustee of the unit trust, is not a party to a lease, or lease arrangement, with another party in relation to an asset that is the subject of another lease or lease arrangement between any party and a related party of the superannuation fund (unless the asset is business real property); and

(e) the company, or a trustee of the unit trust, does not have outstanding borrowings; and

(f) the assets of the company or unit trust do not include:

(i) an interest in another entity; or

(ii) a loan to another entity, unless the loan is a deposit with an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or

(iii) an asset over, or in relation to, which there is a charge; or

(iv) an asset that was acquired from a related party of the superannuation fund after 11 August 1999, unless the asset was business real property acquired at market value; or

(v) an asset that had been, at any time (unless it was business real property acquired by the company, or a trustee of the unit trust, at market value) in the period from the end of 11 August 1999 to the commencement of this Division, an asset of a related party of the superannuation fund.

(3) In subparagraphs (2)(f)(iv) and (v):

***asset*** does not include:

(a) money; or

(b) in relation to a company, a share in the company.

## 13.22C Assets acquired after commencement of Division 13.3A (Act s 71)

(1) This regulation applies to an asset of a superannuation fund that:



Federal Register of Legislative Instruments F2015C00472

(a) is an investment in a company or unit trust; and
(b) was acquired by the fund on or after the commencement of this Division; and
(c) is not affected by subregulation 13.22D(3).

(2) For subparagraph 71(1)(j)(ii) of the Act, the asset is not an in-house asset of the superannuation fund if, when the asset is acquired:
(a) the superannuation fund has fewer than 5 members; and
(b) the company, or a trustee of the unit trust, is not a party to a lease with a related party of the superannuation fund, unless the lease relates to business real property; and
(c) the company, or a trustee of the unit trust, is not a party to a lease arrangement with a related party of the superannuation fund, unless the lease arrangement:
(i) is legally binding; and
(ii) relates to business real property; and
(d) the company, or a trustee of the unit trust, is not a party to a lease, or lease arrangement, with another party in relation to an asset that is the subject of another lease or lease arrangement between any party and a related party of the superannuation fund (unless the asset is business real property); and
(e) the company, or a trustee of the unit trust, does not have outstanding borrowings; and
(f) the assets of the company or unit trust do not include:
(i) an interest in another entity; or
(ii) a loan to another entity, unless the loan is a deposit with an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or
(iii) an asset over, or in relation to, which there is a charge; or
(iv) an asset that was acquired from a related party of the superannuation fund after 11 August 1999, unless the asset was business real property acquired at market value; or



Federal Register of Legislative Instruments F2015C00472

(v) an asset that had been at any time (unless it was business real property acquired by the company, or a trustee of the unit trust, at market value) an asset of a related party of the superannuation fund since the later of:

(A) the end of 11 August 1999; and

(B) the day 3 years before the day on which the fund first acquired an interest in the company or unit trust.

(3) In subparagraphs (2)(f)(iv) and (v):

***asset*** does not include:

(a) money; or

(b) in relation to a company, a share in the company.

## 13.22D When regulations 13.22B and 13.22C cease to apply to assets

(1) If regulation 13.22B or 13.22C applies to an asset, that regulation ceases to apply to the asset if any of the following events happens:

(a) the number of members of the superannuation fund increases to 5 or more;

(b) either of the following becomes an asset of the company or unit trust:

(i) an interest in another entity;

(ii) a loan to another entity, unless the loan is a deposit with an authorised deposit-taking institution within the meaning of the *Banking Act 1959*;

(c) the company, or a trustee of the unit trust:

(i) borrows money; or

(ii) gives, or allows to be given, a charge over, or in relation to, an asset of the company or unit trust;

(d) the company, or a trustee of the unit trust, conducts a business;

(e) the company, or a trustee of the unit trust, becomes a party to a lease with a related party of the superannuation fund, unless the lease relates to business real property;



Federal Register of Legislative Instruments F2015C00472

(f) the company, or a trustee of the unit trust, becomes a party to a lease arrangement with a related party of the superannuation fund, unless the lease arrangement:
  (i) is legally binding; and
  (ii) relates to business real property;

(g) if the company, or a trustee of the unit trust, is a party to a lease, or legally binding lease arrangement, with a related party of the superannuation fund in relation to business real property, the property ceases to be business real property;

(h) if the company, or a trustee of the unit trust, is a party to a lease arrangement with a related party of the superannuation fund in relation to business real property, the lease arrangement ceases to be legally binding;

(i) the company, or a trustee of the unit trust, becomes a party to a lease, or lease arrangement, with another party in relation to an asset (unless it is business real property) that is the subject of another lease or lease arrangement between any party and a related party of the superannuation fund;

(j) a related party of the superannuation fund becomes a party to a lease, or lease arrangement, with another party in relation to an asset (other than business real property) that is the subject of another lease or lease arrangement between any party and:
  (i) the company; or
  (ii) a trustee of the unit trust;

(k) if the company, or a trustee of the unit trust, is a party to a lease, or lease arrangement, with another party in relation to business real property that is the subject of another lease or lease arrangement between any party and a related party of the superannuation fund, the property ceases to be business real property;

(l) the company, or a trustee of the unit trust, conducts a transaction otherwise than on an arm's length basis;

(m) the company, or a trustee of the unit trust, acquires an asset of a related party of the superannuation fund, unless the asset is business real property acquired at market value;



Federal Register of Legislative Instruments F2015C00472

(n) the company, or a trustee of the unit trust, acquires from any party an asset (unless it is business real property acquired by the company, or trustee of the unit trust, at market value) that had been an asset of a related party of the superannuation fund at any time since the later of:

(i) the end of 11 August 1999; and

(ii) the day 3 years before the day on which the asset was acquired by the company or the trustee of the unit trust.

(2) In paragraphs (1)(m) and (n):

***asset*** does not include:

(a) money; or

(b) in relation to a company, a share in the company.

(3) If regulation 13.22B or 13.22C ceases to apply to an asset of a superannuation fund, neither regulation applies to any other asset of the fund that is:

(a) acquired by the fund at any time; and

(b) an interest in the company or unit trust.



Federal Register of Legislative Instruments F2015C00472

# Division 13.4—Repeal

## 13.23 Superannuation Industry (Supervision) (Approval of Trustees) Regulations

Statutory Rules 1993 No. 373 are repealed.

# 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.



Federal Register of Legislative Instruments F2015C00472

## 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.

(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.



Federal Register of Legislative Instruments F2015C00472

# Part 14—Transitional arrangements

## Division 14.1—Transitional arrangements arising out of Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012

### 14.01 Definition

In this Part:

***sign off***, in relation to an audit (an ***SMSF audit***) of a superannuation entity that is a self managed superannuation fund, means the action that occurs when an auditor gives a report of the kind mentioned in subsection 35C(1) of the Act to each trustee of the entity for subsection 35C(6) of the Act.

### 14.02 Applications before 1 July 2013 as an approved SMSF auditor

For item 71 of the *Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Act 2012*, the table sets out the prescribed circumstances.

| Item | Prescribed circumstance | Requirement of paragraph 128B(1)(a) of the Act taken to have been met |
|---|---|---|
| 1 | An approved auditor has signed off on an SMSF audit in the 12 months immediately before applying for registration as an approved SMSF auditor under section 128A of the Act | subparagraph 128B(1)(a)(ii) |
| 2 | An approved auditor has signed off on at least 20 SMSF audits in the 12 months immediately before applying for registration as an approved SMSF auditor under section 128A of the Act | subparagraph 128B(1)(a)(iii) |



Federal Register of Legislative Instruments F2015C00472

| Item | Prescribed circumstance | Requirement of paragraph 128B(1)(a) of the Act taken to have been met |
|---|---|---|
| 3 | An approved auditor is a registered company auditor at the time of making an application under section 128A of the Act | subparagraphs 128B(1)(a)(ii) and (iii) |



Federal Register of Legislative Instruments F2015C00472

# Division 14.2—Transitional arrangements arising out of Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)

## 14.03 Arrangements

(1) The amendments made by items [2], [3] and [7] of Schedule 1 to the *Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)* apply in relation to a request to roll over or transfer a withdrawal benefit in a regulated superannuation fund or an approved deposit fund made on or after the commencement of this regulation.

(2) The amendment made by item [6] of Schedule 1 to the *Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)* applies in relation to an application that is accepted by a trustee under subregulation 6.45 (1) on or after the commencement of this regulation.

(3) The amendment made by item [10] of Schedule 1 to the *Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)* applies in relation to a superannuation interest that becomes subject to a payment split on or after the commencement of this regulation.



Federal Register of Legislative Instruments F2015C00472

# Division 14.3—Transitional arrangements arising out of the Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013

## 14.04 Arrangements

(1) The amendment of these Regulations made by item 32 of Schedule 1 to the *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013* applies on and after 1 July 1997.

(2) The amendment of these Regulations made by item 33 of Schedule 1 to the *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013* applies on and after 1 January 2013.

(3) The amendment of these Regulations made by item 38 of Schedule 1 to the *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013* applies on and after 15 May 1999.

(4) The amendment of these Regulations made by item 39 of Schedule 1 to the *Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013* applies on and after 25 December 2012.



Federal Register of Legislative Instruments F2015C00472

# Division 14.4—Transitional arrangements arising out of the Superannuation Laws Amendment (2014 Measures No. 1) Regulation 2014

## 14.05 Arrangements

(1) The amendment of these Regulations made by items 1 and 2 of Schedule 2 to the *Superannuation Laws Amendment (2014 Measures No. 1) Regulation 2014* apply on and after 1 July 2013.

(2) The amendment of these Regulations made by item 1 of Schedule 5 to the *Superannuation Laws Amendment (2014 Measures No. 1) Regulation 2014* applies on and after 1 July 2013.



Federal Register of Legislative Instruments F2015C00472

# Division 14.5—Transitional arrangements arising out of the Tax and Superannuation Laws Amendment (2014 Measures No. 4) Regulation 2014

## 14.06 Arrangements

The amendments of these Regulations made by items 1 and 2 of Schedule 1 to the *Tax and Superannuation Laws Amendment (2014 Measures No. 4) Regulation 2014* apply on and after 1 July 2015.



Federal Register of Legislative Instruments F2015C00472

# Division 14.6—Transitional arrangements arising out of the Tax and Superannuation Laws Amendment (Release Conditions for Non-concessional Contributions) Regulation 2015

## 14.07 Arrangements

The amendments of these Regulations made by items 15 and 17 of Schedule 1 to the *Tax and Superannuation Laws Amendment (Release Conditions for Non-concessional Contributions) Regulation 2015* apply in relation to non-concessional contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the 2013-14 financial year and later financial years.



Federal Register of Legislative Instruments F2015C00472