

EXPLANATORY STATEMENT

STATUTORY RULES 1994 NO 57

ISSUED BY THE AUTHORITY OF THE TREASURER

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Regulations

Section 353 of the Superannuation Industry (Supervision) Act 1993 (the Act) provides that the Governor-General may make Regulations for the purposes of the Act.

The Act provides for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts and for their supervision by the Insurance and Superannuation Commissioner. The basis for supervision is that those funds and trusts are subject to regulation under the Commonwealth's powers with respect to corporations or pensions (for example, because the trustee is a corporation). In return, the supervised funds and trusts may become eligible for concessional taxation treatment under the Income Tax Assessment Act 1936.

The regulations continue and enhance the thrust of the existing Occupational Superannuation Standards Regulations under the Occupational Superannuation Standards Act 1987.

The regulations have been developed in consultation with representatives of the superannuation industry and related professional organisations.

The regulations are described in detail in the attachment. They cover the following areas:

Part 1 - Preliminary - Provides information on the citation and commencement of the regulations and definitions of various terms used throughout the regulations.

Part 2 - Information for members and others - Prescribes the information that trustees of superannuation entities must give to members or other persons on specified occasions.

Part 3 - Matters prescribed or specified in relation to public offer entities - Deals with matters concerning public offer entities, including applications for approval as trustees, policy committee requirements, commission and brokerage and requirements concerning application money.

Part 4 - Management and trusteeship of superannuation entities - Deals with the administration, management and trusteeship of funds. Division 1 covers, inter alia, beneficiary investment choice and the extent of control employers have in a superannuation entity. Division 2 prescribes operational standards relating to decision making by trustees and investments.

Part 5 - Minimum benefits standards - Prescribes requirements for funds concerning the minimum level of benefits that members are entitled to in various circumstances.

Part 6 - Payment standard - Prescribes requirements for funds concerning the circumstances when, to whom and in what form benefits can be paid from funds.

Part 7 - Contribution and benefit accrual standards (regulated superannuation funds) - Prescribes when contributions may be accepted and benefit accruals may be granted.

Part 8 - Financial Reporting - Prescribes matters relating to the preparation of financial statements by superannuation entities.

Part 9 - Financial Management of Funds - Prescribes operating standards relating to the funding and solvency of funds, actuarial standards for funds and other matters relating to the financial position of funds.

Part 10 - Eligible rollover benefits - Prescribes requirements relating to the operation of eligible rollover funds and related matters dealing with the handling of benefits in respect of 'lost' members of superannuation funds.

Part 11 - Information to be given to the Commissioner and related matters - Prescribes certain requirements related to powers given to the Commissioner under the Act, for example, information to be provided to the Commissioner, when certain information must be provided and the manner in which the ISC is to advertise the winding-up of the entity.

Part 12 - Pre-1 July 1988 funding credits and debits - Provides details on how superannuation funds can take advantage of the pre-1 July 1988 funding credits and debits arrangements.

Part 13 - Miscellaneous - Provides details on a number of transitional provisions covering the application of the occupational superannuation standards, contribution standards under Part 7, miscellaneous operating standards and various prescribed matters.

Details of commencement dates for the regulations are contained in the attachment. The regulations that are made pursuant to sections of the Act which do not commence until 1 July 1994, will not commence until 1 July 1994.

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Superannuation Industry (Supervision) Regulations

PART 1 - PRELIMINARY**BACKGROUND**

The citation provision in this Part provides that the regulations are called the Superannuation Industry (Supervision) Regulations. As several sections of the Act do not commence until 1 July 1994, regulations which are made pursuant to those sections can equally not commence until 1 July 1994. The remaining provisions of the regulations will commence on gazettal.

The regulations use a number of terms that have a precise technical meaning and are not defined in the Act. Where these terms are used consistently throughout the regulations they have been defined in regulation 1.03. The Act also provides in a number of definitions a cross reference to further requirements contained in the regulations. Regulation 1.04 prescribes matters for the purposes of these definitions.

Regulation 1.01 - Citation

Regulation 1.01 provides that the regulations may be cited as the Superannuation Industry (Supervision) Regulations.

Regulation 1.02 - Commencement

Parts 18, 19, 20, 22, 23 and 24 section 342 of the Act commence on 1 July 1994. Subsection 4(1) of the Acts Interpretation Act 1901 (Interpretation Act) provides that where an Act confers a power to make regulations, the regulations may be made before the Act comes into operation. Subsection 4 (2A) of the Interpretation Act provides that regulations made in these circumstances take effect on or from the date 'specified' in the regulations, provided that that date is not earlier than the date on which the Act comes into operation.

Regulation 1.02 provides that the following provisions 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; and
- (g) Part 12.

The remainder of the regulations commence on gazettal.

Regulation 1.03 - Interpretation.

Regulation 1.03 inserts definitions of a number of words and expressions for the purposes of the regulations.

Regulation 1.04 - Section 10 of the Act - prescribed matters

Regulation 1.04 prescribes matters for the purposes of various definitions in section 10 of the Act. These include:

- ‘approved auditor’;
- ‘approved rules’;
- ‘excluded approved deposit fund’; and
- ‘pooled superannuation trust’.

PART 2 - INFORMATION FOR MEMBERS AND OTHERS

BACKGROUND

The information disclosure requirements under Part 2 of the regulations aim to ensure that members have provided to them adequate, appropriate and timely information regarding their superannuation. The regulations also ensure that relevant information is available to members and third parties on request to a superannuation entity.

An informed membership has a critical role to play in the superannuation system. The disclosure requirements aim to ensure that members understand their superannuation entitlements and the way in which their fund is managed. The disclosure requirements also aim to ensure that superannuation entities are accountable for their actions. This, combined with the principle of equal representation, enables members to be in a position to exercise influence on the direction their fund takes.

Generally, the information disclosure requirements will apply to all superannuation entities (that is regulated superannuation funds, approved deposit funds (ADF's) and pooled superannuation trusts (PST's)). Some funds will, however, be exempt from certain requirements. The most significant exemptions apply to eligible rollover funds (such funds are only subject to the on request disclosure requirements) and excluded funds (which are exempted from some of the more prescriptive elements of disclosure and from the requirement to provide an annual fund report to members).

Eligible rollover funds are funds specifically designed to hold benefits for 'lost' members and clearly disclosure cannot be made to 'lost' members. Excluded funds are funds with less than 5 members - generally in such funds the members are aware of their benefits and the operations of the fund and consequently do not require the same level of disclosure as members of other funds.

In contrast to the disclosure requirements under the Occupational Superannuation Standards Regulations (the OSS Regulations), the requirements placed on ADF's by the regulations are largely the same as those on superannuation funds (under the OSS Regulations the requirements on ADF's were less extensive than they were on superannuation funds). Also in contrast to the OSS Regulations, the regulations impose disclosure requirements on PST's.

The information disclosure requirements which apply to superannuation funds and ADF's under the OSS Regulations have generally been incorporated into the regulations. Superannuation entities which were previously subject to Corporations Law 'prospectus' requirements will be subject to similar requirements under the regulations.

The regulations adopt a mixture of a ‘general’ (or ‘broad brush’) and ‘prescriptive’ approach to disclosure. The ‘broad brush’ element is similar to section 1022 of the Corporations Law and in part to paragraph 18H(3)(u) of the current OSS Regulations and requires disclosure of all relevant matters. The prescriptive element comprises a listing of certain important pieces of information (such as information on fees and charges) that must be disclosed in all cases or in certain cases. The prescriptive element largely reflects the current requirements in the OSS Regulations, though with some necessary refinements.

The requirements on superannuation entities regarding the disclosure of information to members and third parties are generally imposed as operating standards pursuant to sections 31, 32 and 33 of the Act.

However, the regulations relating to information to be given before a person joins a public offer superannuation fund, approved deposit fund or pooled superannuation trust are prescribed pursuant to the specific regulation making power in sections 157 to 159 of the Act.

A penalty of \$10,000 can apply to an intentional or reckless breach of a requirement in Division 2.

To summarise the regulations, they cover the following areas:

- the content of information that must be provided:
 - before or soon after a person joins a superannuation entity;
 - regularly to members of entities (this covers both member specific information and general information relating to the entity);
 - where an ‘important event’ occurs;
 - where a member requests information; and • where a member leaves a entity;
- the time allowed for provision of information and to whom information must be given in each of the above circumstances; and
- the method of providing information.

Division 2.1 - Introductory

Regulation 2.01 - Interpretation

Regulation 2.01 sets out a number of definitions and expressions for the purposes of Part 2.

Regulation 2.02 - Scope and application of this Part

Regulation 2.02 provides:

- an overview of the operation of the Part;
- guidance on the inter-relationship between the 'broad brush' requirements and the 'prescriptive' (or specific) requirements - the specific requirements are not to be taken as limiting the general requirements;
- that Division 1 governs the other Divisions of Part 2.

Regulation 2.03 - Duties and requirements, arising under this Part

Regulation 2.03 provides:

- that a requirement to give information must be met within the time specified in the relevant Division as the time for compliance;
- that information given must be given in writing and be worded and presented in a clear and effective manner;
- that information may be given in diagrammatical form where appropriate;
- that where information is likely to materially mislead members then further information to rectify any misleading or potentially misleading effect must be given.

Regulation 2.04 - Reasonable efforts are sufficient

Regulation 2.04 provides that, for the purpose of Divisions 2.3 to 2.7 (both inclusive) and Division 2.8 other than Subdivision 2.8.2, a superannuation entity is taken to have satisfied a duty or requirement to give information to a person if the trustee has taken reasonable steps to give the information to the person but has been unable to do so.

In addition, information required to be given under Part 2 need not be given if it is information that the trustee does not know and could not reasonably be expected to obtain.

Regulation 2.05 - Missing members

Regulation 2.05 provides that a superannuation entity need not give information to a member if the member is 'lost'. A member is considered 'lost' for the purposes of Part 2 if:

- (a) in the case where the entity has an address for the member:

- (i) at least 2 consecutive member reports or at least 2 written communications have been returned unclaimed from the member's last known postal address; and
- (ii) the trustee has taken reasonable steps to locate the member but has been unable to do so; or
- (b) in the case where the entity has not been able to obtain an address for the member:
 - (i) the trustee has taken reasonable steps to find out the member's address but has been unable to do so.

Subregulations (2) and (3) provide that if a member is later 'found' then the entity must recommence providing information to that member.

Regulation 2.06 - Charges for information requested

The effect of regulation 2.06 is that:

- members, recent members and any beneficiaries cannot (generally) be charged for information that they request ;
- policy committees cannot be charged for information they request, however, subregulation 3.08 (4) provides that the trustee may recoup from the fund certain expenses incurred in relation to servicing the needs of policy committees;
- other persons (ie: genuine third parties) can be charged but only on the basis of reasonable cost recovery.

The only case where members etc can be charged is where they request the same information within 12 months.

Regulation 2.07 - Trustee may make a sub-plan

To ensure disclosure is effective and appropriate Part 2 often requires information to be given at the sub-plan level as such information is generally more meaningful to members than information at the fund level.

Trustees are in the best position to determine where sub-plan disclosure would be appropriate and consequently it is left to the trustee to 'determine' a sub-plan.

In making a determination, regulation 2.07 provides that the trustee must have regard to all relevant matters, including each of the following:

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

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

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

Background to the requirements to give information on or before a person joins a superannuation fund or ADF

The information that is required to be given to a person before or shortly after they become a member of a fund, other than an eligible rollover fund, that is either a:

- superannuation fund; or
- an ADF (other than an excluded ADF) ;

is prescribed in Divisions 2.2 and 2.3.

Division 2.2 applies to such funds if they are public offer entities, with the exception that it does not prescribe what information must be given to a person if that person would become a standard employer-sponsored member on joining the fund.

Division 2.3 applies to such funds if they are not public offer entities or, if they are public offer entities, it applies only in relation to standard employer-sponsored members of that entity.

The information prescribed under Division 2.2 is generally the same as that prescribed under Division 2.3. The most significant differences between the two Divisions are that:

- under Division 2.2 information must be given before an interest is issued (ie: effectively before a member joins) whereas under Division 2.3 information can be given after a member joins;
- under Division 2.2 the information that must be given needs to be sufficient to allow an 'informed judgement' to be made on relevant matters whereas under Division 2.3 the information only needs to be sufficient to allow an 'understanding' of the relevant matters.
- The basis for these distinctions is that the persons to whom information is being given under Division 2.2 are making a choice as to whether to join the fund and therefore need to be able to make an 'informed judgement' as to the suitability of the fund to their needs and obviously need that information before they make their choice. The persons to whom information is being given under Division 2.3 are persons who automatically join a

fund as a condition of employment (ie: there is no choice involved). Consequently the lesser test of ‘understanding’ applies in such cases and, as there is no choice, it is sufficient to give the information shortly after joining.

If the entity is an excluded approved deposit fund there are no disclosure requirements on joining (excluded approved deposit funds are defined in such a manner that the only persons investing in them are considered to be professional investors).

Division 2.2 also prescribes what information must be given to a person before the trustee permits the person to become a standard employer-sponsor of the fund.

Regulation 2.08 - Application

Regulation 2.08 provides that this Division applies only to funds, other than eligible rollover funds, that are:

- (a) public offer superannuation funds; and
- (b) approved deposit funds that are not excluded approved deposit funds.

Subregulation (2) clarifies this further by stating that the Division does not apply in respect of information to be given to persons who would become standard employer-sponsored members as a result of the issuing of an interest (this is consistent with subsection 157(3) of the Act). The information to be given to such persons is prescribed in Division 2-3.

Regulation 2.09 - subdivision 3A of Part 19 of the Act

Regulation 2.09 provides that the provisions of this Division are made under subsection 159(1) of the Act and for the purposes of sections 157 and 158 of the Act.

This regulation prescribes the information that the trustee must be satisfied has been received by a person before an interest is issued to that person (ie: effectively before they permit the person to become a member of the fund).

The broad brush element of disclosure requires the following to be provided:

- all information that the trustee reasonably believes a person would reasonably need in order to understand the main features of the fund and make an informed judgement on the management, financial condition and investment performance of the fund.

The broad brush element is supported by a prescriptive listing of certain items that must be disclosed (including information on benefits, fees and charges, the right to a 14 day free look period, the fund's arrangements to deal with inquiries and complaints and the role of the Superannuation Complaints Tribunal).

Where relevant, information is to be given at the sub-plan level.

The prescriptive element of disclosure does not apply to excluded funds.

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

This regulation prescribes the information that the trustee of a fund must be satisfied has been received by a person before the trustee permits such a person to become a standard employer-sponsor of the fund.

A standard employer-sponsored arrangement generally involves an employee, as a condition of employment, automatically joining a particular superannuation fund. In such cases it is the employer who is making the choice of fund and therefore the employer who needs to be informed of the effect of their choice on their employees. The aim of disclosure in this case is therefore to ensure the employer makes an informed choice.

The broad brush element of disclosure requires the following to be provided:

- all information that the trustee reasonably believes a person would reasonably need in order to understand the main features of the fund and make an informed judgement on the management, financial condition and investment performance of the fund.

The broad brush element is supported by a prescriptive listing of certain items that must be disclosed (including information on benefits, fees and charges, the fund's arrangements to deal with inquiries and complaints and the role of the Superannuation Complaints Tribunal).

Where relevant information is to be given at the sub-plan level.

The prescriptive element of disclosure does not apply to excluded funds.

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

Regulation 2.12 - Application

Regulation 2.12 provides that this Division applies only to funds, other than eligible rollover funds, that are:

- (a) not public offer superannuation funds; or
- (b) are public offer superannuation funds - but only in respect of their standard employer-sponsored members.

Regulation 2.13 - Time for compliance

Regulation 2.13 provides that a fund must give information under this Division to a person as soon as practicable, and in any event within 3 months, after the person becomes a member of the fund.

Regulation 2.14 - Requirement taken to have been met

Regulation 2.14 provides that information need not be given after joining if the member has already received the relevant information prior to joining (provided that information is correct in all material respects).

Regulation 2.15 - General requirement

The broad brush element of disclosure requires the following to be provided:

- all information that the trustee reasonably believes a new member would reasonably need in order to understand the main features of the fund and the management, financial condition and investment performance of the fund.

Where relevant information is to be given at the sub-plan level.

Regulation 2.16 - Specific requirements in all cases

The broad brush element in regulation 2.15 is supported by a prescriptive listing, under this regulation, of certain items that must be disclosed (including information on benefits, fees and charges, the fund's arrangements to deal with inquiries and complaints and the role of the Superannuation Complaints Tribunal).

Where relevant information is to be given at the sub-plan level.

This prescriptive element of disclosure does not apply to excluded funds.

Division 2.4 - Information to be given for each reporting period

Background

Division 2.4 prescribes what information must be given at regular intervals (at least yearly) to members. The information consists of:

- Member specific information ('member information'), which provides details on the amount of the member's current benefits and related matters; and
- 'Fund information', which provides information on the management, financial condition and investment performance of the fund and related matters.

Subdivision 2.4.1 - Preliminary

Regulation 2.17 - Interpretation

Regulation 2.17 sets out a number of definitions and expressions for the purposes of Subdivision 2.4.1.

Regulation 2.18 - Application

This Division applies to funds, other than eligible rollover funds, that are regulated superannuation funds and approved deposit funds, subject to certain exceptions which are cross-referenced in this regulation for ease of reference.

Regulation 2.19 - Reporting periods

Regulation 2.19 provides that, generally, member information and fund information must be given to members at least annually.

Member information must be given in respect of consecutive 'member reporting periods', with each subsequent period commencing immediately after the end of the previous period. Likewise, fund information must be given in respect of consecutive 'fund reporting periods' with each subsequent period commencing immediately after the end of the previous period.

The date at which reporting begins for a member must be no later than when the member joined the fund (though there are some transitional arrangements to cater for the movement from the OSS disclosure regime to the Superannuation Industry (Supervision) (SIS) regime).

These requirements ensure that there are no gaps in the reporting of information and that, generally, members will have 'member information' and 'fund information' reported to them in respect of their entire period of membership.

The reporting requirements are more flexible than under OSS Regulations in that all 'fund information' need not be given in respect of an identical period. This would allow, for example, funds to report some fund information with member information and the remaining fund information in respect of a different period, while still ensuring disclosure is achieved.

Regulation 2.20 - Application in relation to reporting period

Regulation 2.20 provides that:

- 'member information' need only be given to persons who were members on the last day of a member reporting period (a member who leaves before the end of the period is provided with similar information under Division 2.7) ; and
- 'fund information' need only be given to persons who are members of the fund on the day on which the report containing that information is completed.

Regulation 2.21 - Time for compliance

Regulation 2.21 provides that 'member information' and 'fund information' must be given as soon as practicable after the end of the relevant period to which the information relates, and in any event within six months of the end of that period.

Subdivision 2.4.2 - Member information

Regulation 2.22 - General requirement

Regulation 2.22 is the broad brush element of 'member information' disclosure and provides that a fund must give to each member all information that the trustee reasonably believes a member would reasonably need for the purpose of understanding his or her benefit entitlements in the fund.

Regulation 2.23 - Specific requirements in all cases

The broad brush element in Regulation 2.22 is supported by a prescriptive listing, under this regulation, of certain items that must be disclosed in all cases. These items of information include the amount of benefit that a member would be entitled to if the member was to voluntarily leave the fund and the amount of such a benefit that is required to be preserved.

This prescriptive element of disclosure does not apply to excluded funds.

Regulation 2.24 - Specific requirements in particular cases

Regulation 2.24 provides a further prescriptive listing of certain items, however these items only need to be disclosed

where disclosure would be ‘applicable’ and do not need to be disclosed if a nil amount would have to be disclosed.

The items of information in this category include:

- the amount of member contributions during the period;
- the amount of employer contributions allotted to the member during the period;
- fees and charges deducted from the member’s account during the period;
- bonuses that have accrued;
- details of ‘significant’ benefits.

This prescriptive element of disclosure does not apply to excluded funds.

Regulation 2.25 - Exception - pensioners

Regulation 2.25 provides that a fund need not give ‘member information’ to a member:

- in relation to any period when he or she is a life pensioner of the fund; or
- if the member is a pensioner and has requested such information not be provided.

Regulation 2.26 - Exception - certain cases of members leaving fund

Regulation 2.26 allows for the case where a member leaves a fund after the completion of a particular member reporting period but before ‘member information’ for that period is given. In such cases this regulation provides that the member need not be given that information provided that the member is given similar information covering that period under Division 2.7 (Division 2.7 prescribes the information to be given when a member leaves a fund). This avoids the need to give two reports (one under this Division and one under Division 2.7) when one would be sufficient.

This exception works in conjunction with subregulation 2.48(1) in Division 2.7.

If the person has ceased to be a member as a result of death then the exception applies provided the relevant requirements under Division 2.7 that apply in such circumstances are met.

Subdivision 2.4.3 - Fund information

Regulation. 2.27 - General requirement

Regulation 2.27 is the broad brush element of ‘fund information’ disclosure and provides that a fund must give to each member all information that the trustee reasonably believes a member would reasonably need for the purpose of understanding the management, investment performance and financial condition of the fund.

Information is to be given in respect of a sub-plan where appropriate.

Regulation 2.28 - Specific requirement in all cases

The broad brush element in Regulation 2.27 is supported by a prescriptive listing, under this regulation, of certain items that must be disclosed in all cases. These items of information include the investment strategy and objectives of the fund, details of the fund’s procedures for dealing with inquiries and complaints and a statement that other information is available on request.

Regulation 2.29 - Specific requirements in particular cases

Regulation 2.29 provides a further prescriptive listing of certain items, however these items only need to be disclosed where disclosure would be ‘applicable’ and do not need to be disclosed if a nil amount would have to be disclosed.

The items of information in this category include:

- details relating to the trustee (including the name of details relating to the trustee (including the name of the trustee and whether the trustee/s have indemnity insurance);
- details of any policy committee;
- the names of investment managers;
- financial information on the fund (including information on the fund’s asset allocation);
- details on the recent investment performance of the fund;
- details of how fees, charges and other expenses are attributed to members;
- details of any penalties imposed on the trustee under the Act;

Information is to be given in respect of a sub-plan, where appropriate.

Regulation 2.30 - Excluded funds - special provision

Regulation 2.30 provides that an excluded fund does not have to give ‘fund information’ to a member. Members of such funds would be able to request such information under Division 2.6.

Regulation 2.31 - Exception - benefits determined by life policies

Regulation 2.31 provides that certain requirements relating to the disclosure of financial information do not apply to funds where the benefits paid to each individual member are wholly determined by reference to policies of life assurance.

Division 2.5 - Information concerning significant events**Regulation 2.32 - Application**

Regulation 2.32 provides that Division 2.5 applies to funds, other than eligible rollover funds, that are regulated superannuation funds and approved deposit funds.

Subregulation (2) prescribes that where a provision of Division 2.5 requires ‘information’ to be given in respect of an event then the information to be given is information that the trustee reasonably believes a member would reasonably need

to:

- understand the nature and purpose of the event (if any); and
- make an informed judgement about the effect of the event on the member’s entitlement.

Regulation 2.33 - Time for Compliance

Regulation 2.33 prescribes the time within which a fund must give information under Division 2.5.

The general rule is that information is required to be given before or as soon as practicable after the event occurs, but in any event not later than 3 months after the event.

Where the event is unlikely to be adverse to the member’s interests then the information can be delayed for up to 12 months (this allows funds to give the information when they next give ‘fund information’ or ‘member information’).

Where a member would reasonably expect to be informed of an event before it occurs (for example, the winding-up of the fund) the information is to be given as soon as practicable after the event becomes likely. Despite this requirement the information need not be given more than 3 months before the expected date of the event.

Regulation 2.34 - Contact details to accompany information

Regulation 2.34 provides that where a fund gives information under Division 2.5 it must give with the information a statement of the contact details of the fund.

Regulation 2.35 - General requirement

Regulation 2.35 is the broad brush element of disclosure in Division 5. It requires information to be provided to a member concerning any event in relation to the fund that the trustee reasonably believes the member would reasonably be expected to be informed of.

Regulation 2.36 - Specific requirements

The broad brush element in regulation 2.35 is supported by a prescriptive listing of the particular events in respect of which information must be given to a member.

The events are:

- changes in the governing rules where those changes would adversely affect a member;
- where a member is transferred to a different fund or different category of membership;
- where the fund receives a notice of non-compliance (certain specific information is required to be given in such cases).

This regulation does not apply to an excluded fund.

Division 2.6 - Information on request

Regulation 2.37 - Application

Regulation 2.37 provides that Division 2.6 applies to all superannuation entities (that is - all regulated superannuation funds, ADF's and PST's).

Regulation 2.38 - Documents may be made available for inspection inspection

Regulation 2.38 provides that a requirement to 'give' information to a person under Division 2.6 is taken to be met if the trustee makes the information available for inspection at a suitable place during business hours. An alternative arrangement can be agreed between the superannuation entity and the person.

Regulation 2.39 - Time for compliance

Information requested under Division 2.6 must be provided as soon as practicable after the request is made, and in any event reasonable efforts must be made to give the information within 1 month of receiving the request.

Regulation 2.40 - General requirement

Regulation 2.40 prescribes the broad brush element of disclosure in Division 2.6. Different requirements apply dependent on the type of person requesting the information. Two types of persons are provided for:

- members, recent members and beneficiaries; and
- employer- sponsors ;

Members, recent members and beneficiaries must be provided, on request, with all information that the person reasonably requires to:

- understand benefit entitlements they may have, have or used to have;
- understand the main features of the entity or relevant sub-plan;
- make an informed judgement about the management and financial condition of the entity and relevant sub-plan;
- make an informed judgement about the investment performance of the entity or relevant sub-plan;
- understand the particular investments of the relevant sub-plan and entity.

Employer-sponsors must be provided, on request, with all information that the employer-sponsor reasonably requires to:

- understand the kinds of benefits to which their employees will or may become entitled;
- understand the main features of the entity or relevant sub-plan;
- make an informed judgement about the management and financial condition of the entity and relevant sub-plan;
- make an informed judgement about the investment performance of the entity or relevant sub-plan;
- for a matter related to the Superannuation Guarantee (Administating Act 1992).

Despite the above, subregulation (2) provides that information need not be disclosed where the information is:

- an internal working document;
- personal information of another person which would be unreasonable to disclose;
- information having a commercial value that would be destroyed or reduced by the disclosure;
- information to which the entity owes to another person a duty of non-disclosure.

Regulation 2.41 - Specific requirements

The broad brush approach in regulation 2.40 is supported by a prescriptive listing in this regulation of certain documents/information that must be provided if requested. Third parties are also required to have certain information provided to them on request under this regulation.

The documents/information prescribed include the governing rules of the entity, the audited accounts of the entity, certain actuarial information and the most recent fund report.

This regulation is subject to the following limitations:

- if the person requesting the information is not a member, recent member or beneficiary - then only the audited accounts and most recent fund report are available.
- if the fund is an excluded fund - the regulation does not apply at all;

Division 2.7 - Information when a member leaves a fund

Regulation 2.42 -Application

Division 2.7 applies to funds, other than eligible rollover funds, that are regulated superannuation funds and approved deposit funds.

Regulation 2.43 - Time for compliance

Information required to be given under Division 2.7 must be provided as soon as practicable, and reasonable efforts must be taken to ensure that information is provided not later than one month, after a person leaves a fund. Reasonable efforts must also be made to provide information about any continuation option (in relation to a death benefit) in good time before the option lapses.

Regulation 2.44 - Exit reporting period

Regulation 2.44 defines 'exit reporting period' as the period:

- beginning on the first day of the member reporting period in which the person ceased to be a member and ending at the end of the day on which the person ceases to be a member.

Regulation 2.45 - General requirement

This is the broad brush element of disclosure on leaving a fund and requires the provision to the person leaving the fund (or in the event of death - the person receiving a benefit) of all information that the trustee reasonably believes the person reasonably needs to understand their benefit entitlements.

Regulation 2.46 - Specific requirements in all cases

The broad brush element in regulation 2.45 is supported by a prescriptive listing, in this regulation, of certain items that must be disclosed to persons who leave a fund (or in the event of death - to the person receiving a benefit).

In respect of persons who leave a fund, otherwise than by death, the information that must be given includes:

- the amount of benefit that a member is entitled to, the method by which that amount was worked out and the amount of the benefit that is required to be preserved;
- information regarding death benefits that are affected by the member leaving the fund (including details of any continuation option that applies in relation to the death benefit);
- a summary of the fund's arrangements for dealing with inquiries or complaints and a summary of the functions of the Superannuation Complaints Tribunal.

If a person leaves a fund as a result of death, any person receiving a benefit as a result must be given a summary of the fund's arrangements for dealing with inquiries or complaints and a summary of the functions of the Superannuation Complaints Tribunal (or a statement that such information is available on request).

Regulation 2.46 does not apply to excluded funds.

Regulation 2.47 - Specific requirements in particular cases

Regulation 2.47 provides a further prescriptive listing of certain items, however these items only need to be disclosed

where disclosure would be ‘applicable’ and do not need to be disclosed if a nil amount would have to be disclosed.

The items of information in this category include:

- the amount of member contributions during the ‘exit reporting period’;
- the amount of employer contributions allotted to the member during the exit reporting period;
- fees and charges deducted from the member’s account during the exit reporting period;
- bonuses that have accrued.

Essentially, the requirements under this regulation ensure that ‘member information’ is provided up to the date that a member leaves a fund.

This prescriptive element of disclosure does not apply to excluded funds.

Regulation 2.48 - Exceptions to ‘exit reporting period’ provisions

Subregulation (1) works in conjunction with regulation 2.26 (in Subdivision 2.4.2). These regulations deal with the case where a member leaves a fund after the end of a ‘member reporting period’ but before information is issued for that period. Normally the fund would be required to give to the member:

- ‘member information’ in relation to the completed reporting period; and
- information under this Division in relation to the exit reporting period (being the period from the end of the completed period until when the member left).

The combined operation of regulations 2.26 and 2.48 means that, rather than issuing a report in respect of each period referred to above, the fund can issue just one report covering both the ‘completed period’ and the ‘exit period’, provided that (generally) the extended period does not exceed eighteen months. That report must contain all the information required to be given under this Division (the information required to be given under this Division is for the most part the same as ‘member information’ required to be given under Subdivision 2.4.2).

Subregulation (3) provides that, where a member is being transferred to another fund, information need not be given under this Division if:

- the member has been provided with sufficient information concerning the transfer under subregulation 2.36(3); and
- the member is likely to be provided, by the fund to which the member is being transferred, with 'member information' (under Subdivision 2.4.2) that will cover the member's 'exit reporting period'.

Division 2.8 - Pooled superannuation trusts

Background

The requirements on PST's are structured in the same manner that the retirements on superannuation funds and ADF's are structured in Divisions 2.1 to 2.5 and 2.7 (Division 2.6 applies to PST's as well as superannuation funds and ADF's). There is, however, significantly less emphasis on the prescriptive approach to disclosure in this Division - this reflects the different nature of PST's compared to superannuation funds and ADF's.

Subdivision 2.8.1 - Preliminary

Regulation 2.49 - Application

Regulation 2.49 provides that this Division applies to Pooled Superannuation Trusts (PST).

Regulation 2.50 - Operating standards

Regulation 2.50 provides that, other than Subdivision 2.8.2, requirements of this Division are prescribed as operating standards for the purposes of subsection 33(1) of the Act.

Regulation 2.51 - Statement of particulars must accompany information.

A statement of the contact details of the PST must be given where a PST gives information in accordance with Division 2.8.

Subdivision 2.8.2 - Information for prospective unit-holders

Background

The requirements imposed on PST's in this Subdivision are similar to the requirements placed on public offer superannuation funds and ADF's under Division 2.2.

Regulations 2.52 Subdivision 3A of Part 19 of the Act

Regulation 2.52 provides that the provisions of this Subdivision are made under subsection 159(1) of the Act and for the purposes of sections 157 and 158 of the Act.

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

This regulation prescribes the information that the trustee must be satisfied has been received by a person before an interest is issued to the person (ie: generally, before the person purchases units in the PST).

The information to be disclosed is based solely on the broad brush approach. The information is all information that the trustee reasonably believes a person would reasonably need to understand the main features, investment performance and financial condition of the PST.

Subdivision 2.8.3 - Information in respect of reporting periods

Background

Subdivision 2.8.3 prescribes what information must be given at regular intervals (at least yearly) to unit-holders. The information consists of:

- Unit-holder specific information ('unit-holder information'), which provides details on the amount of the unit-holders current interest in the PST; and
- 'PST information', which provides information on the management, financial condition and investment performance of the PST and related matters.

Regulation 2.54 - Interpretation

Regulation 2.54 sets out a number of definitions and expressions for the purposes of Subdivision 2.8.3.

Regulation 2.55 - Reporting periods

Regulation 2.55 provides that, generally, unit-holder information and PST information must be given to unit-holders at least annually.

Unit-holder information must be given in respect of consecutive 'unit-holder reporting periods', with each subsequent period commencing immediately after the end of the previous period. Likewise, PST information must be given in respect of consecutive 'PST reporting periods' with each subsequent period commencing immediately after the end of the previous period.

The date at which reporting begins for a unit-holder must normally be no later than when the unit-holder became a unit-holder in the PST.

These requirements ensure that there are no gaps in the reporting of information and that, generally, unit-holders will have ‘unit-holder information’ and ‘PST information’ reported to them in respect of the entire period in which they were a unit-holder.

Regulation 2.56 - Application in relation to reporting period

Regulation 2.56 provides that:

- ‘unit-holder information’ need only be given to persons who were unit-holders on the last day of a unit-holder reporting period (a unit-holder who leaves before the end of the period is provided with similar information under regulation 2.66); and
- ‘PST information’ need only be given to persons who are unit-holders on the day on which the report containing that information is completed.

Regulation 2.57 - Time for compliance

Regulation 2.57 provides that ‘unit-holder information’ and ‘PST information’ must be given as soon as practicable after the end of the relevant period to which the information relates, and in any event within six months of the end of that period.

Regulation 2.58 - Exemption from giving information

Regulation 2.58 allows for the case where a unit-holder ceases to be a unit-holder after the completion of a particular unit-holder reporting period but before ‘unit-holder information’ for that period is given. In such cases this regulation provides that the unit-holder need not be given that information provided that the unit-holder is given similar information covering that period under regulation 2.66 (regulation 2.66 in Subdivision 2.8.5 prescribes the information to be given when a unit-holder ceases to be a unit-holder). This avoids the need to give two reports when one would be sufficient.

This exception works in conjunction with regulation 2.67.

Regulation 2.59 - General requirement

The trustees of a PST must give to each unit-holder all information that the trustee reasonably believes a unit-holder would reasonably need to understand their interest in the PST (this is ‘unit-holder’ information) and make an informed judgment about the management, investment performance and financial condition of the PST (this is ‘PST’ information).

Regulation 2.60 - Specific requirements in all cases

The broad brush element in regulation 2.59 is supported by a prescriptive listing, under this regulation, of certain items that must be disclosed in all cases. These items of information include the opening and closing balances (in respect of the particular unit-holder) for the relevant reporting period and a reconciliation of those balances, and a description of the investment strategy of the PST trustee and the investment objectives of the PST.

Regulation 2.61 - Specific requirements in particular cases

Regulation 2.61 provides a further prescriptive listing of certain items, however these items only need to be disclosed where disclosure would be 'applicable' and do not need to be disclosed if a nil amount would have to be disclosed.

The items of information in this category include:

- the name of the trustee;
- the names of investment managers;
- financial information on the PST (including information on the PST's asset allocation);
- details on the recent investment performance of the PST;
- details of how fees, charges and other expenses are attributed to unit-holders;
- details of any penalties 'imposed on the trustee under the Act.

Subdivision 2.8.4 - Significant Events

Regulation 2.62 - Time for Compliance

Regulation 2.62 prescribes the time within which a PST must give information under Subdivision 2.8.4.

The general rule is that information is required to be given before or as soon as practicable after the event occurs, but in any event not later than 3 months after the event.

Where the event is unlikely to be adverse to the unit-holder's interests then the information can be delayed for up to 12 months (this allows PST's to give the information when they next give 'PST information' or 'unit-holder information').

Where a unit-holder would reasonably expect to be informed of an event before it occurs (for example, the winding-up of the PST) the information is to be given as soon as practicable after the event becomes likely. Despite this requirement the

information need not be given more than 3 months before the expected date of the event.

Regulation 2.63 - Information concerning significant events

Subregulation (1) requires information to be provided to a unit-holder concerning any event in relation to the PST that the trustee reasonably believes the unit-holder would reasonably be expected to be informed of.

Subregulation (2) prescribes that the information required to be given in respect of an event is information that the trustee reasonably believes a unit-holder would reasonably need to:

- understand the nature and purpose of the event (if any) ; and
- make an informed judgement about the effect of the event on the unit-holder's interest in the PST.

Regulation 2.64 - Information concerning notice of non-compliance

Where the PST receives a notice of non-compliance certain specific information is required to be given.

Subdivision 2.8.5 - Information on leaving

Regulation 2.65 - Information when a person ceases to be a unit-holder

Information required to be given under Subdivision 2.8.5 must be provided as soon as practicable, and reasonable efforts must be taken to ensure that information is provided not later than one month, after a person ceases to be a unit-holder.

Regulation 2.66 – Persons ceasing to be unit-holders.

The broad brush element of disclosure requires the provision to the person ceasing to be a unit-holder of all information that the trustee reasonably believes a person reasonably needs to understand their interest in the PST on the day they ceased to be a unit-holder.

The broad brush element is supported by a requirement to specifically disclose the opening and closing balances in relation to the period in which the person ceased to be a unit-holder and a reconciliation of those balances.

Regulation 2.67 - Exceptions to reporting requirement where person ceases to be unit-holder

Regulation 2.67 works in conjunction with regulation 2.58. These regulations deal with the case where a unit-holder ceases to be a unit-holder after the end of a 'unit-holder

reporting period' but before information is issued for that period. Normally the PST would be required to give to the unit-holder:

- 'unit-holder information' in relation to the completed reporting period; and
- information under regulation 2.66 in relation to the exit reporting period (being the period from the end of the completed period until when the unit-holder ceased to be a unit-holder).

The combined operation of regulations 2.58 and 2.67 means that, rather than issuing a report in respect of each period referred to above, the PST can issue just one report covering both the 'completed period' and the 'exit period', provided that (generally) the extended period does not exceed eighteen months. That report must contain all the information required to be given under regulation 2.66.

PART 3 - MATTERS PRESCRIBED OR SPECIFIED IN RELATION TO PUBLIC OFFER ENTITIES

BACKGROUND

A fundamental principle of the SIS legislation is that superannuation funds, approved deposit funds and pooled superannuation trusts should be in the control of a single party (the trustees) who take full responsibility for the fund/trust. Public offer funds, which are presently subject to the Corporations Law, have been required to have this responsibility split between two parties - a management company which effectively runs the fund, and a trustee company which has a background role, acting as a supervisor and custodian.

The Government believes that there should be no mandatory change from the existing two party structure of these funds, but that these funds should be encouraged to change to a one party structure, and that the legislation should facilitate such a change.

This will ensure there is a single party in control of the fund/trust who is fully accountable to beneficiaries. The present system of divided responsibility (between trustee and management company) leads to uncertainty in the division of responsibilities and can make legal redress problematic for beneficiaries. The move to a single responsible entity will also reduce costs for superannuation beneficiaries and avoid duplication of functions.

Most funds which are public offer superannuation funds will be so because they are a standard employer-sponsored fund which has at least one member who is not a standard employer-sponsored member. For example, superannuation funds which have:

- a member who is self employed; or
- a member who contributes to the fund as a result of an arrangement between:
 - the member and the employer; or
 - the member and the trustee;

are public offer superannuation funds.

If the fund is a public offer superannuation fund the trustee of the fund must be an independent trustee approved by the ISC and if the regulations provide that the fund is subject to rules about the existence, number and functions of policy committees - the fund must comply with those rules. Each prescribed policy committee must consist of equal numbers of employer representatives and member representatives.

The Commissioner may declare a fund not to be a public offer fund and a standard employer sponsored fund may elect to be treated as a public offer superannuation entity.

Regulation 3.01 - Public offer superannuation fund -prescribed persons

Regulation 3.01 provides that, for the purposes of sub-subparagraph 18 (1) (a) (ii) (B) of the Act, a prescribed class consists of former standard employer-sponsored members of the fund who, since ceasing to be standard employer-sponsored members, have either not made any contributions to the fund, or have only made contributions to the fund in the 2 year period since they ceased to be such members.

Regulation 3.02 - Application for approval of trustees

Pursuant to section 23 of the Act an application for approval as a trustee for the purposes of the Act must be in the approved form, contain the information required by the form and be accompanied by an application fee of the prescribed amount.

Regulation 3.02 provides that, for the purposes of paragraph 23(2) (c) of the Act, the prescribed application fee is \$500.

Regulation 3.03 - Deciding an application for approval

The Act requires all approved deposit funds, and public offer entities that wish to accept new members, to have an approved trustee with a net tangible asset backing of the amount prescribed in the regulations or a bank guarantee or equivalent Government commitment for this amount.

Regulation 3.03 provides that, for the purposes of subparagraphs 26 (1) (b) (i) and (ii) of the Act, the amount of \$5,000,000 is prescribed.

Regulation 3.04 - Section 54 of the Act - prescribed percentages

Regulation 3.04 provides that, for the purposes of section 54 of the Act (prerequisites to variation of repayment period), the following percentages are prescribed:

- (a) in the case of paragraph (1) (c) of the section - 25%; and
- (b) in the case of paragraph (1) (d) of the section - at least 75%.

Regulation 3.05 - Policy committees - sections 91, 92 and 93 of the Act

Regulation 3.05 sets out for the purposes of the Act, that a public offer superannuation fund is subject to the applicable

rules set out in this regulation unless, as prescribed by subregulation (4) , the fund complies with the basic equal representation rules stated in section 89 of the Act.

The application of subregulation (1) does not apply on or after 1 July 1995, and subregulations (2) and (3) do not apply before that date.

For pre-1 July 1995 funds with 200 or more members (paragraph 91 (3) (b) of the Act) subregulation (1) applies. Subregulation (1) provides that, in the case of a fund to which section 91 of the Act applies, the trustee of the fund must take all reasonable steps to ensure that the fund has at least 1 policy committee for each group of 200 or more members, each of whom is a standard employer-sponsored member and has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group.

For post-30 June 1995 funds with more than 4, but fewer than 50, members subregulation (2) applies. Subregulation (2) provides that, in the case of a fund to which section 92 of the Act applies, if a written request is made to the trustee on behalf of at least 5 members of a group, each of whom is a standard employer-sponsored member and has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group, to form a policy committee, the trustee of the fund must take all reasonable steps to ensure that the fund has at least 1 policy committee.

For post-30 June 1995 funds with more than 49 members subregulation (3) applies. Subregulation) provides that, in the case of a fund to which section 93 of the Act applies, the trustee of the fund must take all reasonable steps to ensure that the fund has at least 1 policy committee for each group of 50 or more members each of whom is a standard employer-sponsored member and has a standard employer-sponsor who is the, or is an associate of a, standard employer-sponsor of each other member of that group. If 5 or more members of such a group, which has more than 4 but fewer than 50 members, request the trustee in writing to form a policy committee, the trustee of the fund must take all reasonable steps to ensure that the fund has at least 1 policy committee.

Subregulation (5) prescribes the requirements if the policy committee is to be considered to have met the requirements of paragraphs 91 (3) (c) , 92 (3) (c) or 93 (3) (c) of the Act (whichever is applicable), being requirements that the policy committee must consist of equal numbers of employer representatives and member representatives, if a vacancy occurs in the membership of a policy committee.

Regulation 3.06 - Policy committees - functions (paragraphs 91 (3) (b), 92 (3) (b) and 93 (3) (b) of the Act)

There are a number of functions listed in this regulation which policy committees may undertake. The list is a guide (and should not be taken as limiting by implication) and the policy committee should be free to determine the functions it will undertake. The list of functions that the policy committee may undertake includes:

- providing an avenue for members of the fund to inquire about the investment strategy and performance of the fund;
- providing an avenue for the trustee of the fund to obtain the views of members on the investment strategy and performance of the fund;
- providing an avenue for fund members to inquire about the operation or performance of the fund;
- providing an avenue for the fund trustee to obtain the views of members concerning the operation or performance of the fund;
- providing an avenue for the trustee of the fund to obtain the views of members on their information needs; and
- assisting the trustee in dealing with inquiries or complaints about the operation or management of the fund.

Regulation 3.07 - Definition of policy committee in section 10 of the Act - matters specified for purposes of paragraph (a)

This regulation provides that, for the purposes of paragraph (a) of the definition of policy committee in section 10 of the Act, the function of a policy committee is to advise the trustee of the entity about issues relating to the fund that a member of the fund, or the employer-sponsor of a member, has raised with the committee as a matter of concern.

Regulation 3.08 - Policy committees - duties of trustee

The trustee of a public offer superannuation fund that is required to have at least one policy committee, must take all reasonable steps and provide all reasonable facilities to ensure that each policy committee meets at least annually. This may include meetings in which some, or all, participants take part through the use of a telephone conference facility. A representative of the trustee must attend all meetings of the policy committee which the policy committee requests the trustee to attend.

Subregulation (4) provides that the trustee may recoup from the fund certain expenses incurred in relation to servicing the needs of policy committees. In recouping such costs the trustee is reminded of the requirements of regulation 5.02 which requires the trustee to ensure that costs of the fund are distributed in a fair and reasonable manner. That is, funds may, if considered appropriate, allocate costs of servicing a policy committee amongst the members of the group which the policy committee represents.

Regulation 3.09 - Dissolution of policy committees

A policy committee may decide to disband. If it does so, the trustee will be deemed to have met all the above requirements concerning the establishment of policy committees. However, should five or more members of any of the groups in respect of whom the committee functioned request that a replacement policy committee be formed, the trustees will be required to take all reasonable steps to ensure that a policy committee is re-established.

The provisions of regulations 3.06, 3.07, 3.08 and 3.09 apply to a replacement committee.

Regulation 3.10 - Commission and brokerage

Regulation 3.10 provides that, for the purposes of subsection 154 (1) of the Act, the requirements set out in this regulation apply in relation to a payment by the trustee of a public offer entity of commission or brokerage of a kind mentioned in that subsection.

The trustee of a public offer entity may make a payment by way of commission or brokerage to a person in consideration of the person applying or agreeing to procure applications for the issue of an interest in the entity if, and only if, the payment is not prohibited by the trust's deed and the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in the regulated document in respect to the entity.

The trustee of a public offer entity must not pay commission or brokerage in respect of the issuing of an interest in the entity to a person, unless the person is of the kind listed in the regulation.

The trustee must keep an account of amounts of commission and brokerage paid by the entity.

Regulation 3.11 - Statements by experts - keeping of written consents

This regulation provides that a trustee of a public offer entity must, for the purposes of subsection 163(2) of the Act, keep the consent, or a copy of the consent, of an expert for 10 years. A copy of the consent may be kept in a physical

form (on paper) or in electronic form that is capable of being reproduced on paper.

Regulation 3.12 - Requirements concerning application money held on trust

For the purposes of section 169 of the Act the regulation specifies that, where the trustee of a public offer entity received application moneys in respect of an application for the issue of a superannuation interest in the entity and the trustee did not issue the superannuation interest immediately after receiving the money, the trustee will hold the moneys in a trust account in the name of the applicant, that need not be interest bearing, on trust for the applicant, until the relevant superannuation interest is issued to the applicant or the money is refunded to the applicant.

PART 4 - MANAGEMENT AND TRUSTEESHIP OF SUPERANNUATION ENTITIES

BACKGROUND

The regulations in Part 4 cover a number of issues relating to the operations of superannuation entities. The most significant issues covered can be broken down into three main areas:

- regulations relating to investment;
- regulations relating to the powers of certain persons (other than the trustee) in employer-sponsored funds;
- regulations relating to trusteeship.

The regulations relating to investment cover:

- the requirement for the trustee of a superannuation entity (other than an excluded fund) to formulate and give effect to an investment strategy that has regard to relevant circumstances;
- the circumstances and extent to which beneficiaries can choose their own investment strategy;
- investment restrictions on non complying superannuation funds and non complying ADF's.

The regulations relating to the powers of certain persons (other than trustees) in employer-sponsored funds cover:

- the circumstances in which the governing rules of a superannuation entity may permit the trustee, in exercising the trustee's powers under those rules, to be subject to direction by an employer-sponsor or associate of an employer-sponsor;
- the circumstances in which the governing rules of an employer-sponsored fund may permit the exercise of a discretion under those rules that is exercisable by a person other than the trustee.
- the circumstances in which the governing rules of an employer-sponsored fund may permit those rules to be amended.

The regulations relating to trusteeship cover:

- the circumstances (in addition to those in the Act) in which member representative trustees may be removed, by a method other than that by which they were appointed, from their position of trustee;

- the circumstances (in addition to those in the Act) in which an ‘additional independent trustee’ or ‘additional independent director’ may be removed, by a method other than that by which they were appointed, from their position of trustee/director.
- decision making by trustees where equal representation rules apply.

The only other regulation in this Division relates to a covenant that is taken to be included in the governing rules of an entity allowing beneficiaries access to certain information and documents.

Division 4.1 - Prescribed matters

Regulation 4.01 - Covenants in governing rules of a superannuation entity - prescribed information and documents

Paragraph 52 (2) (h) of the Act provides that a covenant to the effect that beneficiaries are to be given access to certain information and documents prescribed in the regulations is taken to be included in the governing rules of a superannuation entity.

Regulation 4.01 prescribes that the information and documents referred to are those that are available to a concerned person under Division 2.6 of the regulations (that information is, generally, any information that it would be reasonable for a beneficiary to request for a reasonable purpose - the relevant ‘purposes’ are listed in Division 2.6).

Regulation 4.02 - Covenants in governing rules of a superannuation entity - beneficiary investment choice

Regulation 4.02 prescribes the circumstances in which directions of the kind referred to in paragraph 52(4) (b) of the Act may be given.

Regulation 4.02 differentiates between two ‘types’ of directions:

- ‘initial’ directions; and
- ‘subsequent’ directions.

The prescribed circumstances are more onerous where the direction is an ‘initial’ direction than where the direction is a ‘subsequent’ direction.

In respect of an ‘initial’ direction the following circumstances (or pre-conditions) are prescribed:

- (a) the trustee gives to the relevant beneficiary a choice of investment strategies from which the beneficiary may choose a strategy or combination of strategies;

- (b) the relevant beneficiary is given the investment objectives of each of the strategies referred to in (a) and all information that the trustee reasonably believes a person would reasonably need to understand the effect of and risk involved in each of those strategies;
- (c) the relevant beneficiary is fully informed of the range of directions that can be given and the circumstances in which they can be changed;
- (d) the direction is given after compliance with the above paragraphs and the direction specifies which of the strategies in (a), or what combination of those strategies, is to be followed in relation to the investment of the relevant beneficiary's interest in the fund (the direction may also specify matters related to the choice of strategy or choice of combination of strategies).

In addition to the above requirements, where the beneficiary is a standard employer-sponsored member the beneficiary must be informed of the strategy the trustee will adopt if no direction is given (this requirement does not apply if it is a condition of membership for the beneficiary to choose a strategy or combination of strategies).

Where the direction is a 'subsequent' direction the following circumstances (or pre-conditions) are prescribed:

- (a) the relevant beneficiary is given all information that the trustee reasonably believes a beneficiary would reasonably need for the purpose of understanding the effect of and risk involved in the subsequent direction;
- (b) the direction is given after compliance with (a) and relates to the strategy to be followed in relation to the investment of the beneficiary's interest in the fund.

Regulation 4.03 - Trustee of employer-sponsored fund -prescribed direction by employer-sponsor

Regulation 4.03 prescribes the circumstances in which the governing rules of a superannuation entity may permit the trustee, in exercising the trustee's powers under those rules, to be subject to direction by an employer-sponsor or associate of an employer-sponsor. The circumstances prescribed are such that a direction of that kind would only be permitted if three basic pre-conditions are met. These are:

- that the fund will not become technically insolvent after implementation of the direction; and
- that members' rights to accrued benefits are not adversely affected by the direction; and
- that the direction is of a specified kind.

The specified kinds of directions are directions which relate solely to one or more of the following:

- employer contributions that are not mandated employer contributions or to benefits related to those contributions;
- the admission of new members;
- the category of members into which a new or existing member is to be placed;
- allowing a person to become an employer-sponsor of the fund;
- the termination of the fund;
- the appointment of a trustee to an entity that does not have a trustee.

Regulation 4.04 - Governing rules of a superannuation entity - prescribed exercise of discretion by non-trustee

Regulation 4.04 prescribes the circumstances in which the governing rules of an employer-sponsored fund may permit the exercise of a discretion under those rules that is exercisable by a person other than the trustee. The circumstances prescribed are such that a discretion of that kind would only be permitted if three basic pre-conditions are met. These are:

- that the fund will not become technically insolvent after implementation of the discretion; and
- that members' rights to accrued benefits are not adversely affected by the discretion; and
- that the discretion is of a specified kind.

The specified kinds of discretions are discretions which relate solely to one or more of the following:

- employer contributions that are not mandated employer contributions or to benefits related to those contributions;
- the admission of new members;
- the category of members into which a new or existing member is to be placed;
- allowing a person to become an employer-sponsor of the fund;
- the termination of the fund;

- the appointment of a trustee to an entity that does not have a trustee.

Regulation 4.05 - Governing rules of a superannuation entity - prescribed circumstances of amendment

Regulation 4.05 prescribes the circumstances in which the governing rules of an employer-sponsored fund may permit those rules to be amended. The circumstances prescribed are such that an amendment would only be permitted if three basic preconditions are met. These are:

- that the fund will not become technically insolvent after implementation of the amendment; and
- that members' rights to accrued benefits are not adversely affected by the amendment; and
- that the amendment is of a specified kind.

The specified kinds of amendments are amendments which relate solely to one or more of the following:

- employer contributions that are not mandated employer contributions or to benefits related to those contributions;
- the admission of new members;
- the category of members into which a new or existing member is to be placed;
- allowing a person to become an employer-sponsor of the fund;
- the termination of the fund;
- the appointment of a trustee to an entity that does not have a trustee.

Regulation 4.06 - Removal of member representatives -prescribed circumstances

For the purposes of sub-subparagraph 107(2) (a) (ii) (G) of the Act, this regulation prescribes the circumstances (in addition to those in the Act) in which member representatives can be removed, other than by the procedure by which they were appointed, from their position as a trustee. The circumstances are resignation, the tenure of the position expiring, the member representative ceasing to be a member of the fund or ceasing to satisfy a condition that the member representative was required to satisfy to be eligible for appointment.

Regulation 4.07 - Removal of independent trustee or independent member - prescribed circumstances

For the purposes of subparagraph 108(2)(a)(v) of the Act, this regulation prescribes the circumstances (in addition to those in the Act) in which an additional independent trustee or additional independent director can be removed, other than by the procedure by which they were appointed, from their position as a trustee or director. The circumstances are resignation, the tenure of the position expiring, the trustee or director ceasing to be a independent trustee/director or ceasing to satisfy a condition that they were required to satisfy to be eligible for appointment.

Division 4.2 - Operating standards

Regulation 4.08 - Operating standard. - voting rule where equal representation applies

Regulation 4.08 applies to funds that are required to comply with the basic equal representation rules (including funds which have a choice of complying with the basic equal representation rules or alternative rules but choose the basic equal representation rule).

The regulation provides that a decision by the trustees of such a fund (or the board of directors if the trustee is a body corporate) 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.

Regulation 4.09 - Operating standard - investment strategy

Regulation 4.09 imposes, as an operating standard for the purposes of subsections 31(1), 32 (1) and 33 (1) of the Act, requirements identical to those in paragraph 52 (2) (f) and subsection 52(4) of the Act, with the exception that the regulation does not apply in respect of excluded funds.

Regulation 4.10 - Operating standard - Investment by non-complying superannuation funds

Regulation 4.10 prescribes that a superannuation fund that receives a notice of non-compliance must take all reasonable steps to immediately dispose of any units held by the superannuation fund in a PST, unless the Commissioner directs otherwise.

Regulation 4.11 - Operating standard. - investment by non-complying approved deposit funds

Regulation 4.11 prescribes that an approved deposit fund that receives a notice of non-compliance must take all reasonable steps to immediately dispose of any units held by the approved deposit fund in a PST, unless the Commissioner directs otherwise.

PART 5 - MINIMUM BENEFITS STANDARDS

BACKGROUND

This Part sets out the requirements for funds concerning the minimum level of benefits that funds must maintain for the benefit of members.

The Part also contains many of the definitions upon which regulations in Part 6 (Payment Standards) rely. This is because, in many ways, the standards relating to what a member's benefit must be, and how that benefit may (or must) be paid, are related.

The regulations in this Part do not substantively differ from the equivalent Occupational Superannuation

Standards Regulations except to provide that benefits paid for the purpose of the member's temporary incapacity must not reduce the member's minimum benefits.

They are, however, set out in quite a different form. This approach is intended to make clearer requirements which, in the Occupational Superannuation Standards Regulations, were probably never well understood other than by the ISC and a limited number of industry experts.

In aid of this approach, the Part contains presumptive

regulations designed to facilitate trustee compliance with the Part.

The regulations prescribe, as operating standards pursuant to sections 31 and 32 of the Act, requirements on regulated superannuation funds and approved deposit funds.

The regulations prescribe the kind of benefits which funds must maintain for the benefit of members. These are benefits arising from:

- a member's own contributions;
- contributions made by an employer under an industrial award; and
- contributions made by an employer to satisfy Superannuation Guarantee legislation requirements; and
- payments of shortfall components made pursuant to Superannuation Guarantee legislation.

Division 5.1 - Preliminary

Regulation 5.01 - Interpretation of this Part

This regulation sets out a number of definitions and expressions for the purposes of Part 5.

Regulation 5.02 - Determination of costs

The trustee of a regulated superannuation fund or approved deposit fund must determine the costs to be charged against the benefits of a member of the fund. When determining such costs to be charged, the trustee may include the costs of establishing, operating and terminating the fund. These costs may include any administrative, insurance and taxation costs.

In determining the costs to be charged against the member's benefits the trustee must ensure that the costs of the fund are distributed in a fair and reasonable manner between all members and the various kinds of benefits of each member of the fund.

Regulation 5.03 - Investment return - funds which maintain reserves

This regulation provides that where the trustee of an accumulation fund or approved deposit fund maintains reserves, the trustee must determine the investment return to be credited or debited to a member's benefit in the fund having regard to certain factors.

Division 5.2 - Minimum benefits

Regulation 5.04 - Minimum benefits - regulated superannuation funds

Subregulation (1) provides that the member's minimum benefits in a regulated superannuation fund are as set out in this regulation.

Subregulation (2) provides in the case of a regulated superannuation fund that is an accumulation fund the minimum benefits in relation to a member are the member's member financed benefits and the member's mandated employer financed benefits.

Subregulation (3) provides in the case of a regulated superannuation fund that is a defined benefit fund, the minimum benefits in relation to a member 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 - the member's member financed benefits and mandated employer financed benefits.

Regulation 5.05 - Mandated employer contributions - regulated superannuation funds

Subregulation (1) provides that subject to this regulation, contributions to a regulated superannuation fund are taken to be mandated employer contributions.

Subregulations (2) and (3) provides that in certain circumstances subregulation (1) will cease to apply.

Subregulation (4) gives the trustee of a regulated superannuation fund power to make a decision for the purposes of subregulation (2)

An example of the operation of this regulation is provided in the regulation.

Regulation 5.06 - Certain benefits rolled over or transferred to regulated superannuation funds taken to be minimum benefits

Subregulation (1) provides that subject to this regulation, benefits rolled over or transferred to a regulated superannuation fund are taken to be minimum benefits.

Subregulations (2) and (3) provides that in certain circumstances subregulation (1) will cease to apply.

Subregulation (4) provides that for the purposes of subregulation (1) the fund must treat the benefits rolled over or transferred the same as if the benefits were minimum benefits which originated in the fund.

Subregulation (5) gives the trustee of a regulated superannuation fund power to make a decision for the purposes of subregulation (2).

Regulation. 5.07 - Minimum benefits – approved deposit funds.

Regulation 5.07 provides that the minimum benefits in an approved deposit fund in relation to a member are the amount of the member's accumulated deposit in the fund.

Division 5.3 - Treatment of Minimum benefits

Regulation 5.08 - How minimum benefits are to be treated

A member's minimum benefits must remain in the fund until they are cashed (other than for the purpose of the member's temporary incapacity), rolled-over or transferred as benefits of the member.

PART 6 - PAYMENT STANDARDS

BACKGROUND

Fundamental to the superannuation system is the idea that money should be put aside today and accessed only at retirement, or a retirement related event, such as a termination of employment.

At the same time, superannuation funds are not permitted to defer the dissaving of superannuation benefits beyond the point of entry into retirement (otherwise they may engage in estate planning).

Rules relating to preservation and the payment of benefits give effect to these two broad policy intentions. These rules existed under the OSS Regulations, and continue in Part 6, although with some modification.

The modifications reflect a different “sole purpose test” under the Act than under the OSS Act. Under the sole purpose test (section 62) in the Act, superannuation funds may pay benefits on or after the happening of a retirement related event such as termination of employment, or retirement (under OSS Act, funds could only pay in the event of a retirement related event).

The different wording is more than just semantics. Under the Act, members are able to deal with their benefits with far more flexibility than they were able to do so under the OSS Act. It is considered that this flexibility will lead to greater competition between superannuation funds and approved deposit funds, leading to reduced costs.

The regulations prescribe, as operating standards pursuant to sections 31 and 32 of the Act, rules which support the ability of funds to pay benefits on or after the happening of an appropriate event, subject to appropriate preservation requirements, and which do not allow indefinite deferral beyond retirement.

The regulations cover:

- the circumstances in which a benefit may be paid to a member;
- the circumstances in which a benefit must be paid to a member;
- the circumstances where a benefit may not be paid to a member; and
- the circumstances where a member can rollover or transfer his/her benefit from one fund to another.

Division 6.1 - Introductory

Subdivision 6.1.1 - General interpretation

Regulation 6.01 - Interpretation

Subregulation (1) provides that (subject to subregulation (2)) expressions used in Part 6 that are defined for the purposes of Part 5 have the same meanings as in that Part.

Subregulation (2) inserts definitions of a number of words and expressions for the purposes of Part 6 and Schedule 1.

Subregulation (3) sets out provisions governing the trustees decision in relation to the changeover day.

Subregulation (4) provides that when the trustee is making a decision in respect of the changeover day, it is not necessary that the decision is specific to that member or that the member be an existing member.

Subregulation (5) provides for the purposes of Schedule 1 that a person is in financial hardship if a positive determination has been made by the Commissioner in writing.

Subregulation (6) provides for the purposes of the definition of “restricted non-preserved contributions” in subregulation (1), that certain amounts are undeducted contributions.

Subregulation (7) provides the specific circumstances where a person will be considered to have a retired status for the purposes of Schedule 1.

Subdivision 6.1.2 - Preserved benefits

Regulation 6.02 - Preserved benefits in regulated superannuation funds - before the changeover day

Subregulation (1) provides that the amount of a member’s preserved benefits in a regulated superannuation fund 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).

Subregulation (2) provides that despite the repeal 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 on and after the commencement day (subject to any modifications set out in Schedule 2) in respect of regulated superannuation funds as if the references in the OSS laws were references to regulated superannuation funds.

Regulation 6.03 - Preserved benefits in regulated superannuation funds - on and after the changeover day

The amount of a member's preserved benefits in a regulated superannuation fund at any time on or after the changeover day is the amount of the member's total benefits in the fund less the sum of the amount of the member's restricted non-preserved benefits in the fund as defined by regulation 6.08 and the amount of the member's unrestricted non-preserved benefits in the fund as defined by regulation 6.10.

Regulation 6.04 - Preserved benefits in regulated superannuation funds - rollover or transfer between funds during 1996

Regulation 6.04 provides that, if

- (a) on a day during the 1996 calendar year that is after the day that is the changeover day in relation to a member in a regulated superannuation fund, benefits of that member are rolled over or transferred into another regulated superannuation fund (the receiving fund) ; and
- (b) the trustee of the receiving fund does not decide, on or before the day on which it receives those benefits, that that day is the changeover day in respect of the member;

then the portion of those benefits that is to be taken to be preserved benefits in the receiving fund is the same as the portion of those benefits that comprised preserved benefits immediately before the rollover or transfer.

Regulation 6.05 - Preserved benefits in approved deposit funds.

The amount of a member's preserved benefits in an approved deposit fund 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.

Regulation 6.06 - Effect of rollover or transfer on preserved benefits

Regulation 6.06 provides that preserved benefits do not cease to be preserved benefits merely by being rolled over or transferred.

Subdivision 6.1.3 - Restricted non-preserved benefits

Subdivision 6.07 - Restricted non-preserved benefits in regulated superannuation funds - before the changeover day.

Regulation 6.07 provides that the amount of a member's restricted non-preserved benefits in a regulated superannuation fund 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 the amount of the member's preserved benefits in the fund as defined by regulation 6.02 and the amount of the member's unrestricted non-preserved benefits in the fund as defined by regulation 6.10.

Regulation 6.08 - Restricted non-preserved benefits in regulated superannuation funds - on and after the changeover day.

Subregulation (1) provides that the amount of a member's restricted non-preserved benefits in a regulated superannuation fund at any time on or after the changeover day, is the greatest of the following three amounts:

- (1) The total of:
 - (i) the indexed amount of the member's restricted non-preserved benefits 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 on or after the changeover day that are subject to indexation in the fund;
- (2) The total of:
 - (i) the indexed amount of the member's restricted non-preserved benefits 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 on or after the changeover day that are subject to indexation in the fund;
- (3) The amount of the member's restricted non-preserved contributions in the fund.

Subregulation (2) provides that indexed amounts of restricted non-preserved benefits do not cease to be subject to indexation merely by being rolled over or transferred.

Subregulation (3) provides that restricted non-preserved contributions do not cease to be restricted non-preserved contributions merely by being rolled over or transferred.

Subregulation (4) provides that references to indexation apply subject to regulation 6.14.

Regulation 6.09 - Restricted non-preserved benefits in regulated superannuation funds - rollover or transfer between funds during 1996

Regulation 6.09 provides that, if

- (a) on a day during the 1996 calendar year that is after the day that is the changeover day in relation to a member in a regulated superannuation fund, benefits of that member are rolled over or transferred into another regulated superannuation fund (the receiving fund); and
- (b) the trustee of the receiving fund does not decide, on or before the day on which it receives those benefits, that that day is the changeover day in respect of the member;

then the portion of those benefits that is to be taken to be restricted non-preserved benefits in the receiving fund is the same as the portion of those benefits that comprised restricted non-preserved benefits immediately before the rollover or transfer.

Subdivision 6.1.4 - Unrestricted non-preserved benefits

Regulation 6.10 - Unrestricted non-preserved benefits -regulated superannuation funds

Regulation 6.10 provides that the amount of a member's unrestricted non-preserved benefit in a regulated superannuation fund is:

- (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 amount of unrestricted non-preserved benefits received by the fund from another regulated superannuation fund or from an approved deposit fund in respect of the member on or after the commencement day; and
- (c) any investment earnings on the amounts mentioned in paragraph (a) and (b).

Regulation 6.11 - Unrestricted non-preserved benefits -approved deposit funds

Regulation 6.11 provides that the amount of a member's unrestricted non-preserved benefit in an approved deposit fund is:

- (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 OSS 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 amount of unrestricted non-preserved benefits received by the fund from a regulated superannuation fund or from an approved deposit fund in respect of the member on or after the commencement day; and
- (d) any investment earnings on the amounts mentioned in paragraphs (a), (b) and (c).

Regulation 6.12 - Movement of benefits between categories by satisfaction of conditions of release

Subregulation (1) provides that, 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.

Subregulation (2) provides that, if

- (a) a member of a regulated superannuation fund satisfies a condition of release; and
- (b) the relevant cashing restriction in respect of restricted non-preserved benefits is 'nil';

the member's restricted non-preserved benefits in the fund at that time cease to be restricted non-preserved benefits and become unrestricted non-preserved benefits.

Regulation 6.13 - Effect of rollover or transfer on unrestricted non-preserved benefits

Regulation 6.13 provides that unrestricted non-preserved benefits do not cease to be unrestricted non-preserved benefits merely by being rolled-over or transferred.

Subdivision 6.1.5 - Miscellaneous

Regulation 6.14 - Indexation

Regulation 6.14 provides that the benefits that are referred to in Division 6 as indexed may be aggregated for the purpose of that indexation.

Regulation 6.15 - Contributions and benefits taken to be preserved benefits

Regulation 6.15 provides that contributions made or benefits rolled over or transferred, to a regulated superannuation fund or an approved deposit fund are taken to be preserved benefits unless and until the trustee is satisfied that they are not preserved benefits.

Regulation 6.16 - Redistribution of member's benefits within a fund in certain circumstances by operation of the governing rules or action of trustee

Subregulation (1) provides that for the purposes of subregulation (2), preserved benefits (as defined in regulations 6.02, 6.03, or 6.05), restricted non-preserved benefits (as defined by regulations 6.07 or 6.08), and unrestricted non-preserved benefits (as defined by regulations 6.10 or 6.11) are recognised as categories of benefits.

Subregulation (2) provides that:

- (a) the governing rules of a fund may alter the category of any member's benefits in the fund but not so as to decrease the amount of the member's preserved benefits in the fund or increase the amount of the member's unrestricted non-preserved benefits in the fund; and
- (b) the trustee of the fund may further alter the category of any member's benefits in the fund but not so as to decrease the amount of the member's preserved benefits in the fund or increase the amount of the member's unrestricted non-preserved benefits in the fund.

Division 6.2 - Payment of benefits

Subregulation (1) provides for the purposes of subsections 31 (1) and 32 (1) of the Act, the standard set out in subregulation (2) is applicable to the operation of regulated superannuation funds and approved deposit funds.

Subregulation (2) provides that benefits of a member may only be paid by being cashed, rolled over or transferred in accordance with the relevant Divisions and must not be paid except when, and to the extent, that the fund is required or

permitted under this Part to pay them and must be paid when and to the extent that the fund is required to pay them under Part 6.

Division 6.3 - Cashing of benefits

Subdivision 6.3.1 - Regulated superannuation funds

This subdivision only applies to regulated superannuation funds.

Regulation 6.18 - Voluntary cashing of preserved benefits in regulated superannuation funds

Subregulation (1) provides that preserved benefits of a member may be cashed on or after the member has satisfied a condition of release.

Subregulation (2) provides that the amount of preserved benefits which may be cashed must not exceed a certain amount.

Subregulation (3) provides that the benefits must be cashed in a certain form.

Subregulation (4) recognises the overriding nature of paragraph 6.21(2)(a).

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

Subregulation (1) provides that restricted non-preserved benefits of a member may be cashed on or after the member has satisfied a condition of release.

Subregulation (2) provides that the amount of restricted non-preserved benefits which may be cashed must not exceed a certain amount.

Subregulation (3) provides that the benefits must be cashed in a certain form.

Subregulation (4) recognises the overriding nature of regulation 6.21(2) (a).

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

Subregulation (1) provides that unrestricted non-preserved benefits of a member may be cashed at any time.

Subregulation (2) provides that the amount of unrestricted non-preserved benefits which may be cashed may be the whole or part of the member's unrestricted non-preserved benefits.

Subregulation (3) provides that the benefits must be cashed in a certain form.

Subregulation (4) recognises the overriding nature of paragraph 6.21(2)(a).

Regulation 6.21 - Compulsory cashing of benefits in regulate superannuation funds

Subregulation (1) provides that a member's benefits must be cashed as soon as practicable after the occurrence of any of the following events:

- (a) the member has reached age 65 but not age 70 and is not gainfully employed on a full-time or part-time basis;
- (b) the member has reached age 70 and is not gainfully employed on a full-time basis;
- (c) the member dies.

Subregulation (2) provides that the benefits must be cashed in a certain form.

Regulation 6.22 - Limitation on cashing of benefits in regulated superannuation funds in favour of persons other than members

Regulation 6.22 provides the circumstances where benefits may be cashed in favour of persons other than members.

Subdivision 6.3.2 - Approved deposit funds

This Subdivision only applies to approved deposit funds.

Regulation 6.23 - Voluntary cashing of preserved benefits in approved deposit funds

Subregulation (1) provides that preserved benefits of a member may (subject to regulation 6.27) be cashed on or after the member has satisfied a condition of release.

Subregulation (2) provides that the amount of preserved benefits which may be cashed must not exceed a certain amount.

Subregulation (3) provides that the benefits must be cashed in a certain form.

Subregulation (4) recognises the overriding nature of subregulation 6.25 (2).

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

Subregulation (1) provides that unrestricted non-preserved benefits of a member may be cashed at any time.

Subregulation (2) provides that the amount of unrestricted non-preserved benefits which may be cashed may be the whole or part of the member's unrestricted non-preserved benefits

Subregulation (3) provides that the benefits must be cashed in a certain form.

Subregulation (4) recognises the overriding nature of subregulation 6.25(2).

Regulation 6.25 - Compulsory cashing of benefits in approved deposit funds

Subregulation (1) provides that a member's benefits must be cashed as soon as practicable after the occurrence of any of the following events:

- (a) the member has reached age 65;
- (b) the member dies.

Subregulation (2) provides that the benefits must be cashed in a certain form.

Regulation 6.26 - Limitation on cashing benefits in approved deposit funds in favour of persons other than members

Regulation 6.26 provides the circumstances where benefits may be cashed in favour of persons other than members.

Regulation 6.27 - Limitation on cashing benefits in approved deposit funds of less than \$500

Regulation 6.27 provides that an approved deposit fund must not cash an amount of a member's benefits in the fund that is less than \$500 except to close the member's account.

Division 6.4 - Rollover and transfer of benefits in regulated superannuation funds and approved deposit funds

Regulation 6.28 - Rollover - regulated superannuation funds and approved deposit funds

Regulation 6.28 provides that except as otherwise provided by the Act, benefits of a member of a regulated superannuation fund or an approved deposit fund may be rolled-over if the member has given written consent regarding the rollover to the trustee.

Regulation 6.29 - Transfer - regulated superannuation funds

Regulation 6.29 provides that except as otherwise provided by the Act, benefits of a member of a regulated superannuation fund must not be transferred unless the member has given written consent regarding the transfer to the trustee or the transfer is to a successor fund.

Division 6.5 - Additional standards for eligible rollover funds**Regulation 6.30 - Obligations of trustees**

Regulation 6.30 provides additional obligations for trustees of eligible rollover funds.

PART 7 - CONTRIBUTION AND BENEFIT ACCRUAL STANDARDS (REGULATED SUPERANNUATION FUNDS)

BACKGROUND

This Part sets out the rules relating to the circumstances in which contributions made by members or employers can be accepted by regulated superannuation funds, and when benefit accruals may be granted. The rules are consistent with the notion that there must be some 'occupational link' before a person is able to make use of the superannuation system.

The regulations also deal with when benefit accruals may be granted. This is an addition to the OSS Regulations and ensures that the intent of the contribution standards applies to all funds regardless of their benefit structure.

The regulations prescribe, as operating standards pursuant to section 31 of the Act, the following requirements:

a fund may only accept contributions or grant a benefit accrual in respect of a member if:

- the member is or was in the last two years gainfully employed for at least 10 hours per week; or
- the member is prevented by ill-health from engaging in employment of the kind that he or she engaged in at the onset of the ill-health, being gainful employment for at least 10 hours per week; or
- the contributions are made by an employer under an industrial award or to satisfy Superannuation Guarantee requirements (including shortfall components) or the benefit accrual is attributable to such contributions.

contributions may not generally be accepted, or benefit accruals granted, in respect of a member after that member reaches age 65.

Regulation 7.01 - Interpretation

Subregulation (1) provides certain definitions to be used in Part 7.

Subregulation (2) provides that expressions used in Part 7 that are defined for the purposes of Part 5 have the same meanings as in that Part.

Regulation 7.02 - Application

Regulation 7.02 provides that Part 7 applies only to regulated superannuation funds and is subject to regulation 13.04.

Regulation 7.03 - Restriction on accepting contributions or granting benefit accruals

Regulation 7.03 provides that except in accordance with this Part, a fund must not accept contributions or grant an accrual of benefits.

Regulation 7.04 - Acceptance of contributions - regulated superannuation funds

Subregulation (1) provides (subject to subregulation (2)) that a regulated superannuation fund may accept contributions in respect of a member who is under 65 years if:

- (a) the member has, at any time in the period of 2 years immediately preceding the date of acceptance, engaged in part-time or full-time gainful employment; or
- (b) the member has ceased a part-time or full-time gainful employment because of ill-health (whether physical or mental) that, at the date of acceptance, prevents the member from engaging in employment of the kind that the member engaged in at the onset of the ill-health;
- (c) the contributions are mandated employer contributions.

Subregulation (2) provides that a regulated superannuation fund may accept contributions in respect of a member if the trustee is reasonably satisfied that the contributions are in respect of a period before subregulation (1) ceased to apply to the member.

Regulation 7.05 - Accrual of benefits - defined benefit-funds

Subregulation (1) provides that a defined benefit fund may accept a benefit accrual in respect of a member of the fund who is under 65 years if the member:

- (a) has, at any time in the period of 2 years immediately preceding benefit accrual, engaged in part-time or full-time gainful employment; or
- (b) ceased a part-time or full-time gainful employment because of ill-health (whether physical or mental) that, at the date of the grant of accrual, prevents the member from engaging in employment of the kind that the member engaged in at the onset of the ill-health; or
- (c) the benefit accrual is attributable to mandated employer contributions.

Subregulation (2) provides that a defined benefit fund may grant an accrual of benefits in respect of a member if the trustee is reasonably satisfied that the grant of accrual is in respect of a period before subregulation (1) ceased to apply to the member.

PART 8 - FINANCIAL REPORTING

BACKGROUND

The aim of the regulations in Part 8 is to prescribe the financial reporting requirements that apply to superannuation entities. Such requirements are necessary as:

- they impose a discipline on superannuation entities to keep adequate records and accounts and thus increase the accountability of superannuation entities; and
- the availability of reliable, consistent and timely financial accounts greatly assists the ISC in undertaking its supervisory responsibilities under the Act.

The regulations in this Part cover the following areas:

- the circumstances in which the trustee of a superannuation entity would not be required to prepare a statement of financial position or an operating statement (the Act requires that all superannuation entities must prepare such statements unless the regulations specify otherwise);
- the accounts and statements (in addition to a statement of financial position and operating statement) that must be prepared by superannuation entities;
- the period after the end of the year of income within which an auditor must give the trustee an audit certificate.

Regulations 8.01 and 8.02 essentially ensure that the requirements imposed under SIS in relation to financial reporting are consistent with the requirements under Australian Accounting Standard AAS 25.

Regulation 8.01 - Accounts - statement of financial position and financial position statement

Regulation 8.01 prescribes the circumstances in which a statement of financial position and operating statement need not be prepared in respect of a year of income.

The circumstances are that:

- a defined benefit fund need not prepare a statement of financial position and an operating statement in respect of a year of income if they instead prepare a statement of net assets and statement of changes in net assets in respect of that year of income;
- an accumulation fund need not prepare a statement of financial position and an operating statement in respect of the 1994/95 year of income if they instead prepare a

statement of net assets and statement of changes in net assets in respect of that year of income;

- a superannuation fund in which the benefits to be paid to each individual member are wholly determined by reference to policies of life assurance need not prepare a statement of financial position and an operating statement (instead they must comply with the requirements of regulation 8.02).

Regulation 8.02 - Accounts and statements that must be prepared

Regulation 8.02 prescribes the circumstances in which accounts and statements (other than a statement of financial position and operating statement) must be prepared in respect of a year of income.

the circumstances are that a superannuation fund in which the benefits to be paid to each individual member are wholly determined by reference to policies of life assurance must prepare the following accounts/statements in respect of a year of income:

- a statement that policies of life assurance which fully determine the benefits to be paid to individual members are in force;
- a statement as to whether those policies have been fully maintained;
- the identities of the insurers;
- the amount of contributions by employers and members;
- where not all of those amounts were premiums then the amount of premiums;
- expenses incurred (other than amounts covered by premiums).

Regulation 8.03 - Audit certificate

Subsection 113 (4) of the Act requires the auditor of a superannuation entity to give to the trustee a certificate relating to the accounts and statements that the trustee is required to prepare. The certificate must be given within the prescribed period after the end of year of income to which the accounts and statements relate.

Regulation 8.03 prescribes that the period is:

- for excluded funds - nine months;
- for public offer entities (other than excluded funds) -four months;
- for all other superannuation entities - six months.

PART 9 - FINANCIAL MANAGEMENT OF FUNDS

BACKGROUND

The regulations to be prescribed in relation to the financial management and solvency of superannuation funds are essentially new regulatory/supervisory functions. The necessity for regulation in these areas has emerged with the introduction of compulsory employer-financed superannuation via the Superannuation Guarantee (Administration) Act 1992. It is the government's objective to ensure the security of the member's entitlement to those benefits attributable to compulsory Superannuation Guarantee (SG) contributions.

The regulations framed under the Occupational Superannuation Standards Regulations were considered inappropriate in a number of respects:

- the imposts on defined benefit funds (DBF) were more onerous than those on non-defined benefit funds;
- the solvency measures for DBFs were prescribed such as to have retrospective effect - limited transitional provision was made for funds unable to satisfy the standards at outset;
- the nature of the solvency test for DBFs - requiring non-conditional guarantee as to the continuous solvency of the fund over a five year future period - was, given the probabilistic nature of superannuation, impossible to provide.

The necessity for financial management and solvency standards has emerged under the new superannuation regulatory regime, the measures should not be excessively prescriptive nor onerous. The objective is:

- to protect the interests of fund members, in the long term, against intentional mismanagement of their retirement savings; and
- to provide a mechanism for early identification of mismanagement (preventative measures) and to initiate corrective actions where mismanagement occurs.

Division 9.1 - Introductory

Regulation 9.01 - Interpretation

Regulation 9.01 defines the expression 'funding and solvency certificate' to mean a certificate required under regulation 9.09.

Division 9.2 - Financial position of funds

Regulation 9.02 - Application

Regulation 9.02 provides that Division 9.2 applies only to superannuation entities other than:

- (a) funds that are part of one of the following schemes:
 - (i) Commonwealth Superannuation Scheme;
 - (ii) Public Sector Superannuation Scheme;
 - (iii) Military Superannuation and Benefits Scheme; and
- (b) funds that are part of an exempt public sector superannuation scheme.

Regulation 9.03 Subsection 130 (1) of the Act etc -obligations of actuaries and auditors

Subregulation (1) provides for the purposes of forming an opinion under paragraph 130(1) (a) of the Act or subregulation 9.31(3) whether the financial position of a defined benefit fund (DBF) 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.

Subregulation (2) provides for the purposes of subregulation (1), the likelihood of the value of assets being inadequate must be based if the person considering the matter is an actuary, on their reasonable expectations and if the person is an auditor, on the reasonable expectation of an actuary on whose advice the auditor has relied on this matter. Subregulations (1) and (2) do not affect the meaning of paragraph 130(1)(a) of the Act.

Subregulation (4) provides for the purposes of paragraph 130(1) (b) of the Act, if an actuary in the course of performing a function for an entity under the Act or the 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 the regulations in relation to the entity.

Subregulation (5) provides for the purposes of paragraph 130(1) (b) of the Act, if an auditor in the course of performing a function under the Act or the regulations for an entity obtains sufficient information to enable the auditor to

assess the financial position of the entity, the auditor is taken to have performed an audit function under the Act or the regulations in relation to the entity.

Regulation 9.04 - Subsection 130(7) of the Act -unsatisfactory financial position

Regulation 9.04 provides 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) if a DBF, 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) if an accumulation fund, either the assets of the fund are inadequate to cover the aggregate benefit accounts of members of the fund or 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) if 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) if 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.

Division 9.3 - Funding and solvency of defined benefit funds

Regulation 9.05 - Application

Regulation 9.05 provides that Division 9.3 applies only to defined benefit funds other than:

- (a) funds that are part of one of the following schemes:
 - (i) Commonwealth Superannuation Scheme;
 - (ii) Public Sector Superannuation Scheme;
 - (iii) 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.

Regulation 9.06 - Interpretation

Regulation 9.06 provides definitions of a number of words and expressions for the purposes of Division 9.3.

Regulation 9.07 - Prescription of standards

Regulation 9.07 provides that 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 operating standards applicable to defined benefit funds to which Division 9.3 applies.

Regulation 9.08 - Funding standard

In respect of each year of income of a DBF to which Division 9.3 applies, an employer-sponsor of the fund must pay a contribution to the fund of no less than the certified minimum contribution certified by an actuary. A fund will be considered to have complied with the contribution standard where the certified minimum contribution is paid not later than 28 days after the date specified as the due date by the actuary or where no date is specified, 28 July following the end of the year of income.

Regulation 9.09 - Funding and solvency certificates -operating standard

Regulation 9.09 provides that a funding and solvency certificate must be obtained in accordance with Division 9.3 from an actuary by the trustee of a defined benefit fund to which Division 9.3 applies.

A copy of the certificate must be provided as soon as practicable to each employer-sponsor who has contributed to the fund.

Regulation 9.10 - Contents of funding and solvency certificates

An actuary must, subject to proposed regulation 9.18 (relating to periods of technical insolvency), in the funding and solvency certificate required under regulation 9.09 in relation to a DBF provide the following details:

- specify the date on which the certificate takes effect;
- make a statement, if required, under subregulation 9.11(4);

- identify any event relating to the fund that, in the opinion of the actuary, should require the certificate to cease to have effect and a new certificate to be obtained if the event occurs during the period when the certificate is in force;
- in accordance with subregulation (2) - specify the expiry date of the certificate;
- certify to the solvency or otherwise of the fund as at the effective date;
- certify the minimum contributions reasonably expected by the actuary to be required to secure the solvency of the fund on the expiry date of the certificate; and
- frequency with which contributions should be paid, if considered appropriate by an actuary.

The expiry date must be a date that is not less than 12 months and not more than 5 years after the effective date of the certificate.

Regulation 9.11 - Effective date of funding and solvency certificates

Subregulation (1) provides that a defined benefit fund's first funding and solvency certificate obtained from an actuary must take effect on:

- (a) in the case of a fund in operation on 30 June 1994, if an actuarial investigation was carried out under paragraph 17(1) (a) of the OSS Regulations on or after 1 July 1991:
 - (i) date of actuarial review; or
 - (ii) 1 July 1994;
- (b) in the case of a fund in operation on 30 June 1994 where subparagraph (a) does not apply, 1 July 1994;
- (c) in any other case - the date on which the fund is established.

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 up to 12 months earlier than the date on which the actuary signs the certificate. In the case of a first funding and solvency certificate which takes effect in accordance with subparagraph (1) (a) (i) the effective date of the certificate may be more than 12 months earlier than the date on which the actuary signs the certificate, but it cannot be signed later than 30 June 1995.

If the effective date of a certificate is earlier than the date on which the actuary signs the certificate, the actuary

must only sign the certificate if the actuary is not aware, and states 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.

Regulation 9.12 - Period of effect of funding and solvency certificates

Regulation 9.12 provides (subject to regulation 9.18) that the contribution and solvency certificate has effect from the date specified in the certificate (the effective date) until the earlier occurrence of the expiry date or one of the following events:

- (a) amounts are released from the fund to the employer-sponsor (s) or member (s);
- (b) another certificate is issued in respect of the fund;
- (c) a notifiable event;
- (d) employer-sponsor fails to pay certified minimum contribution; or
- (e) withdrawal of the certificate by the actuary.

Regulation 9.13 - Effect of notifiable events on funding and solvency certificates

A 'lapsed certificate' in regulation 9.13 means a funding and solvency certificate that, under subregulation 9.13 (2), has ceased to have effect because of the occurrence of a notifiable event.

Under subregulation (2) if a notifiable event, occurs in relation -to a DBF to which Division 9.3 applies the existing certificate ceases to have effect on the date on which the notifiable event occurs and the trustee must obtain a new certificate not later than 3 months after that date.

An actuary providing a new certificate must, after considering the nature of the notifiable event and the consequences for the fund, specify the kind of new certificate required as the most appropriate one of the following kinds of certificate:

- (a) a new certificate with the same contents;
- (b) a new certificate with modifications of the lapsed certificate as specified in the determination;
- (c) a new certificate unrelated to the lapsed certificate and relying on new calculations.

A new certificate issued after the occurrence of a notifiable event must have an effective date that is the date immediately following the date of the notifiable event. The expiry date

of a new certificate may differ from that of the lapsed certificate.

Regulation 9.14 - Further funding and solvency certificates to be obtained

Subregulation (1) provides several definitions of expressions used in this regulation.

Subregulation (2) provides (subject to regulations 9.13 and 9.18 and subregulation (3)) that the trustee of the DBF that has an effective certificate, must obtain a further certificate in relation to the fund for a certificate having a term of 4 years or less, on or before the date on which 75% of the term expires and for a certificate having a term of more than 4 years, not less than 12 months before the end of the term.

If a certificate ceases to have effect as a consequence of paragraphs 9.12 (2) (a), (d) or (e), before the expiry date specified in the certificate and before a further certificate has been obtained the trustee must obtain a further certificate no later than 3 months after the date on which the first mentioned certificate ceases to have effect. The effective date of the new certificate under these circumstances must be the date immediately following the date on which the previous certificate ceased to have effect.

Regulation 9.15 -Minimum benefit index

Regulation 9.15 provides details of how the minimum benefit index in a DBF is calculated and provides formulae and a number of meanings of terms used within the formulae.

Regulation 9.16 - Non-compliance with solvency requirement - technical insolvency

Regulation 9.16 provides that if an actuary of a DBF (other than a technically insolvent fund) discovers that they are unable to certify the solvency of the fund they must, as soon as practicable, declare in writing that the fund is technically insolvent and provide a copy of the declaration to the trustee. A DBF is taken to be technically insolvent on and from the date the declaration is made.

Regulation 9.17 - Technical insolvency - operating standard

If a DBF is technically insolvent the trustee must initiate a program in accordance with Division 9.3 that is designed to return the fund to a position where the actuary would be able to certify as to the solvency of the fund in accordance with regulation 9.10 not later than 5 years after the date on which the technical insolvency commenced or initiate winding-up proceedings in accordance with Division 9.4.

Regulation 9.18 - Technical insolvency program - special funding and solvency certificate

Regulation 9.18 provides that a 'concluding date' in respect of a funding and solvency certificate of a DBF means whichever of the expiry date or the date on which the certificate ceases to have effect occurs first.

If the DBF is technically insolvent, a 'special funding and solvency' certificate must be obtained by the trustee. The first special certificate must be obtained as soon as practicable after the insolvency is declared but not later than 3 months after that date. The effective date of the first special certificate must be a date that is not more than 9 months earlier than the declared date. At least one further special certificate must be obtained in each subsequent 12 month period following the concluding date of the first special certificate until the end of the period of technical insolvency. Each further special certificate must be obtained not later than 3 months after the concluding date of the previous special certificate and the date the new special certificate takes effect must be the date immediately following the concluding date of the previous special certificate.

In the special certificate, the actuary must specify the date on which the certificate takes effect, its expiry date (12 months after the effective date) and identify any event in relation to the fund which would require the certificate to cease and a new certificate to be obtained. The actuary must also certify the minimum contribution rate required to secure the solvency of the fund at the end of the period of technical insolvency and any improvement in the level of the minimum benefit index.

Regulation 9.19 - Technical insolvency program - procedure

Regulation 9.19 sets out the procedure to be followed by a DBF in technical insolvency:

- an employer-sponsor must continue to pay contributions that are not less than the certified minimum contributions as required under regulation 9.08;
- the trustee must secure the services of an actuary who accepts responsibility for the actuarial management of the fund during the period of technical insolvency;
- any benefit payments must be either approved by the actuary individually or be in accordance with a method approved by the actuary in writing.

If for some reason the actuary is no longer willing or able to accept responsibility for the fund, the actuary must if practicable, inform the Commissioner and the trustee of his or

her reasons. On receipt of such information the trustee must secure the services of another actuary and inform the Commissioner of the change in the fund's responsible actuary.

Division 9.4 - Winding-up of defined benefit funds

Regulation 9.20 - Application

Regulation 9.20 provides that Division 9.4 applies only to DBF other than:

- (a) funds that are part of one of the following schemes:
 - (i) Commonwealth Superannuation Scheme;
 - (ii) Public Sector Superannuation Scheme;
 - (iii) 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.

Regulation 9.21 - Interpretation

Regulation 9.21 defines a number of words and expressions used in Division 9.4.

Regulation 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 operating standards for DBF to which Division 9.4 applies.

Regulation 9.23 - Winding-up of defined benefit funds

Subregulation (1) provides that the trustee must initiate winding-up proceedings if a technically insolvent DBF fails to comply with regulations 9.17 and 9.18 or 9.19 or the actuary is unable to certify the solvency of the fund at the end of the period of technical insolvency except where regulation 9.24 applies. Winding-up proceedings initiated under subregulation (1) or otherwise must be in accordance with Division 9.4, with the exception of winding-up schemes initiated by the Commissioner.

Regulation 9.24 - Alternative program approved by the Commissioner

Regulation 9.24 provides that if the responsible actuary recommends in writing to the DBF trustee an alternative to

commencing winding-up proceedings, and the trustee wishes to accept the approach, the trustee must forward a copy of the recommendations to the Commissioner within 21 days requesting the Commissioner's approval to the recommendations. If approval is provided by the Commissioner in writing, the trustee must ensure the recommendations are followed.

Regulation 9.25 - Winding-up proceedings - priorities

Regulation 9.25 provides that certain priorities in respect of the liabilities of the fund must apply on the winding-up. Subregulations (2) to (5) provide details of the priority to be given to certain liabilities of the fund.

Division 9.5 - Actuarial standards relating to defined benefit funds

Regulation 9.26 - Application

Regulation 9.26 provides that Division 9.5 applies to DBF only.

Regulation 9.27 - Interpretation

Regulation 9.27 provides a number of definitions to words and expressions used in Division 9.5.

Regulation 9.28 - Prescription of standards

Regulation 9.28 provides for the purposes of subsection 31 (1) of the Act that the standards contained in regulations 9.29 and 9.30 are prescribed for DBF.

Regulation 9.29 - Actuarial investigation standard

A trustee of a DBF must require an actuarial investigation to be made for a DBF in operation on 30 June 1994 as at a date not later than 3 years after the date the last actuarial investigation was made, or if no investigation was made, the date of establishment, or conversion of the fund. In the case of a fund established after 30 June 1994 an investigation is required as at the date of establishment (or conversion). In all cases, after the first actuarial investigation has been made, further regular investigations must be made at a date not later than 3 years after the last investigation was made.

Regulation 9.30 - Actuarial reporting standard

Regulation 9.30 provides that a trustee of a DBF must obtain an actuarial report in accordance with this regulation in relation to each investigation required under regulation 9.29. The report must be obtained within the 12 month period commencing on the day immediately following the valuation date in relation to the fund. For a private sector fund and fully funded public sector superannuation schemes the report must include the matters specified in regulation 9.31 and for other

public sector superannuation schemes the matters specified in regulation 9.32.

Regulation 9.31 - Contents of actuarial report - private sector funds and fully funded public sector superannuation schemes

Regulation 9.31 provides the details of what the actuarial report must include in relation to private sector funds or fully funded public sector superannuation schemes.

Regulation 9.32 - Contents of actuarial report - public sector superannuation schemes that are not fully funded

Regulation 9.32 provides the details of what an actuarial report must include in relation to a public sector superannuation scheme that is not fully funded.

Regulation 9.33 - Content of actuarial report - newly established or converted funds

Regulation 9.33 provides a number of details on what an actuarial report must contain in relation to a newly established fund or a newly converted fund.

Division 9.6 - Solvency of accumulation funds

Regulation 9.34 - Application

Regulation 9.34 provides that Division 9.6 applies to accumulation funds only.

Regulation 9.35 - Interpretation

Regulation 9.35 provides a number of definitions to words and expressions used in Division 9.6.

Regulation 9.36 - Prescription of standard - accumulation funds.

Regulation 9.36 provides for the purposes of subsection 31(1) of the Act that the standards contained in regulations 9.37 and 9.38 are prescribed for accumulation funds for Division 9.6.

Regulation 9.37 - Accumulation funds solvency standard

A trustee of an accumulation fund which is solvent at the beginning of the year must not (subject to subregulation (2)) add such an amount to the minimum guaranteed benefit of members, in respect of earnings of the fund that would result in the fund being technically insolvent at the end of the year of income.

Subregulation (2) provides that a greater amount can be added to the minimum guaranteed benefits if done in accordance with a program referred to in subregulation 9.38(2).

If the fund is insolvent at the start of the year of income, only amounts that are in accordance with a program referred to in subregulation 9.38 (1) can be added to the minimum guaranteed benefits.

Regulation 9.38 - Technical insolvency of accumulation funds -operating standard

The trustee of a technically insolvent accumulation fund must either initiate a program in accordance with this Division that is designed by an actuary to ensure that the fund is in a solvent position at the end of the period of technical insolvency or initiate winding-up proceedings. The trustee of an accumulation fund may elect to have the fund comply with a program comparable to that explained above.

Regulation 9.39 - Technical insolvency program for accumulation funds - procedure

Regulation 9.39 provides a number of details of the procedure to be followed for accumulation funds which are technically insolvent:

- the trustee must secure the services of an actuary;
- no amount may be added to the minimum guaranteed benefits of members unless approved by the actuary;
- any benefit payments must either be approved by the actuary individually or be in accordance with a method approved by the actuary in writing.

Division 9.7 - Winding-up of accumulation funds

Regulation 9.40 - Application

Regulation 9.40 provides that Division 9.7 applies only to accumulation funds to which Division 9.6 applies.

Regulation 9.41 - Interpretation

Regulation 9.41 defines a number of words and expressions used in Division 9.7.

Regulation 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 operating standards for accumulation funds for Division 9.7.

Regulation 9.43 - Winding-up of accumulation funds

Regulation 9.43 provides that the trustee must initiate winding-up proceedings if a technically insolvent accumulation fund fails to comply with regulations 9.38 or 9.39 or the fund does not attain a position of solvency at the end of the period of technical insolvency except where regulation 9.44 applies. Winding-up proceedings initiated under subregulation (1) or otherwise must be in accordance with Division 9.7, with the exception of winding-up schemes initiated by the Commissioner.

Regulation 9.44 - Alternative program approved by the Commissioner for an accumulation fund

The trustee may seek the approval of the Commissioner for a scheme recommended by the actuary. Where approved the trustee must ensure the scheme is followed.

Regulation 9.45 - Accumulation fund winding-up proceedings priorities

Regulation 9.45 provides that certain priorities in respect of the liabilities of the fund must apply on winding-up. Subregulations (2) to (5) provides details of the priority to be given to certain liabilities of the fund.

PART 10 - ELIGIBLE ROLLOVER BENEFITS

BACKGROUND

This Part contains:-

- (a) regulations for the purposes of sections of Part 24 of the Act; and
- (b) regulations which constitute operating standards for regulated superannuation funds and approved deposit funds which are eligible rollover funds.

These operating standards are additional to other operating standards in the regulations which apply to eligible rollover funds.

The regulations referred to in (a) above deal with matters such as:

- the conditions to being an eligible rollover fund prescribed for the purposes of section 243 of the Act;
- the definition of two consecutive prescribed reports for the purposes of when standard employer sponsored funds must pay eligible rollover benefits to eligible rollover funds pursuant to section 244 of the Act;
- the information to be given by transferor funds to eligible rollover funds, pursuant to section 245 of the Act;
- the information to be given by eligible rollover funds to the Commissioner, pursuant to section 249 of the Act.

The regulations referred to in (b) above contain as operating standards requirements that eligible rollover funds must not fail to satisfy certain requirements without the written approval of the Commissioner and must accept payment of:

- (a) eligible rollover benefits greater than \$500 in relation to a particular person and
- (b) shortfall components in relation to a member.

Division 10.1 - Introductory

Regulation 10.01 - Interpretation

Subregulation (1) provides definitions of a number of words and expressions for the purposes of Part 10.

Subregulation (2) provides that expressions used in Part 10 that are defined for the purposes of Part 24 of the Act have the same meanings respectively as in that Part.

Subregulation (3) provides that expressions used in Part 10 that are defined for the purposes of Part 5 of the regulations have the same meanings respectively as in that Part.

Division 10.2 - Prescribed matters

Regulation 10.02 - Eligible rollover funds - prescribed conditions

Regulation 10.02 prescribes conditions for eligible rollover funds for the purposes of section 243 of the Act:

- in the case of a regulated superannuation fund - the governing rules of the fund must require the fund to be an accumulation fund.
- the governing rules of the fund must require the trustee of the fund not to be, or be an associate of, the trustee of another eligible rollover fund.
- the governing rules of the fund must require the fund not to have or accept amounts other than eligible rollover benefits or payments of shortfall components.
- the governing rules of the fund must require the fund to comply with the conditions that are prescribed for the purposes of section 243 of the Act.

Regulation 10.03 - Reports to members

Regulation 10.03 prescribes matters for the purposes of paragraph 244 (3)(b) of the Act.

Regulation 10.04 - Prescribed information to be given to eligible rollover fund

Regulation 10.04 provides the information that must be given by transferor funds to eligible rollover funds for the purposes of subsection 245(1) of the Act.

Regulation 10.05 - Prescribed information to be given to the Commissioner

Regulation 10.05 provides the information that must be given by eligible rollover funds to the Commissioner for the purposes of subsection 249(2) of the Act.

Division 10.3 - Additional operating standards applicable to eligible rollover funds

Regulation 10.06 - Operating standards - eligible rollover funds

Regulation 10.06 provides that for the purposes of subsections 31(1) and 32 (1) of the Act, it is a standard applicable to

the operation of an eligible rollover fund that the eligible rollover fund must not fail to satisfy certain requirements to be an eligible rollover fund without the approval in writing of the Commissioner and must accept payments of:

- eligible rollover benefits in relation to a particular member that are greater than \$500; and
- shortfall components in relation to the member.

PART 11 - INFORMATION TO BE GIVEN TO THE COMMISSIONER AND RELATED MATTERS

BACKGROUND

To enable the Commissioner to satisfactorily perform his supervisory duties it is necessary to require superannuation entities to provide certain information, on establishment of the entity and during the life of the entity, to the Commissioner. It is also essential that this information is provided in a timely manner.

To this end Part 11 imposes requirements on superannuation entities in respect of the information they must give to the Commissioner and the time within which they must give information.

The following matters are covered in Part 11:

- the time allowed for the provision of an annual return to the Commissioner;
- the information that must be given to the Commissioner on establishment of an entity and the time allowed for giving that information;
- the information that must be given to the Commissioner where there is a change in contact details for a entity and the time allowed for giving that information;
- the requirements for an entity to advise the Commissioner regarding the winding-up of an entity and the time allowed for giving that information.
- the information that the trustee of an eligible rollover fund must give to the Commissioner at regular intervals and in certain circumstances.

Regulation 11.01 - Interpretation

Regulation 11.01 defines the term 'contact person' for the purposes of Part 11.

Regulation 11.02 - Lodgment of annual returns by superannuation entity

Regulation 11.02 prescribes the period after the end of each year of income of a superannuation entity by which a superannuation entity must lodge an 'annual return' with the ISC. The prescribed periods are:

- (a) in the case of a superannuation entity that is an excluded fund - 9 months; and

- (b) in the case of a superannuation entity, other than an excluded fund, that is a public offer entity - 4 months; and
- (c) in the case of any other superannuation entity - 6 months.

Regulation 11.03 - Prescribed period for giving information to the Commissioner (subsection 254(1))

Regulation 11.03 prescribes that a superannuation entity has 7 days from the date of its establishment to provide certain information to the ISC.

Regulation 11.04 - Prescribed information (subsection 254(1)) - regulated superannuation funds

Regulation 11.04 prescribes the information that the trustee of a regulated superannuation fund must give to the Commissioner within 7 days of the fund's establishment.

The information given covers 'general information' (such as the name of the fund and contact details), 'trustee information' (such as the name and address of the trustee/s and where applicable the names of the directors of the trustee board), and 'fund information' (such as the type of fund and the date of establishment of the fund).

Regulation 11.05 - Prescribed information (subsection 254 (1)) - approved deposit funds

Regulation 11.05 prescribes the information that the trustee of an approved deposit fund must give to the Commissioner within 7 days of the fund's establishment.

The information given covers 'general information' (such as the name of the fund and contact details), 'trustee information' (such as the name and address of the trustee), and 'fund information' (such as the type of fund and the date of establishment of the fund).

Regulation 11.06 - Prescribed information (subsection 254 (1)) - PSTs

Regulation 11.06 prescribes the information that the trustee of a PST must give to the Commissioner within 7 days of the PST's establishment.

The information given covers 'general information' (such as the name of the PST and contact details), 'trustee information' (such as the name and address of the trustee), and 'PST information' (such as the date of establishment of the PST).

Regulation 11.07 - Operating standard - disclosure of information to the Commissioner

Regulation 11.07 prescribes:

- that where the contact details of a superannuation entity-change the entity must inform the Commissioner as such within a period of one month.
- that where there is a decision or resolution to wind-up a superannuation entity the Commissioner must be informed as soon as practicable. If the fund is an excluded fund it is acceptable to give the notification after the winding-up. For all other funds the notification must be given before the winding-up commences.

Regulation 11.08 - Eligible Rollover Funds

Regulation 11.08 prescribes the information that the trustee of an eligible rollover fund must give to the Commissioner. The information to be given comprises both information to be given at half-yearly intervals and documents to be given in certain circumstances.

The information to be given at half-yearly intervals enables the Commissioner to keep an up-to-date register of 'lost members' and consists of information relating to moneys paid into or out of the fund (in respect of particular members) during the relevant half-year. The information includes details of the relevant member, details of the eligible rollover fund, details of the fund from which the member's benefits were rolled over and details of the benefits so rolled over.

The documents to be given in certain circumstances comprises amendments of the governing rules where there is a change to the governing rules of a fund and the governing rules where requested by the Commissioner.

PART 12 - PRE-1 JULY 1988 FUNDING CREDITS AND DEBITS

BACKGROUND

Funding credits are tax deductible amounts granted to eligible superannuation funds to prevent the retrospective application of the 15 per cent contributions tax which was introduced on 1 July 1988. Funding credits will be approved for liabilities which accrued prior to 1 July 1988 to be met by contributions made after that date.

A funding credit may occur either as a result of a later payment of contributions that are for service prior to 1 July 1988 and/or, for defined benefit funds, from a shortfall in fund assets needed to meet a liability which accrued prior to 1 July 1988.

In his economic statement of May 1988 the then Treasurer announced significant changes to the tax treatment of superannuation funds, effective from 1 July 1988. One of the changes was the introduction of a 15 per cent tax on deductible contributions made to a fund with a corresponding 15 per cent reduction in the tax on benefits when they emerge from the fund. This had the effect of bringing forward 15 per cent of the tax on superannuation.

To avoid retrospective application of the newly introduced contributions tax, the Treasurer made special provision for funds which had an outstanding liability for superannuation contributions when the tax was introduced.

Regulation 12.01 - Interpretation

Regulation 12.01 provides definitions of a number of words and expressions for the purposes of Part 12.

Regulation 12.02 - Pre-1 July 88 funding amounts

Regulation 12.02 defines 'late payment amount' funding credits for a superannuation fund as any unpaid employer contributions which, under the terms of the governing rules of the fund, were owing as at 30 June 1988. To avoid potential abuse of this tax concession within non arms length arrangements, late payment amounts are not to include any contribution whose payment is at the discretion of the employer-contributor.

A funding credit may occur either as a result of a late payment of contributions that are for service prior to 1 July 1988 and/or, from a shortfall in fund assets needed to meet a liability which accrued prior to 1 July 1988.

Amounts claimed as a late payment amount should not also be claimed as a shortfall in asset amount. This is to prevent double counting.

Regulation 12.03 - Shortfall in assets amount - calculation

Subregulation (1) imposes a cap on the amount of funding credit that a DBF is able to claim. The claimable amount will be the lesser of two amounts derived from two prescribed calculations; one uses the assumptions made by the fund prior to the announcement of the contributions tax, and the other being a control calculation which effectively caps the funding credit amount. The control calculation is to prevent funds that adopt a conservative actuarial basis from receiving unreasonably large concessions.

Subregulation (2) defines, or cross-references to more detailed definitions of, the variables used in the calculations set out in subregulation (1). This is necessary to achieve consistency throughout, and control over, applications from a large number of funds which vary in benefit design and actuarial assumptions. It also provides that three of the variables - 'net market value of fund assets', 'value A of accrued benefits' and 'value B of accrued benefits' are defined in greater detail in the following regulations.

Paragraph (3) (a) provides that any alteration to the governing rules of the fund after 25 May 1988, apart from one which is a prescribed event, should be ignored to ensure that funding credits are only given to genuine pre-1 July 1988 funding liabilities.

Paragraph (3)(b) provides that any accrued asset shortfall amount is ignored if it results from a benefit whose payment to a non arms length member is at the discretion of the employer contributor.

Regulation 12.04 - Estimation of net market value of fund assets

Regulation 12.04 prescribes, for the purpose of determining the shortfall in assets amount under subregulation 12.03(2), a detailed definition for the "net market value of fund assets". This definition is detailed to prevent subjective and unrealistic valuations which may artificially increase the size of the funding credit.

Regulation 12.05 - Value A of accrued benefits

Regulation 12.05 prescribes, for the purposes of calculating the shortfall in assets amount under subregulation 12.03(2), the assumptions that a fund's actuary is to use to determine the accrued liabilities of the fund as at 30 June 1988.

Value A allows the fund to use the assumptions that it used prior to the announcement of the contributions tax, subject to certain restrictions which are mostly to control assumptions which the trustees have the discretion to vary.

Regulation 12.06 - Value B of accrued benefits

Regulation 12.06 prescribes, for the purposes of calculating the shortfall in assets amount under subregulation 12.03 (2), the assumptions that a fund's actuary is to use to determine the accrued liabilities of the fund as at 30 June 1988.

The assumptions used for Value B of accrued benefits are designed to cap the funding credit amount.

Regulation 12.07 - Calculation of value A or B of accrued benefits

Regulation 12.07 prescribes the method that a fund's actuary is to use to calculate Value A and Value B. Essentially, the prescribed method determines the aggregate present values of the pre-1 July 1988 component of each benefit to which a member may become entitled on future exit from the fund, calculated in the case of Value A, on the basis used by the fund's actuary prior to the announcement of the contribution tax and in the case of Value B, on a proportionate basis, using completed fund membership as at 30 June 1988 divided by total fund membership to date of exit.

The method is largely prescribed to enable the efficient approval and auditing of applications. Without a prescribed method it would be difficult and costly to ensure the validity of funding credit amounts.

Regulation 12.08 - Date before which applications must be made

This regulation prescribes for the purposes of paragraph 342(3) (b) of the Act a closing date for funding credit applications of 30 September 1994.

Regulation 12.09 - Application fees

For the purposes of subparagraph 342 (3) (d) (ii) of the Act funds will pay an application fee to cover the cost of processing their return.

The applications will be processed on a self assessment basis supported by a thorough audit program. This is less costly than the alternative of examining all applications in full prior to approval. As auditing costs are an integral part of the self-assessment approach the fee for each application reflects the cost of processing the application plus an amount to cover the auditing costs associated with the class of application.

Paragraph (1) (a) prescribes a flat fee for late payment applications.

Paragraph (1) (b) prescribes a scaled fee for shortfall in assets applications. The fee is on a sliding scale commencing

at \$500 and increasing according to the size of the amount claimed. This is because larger cases will require more specialised actuarial resources. The maximum fee will be \$5,000 which will be attracted by an application which is for an amount greater than \$2,500,000.

Paragraph (1) (c) prevents the double charging of fees where a fund applies for a funding credit for both late payment and a shortfall in asset amount. In this case the fee for the shortfall in assets amount will apply.

Regulation 12.10 - Prescribed events for the purposes of paragraph 342 (4) (a) of the Act

This regulation provides that a prescribed event will occur if benefits accrued prior to 1 July 1988 are reduced as a result of a change in the rules of the fund. This would require the approval of all of the members of the fund or the ISC and is therefore unlikely to be a common occurrence.

If a prescribed event occurs the Commissioner may give to the trustee of the fund a notice in writing granting the trustee of the fund a pre-1 July 1988 funding debit to reduce their funding credit balance appropriately. The formula set out in regulation 12.10 provides that, in testing for the occurrence of a prescribed event, the actuaries of the fund should consider the effect that transfers to and from the fund may have had on the fund's funding credit balance.

Regulation 12.11 - Time and manner in which prescribed events must be notified to the Commissioner

Paragraphs (1) (a) and (b) provide that the trustee must notify the ISC of a prescribed event within three months of its occurrence or by 30 September 1994 if later.

Paragraph (2)(a) requires that notification of a prescribed event should be accompanied by a statement from an actuary certifying the amount by which the event reduces the funding credit.

Paragraph (2)(b) requires that notification of a prescribed event should be accompanied by a statement from the trustee detailing the alteration of the fund's governing rules which gives rise to the prescribed event.

Subregulation (3) provides the Commissioner may extend the time in which notice must be given of the prescribed event.

Regulation 12.12 - Transfer of PJFCs - trustees of transferor funds

The transfer of a funding credit may be necessary following a scheme reconstruction or for other reasons. Funds wishing to transfer a funding credit amount will be required to notify the ISC of the details of the transfer and seek the

Commissioner's approval. This approval process is necessary to prevent the abuse of funding credits and to ensure that transferring members are treated equitably.

Subregulation (1) provides that the trustee of a defined benefit fund who wishes to transfer a funding credit amount to another fund may apply to the Commissioner for approval.

Paragraphs (2) (a) and (b) respectively provide that transfers will only be approved if the criteria set out in regulation 12.15 are satisfied, or, the Commissioner is satisfied that special circumstances exist.

Paragraph (3) (a) provides a control against the commercial trading of funding credit amounts by ensuring that they can not be transferred unless a corresponding pre-1 July 1988 funding liability is also transferred.

Paragraph (3) (b) provides a check to ensure that the fund's funding credit balance is sufficient to accommodate the transfer.

Subregulation (4) provides that the Commissioner must, as soon as practicable, notify the trustee of the transferor and transferee funds of the approval of the application to transfer a funding credit.

Regulation 12.13 - Transfer of PJFCs - trustees of transferee funds

There will be situations where a fund which had a funding liability as at 30 June 1988 has since been reconstituted or merged with another fund. In such cases, it will be necessary for the trustee of the newly constituted fund or the fund which has resulted from the merger to apply for a funding credit to offset the accrued pre-1 July 1988 funding liability of the original fund.

Subregulation. (1) and paragraphs (1) (a) and (b) make provision for such cases.

Paragraph (1) (c) provides that a transferee fund constituted on or after 1 July 1988 may apply for a transfer where that fund has taken on the liabilities, but not all the assets, in respect of pre-1 July 1988 contributions to a transferor fund.

Subregulations (2), (3) and (4) impose the same requirements on the transferee fund, as if the transfer were happening under the provisions of regulation 12.12.

Regulation 12.14 - Transfer of PJFCs - revocation of approval

It may be necessary for the Commissioner to revoke the approval of a transfer if new information becomes available

which results in the transfer failing to meet the prescribed criteria.

Regulation 12.14 provides the Commissioner with the power to revoke the approval of a transfer if new information” provided after a decision does not satisfy the requirements of regulation 12.15 or makes previously existing special circumstances void.

Regulation 12.15 - Transfer of PJFCs - requirements to be satisfied

This regulation sets out the requirements that must be satisfied for a transfer to be approved under paragraphs 12.12 (2) (a) and 12.13 (2) (a).

Paragraph (a) requires actuarial certification that the transfer is ‘reasonable’ with regard to the unfunded liability being transferred from the transferor fund, the amount of unfunded liability which remains with the transferor fund and the amount of benefits that have accrued prior to 1 July 1988. Certification of reasonableness is a common actuarial practice used for dealing with complex matters that are difficult to quantify and which may have much wider implications. In assessing whether a transfer is reasonable within the context of this subparagraph, the Commissioner will be primarily concerned in assuring that the transferring and remaining members in respect of whom the funding credit relates are treated equitably.

Paragraph (b) provides that, for a transfer to be approved, the transferor fund must have, by notice, approval of the funding credit under subsection 342 (2) of the Act.

Paragraph (c) provides that the funding credit balance must be sufficient to accommodate the transfer.

Paragraph (d) provides that the fund to which the funding credits are being transferred must be a complying fund in relation to that year of income in accordance with section 45 of the Act.

Paragraph (e) requires actuarial certification that sufficient information about the transfer is available to enable future calculations to monitor for the occurrence of a prescribed event.

Regulation 12.16 - Notice of reviewable decisions and reasons for those decisions

Subregulation (1) provides that the Commissioner must give notice of reviewable decisions and reasons for the decisions to the interested party as soon as practicable.

Subregulation (2) provides that the notification must contain reason for the Commissioner’s decision.

Paragraphs (3)(a) and (b) respectively provide that the notice must state that the trustee may request reconsideration of the non-approval of an application for a funding credit transfer and that if dissatisfied with the reconsideration may apply to the Administrative Appeals Tribunal.

Subregulation (4) provides that the validity of the Commissioner's decision on a transfer is not affected by any non-compliance with subregulation (3).

Regulation 12.17 - Reconsideration of certain decisions

Subregulation (1) provides that within 21 days from receiving notice of a decision, or such time as the Commissioner allows, the trustee may give notice requesting the Commissioner to reconsider the decision.

Subregulation (2) provides that the trustee must set out the reasons for a request.

Paragraphs (3) (a) and (b) respectively provide that, subject to subregulation (4) described below, the Commissioner must reconsider the decision and may confirm, vary or revoke it.

Subregulation (4) provides that if the Commissioner does not confirm, vary or revoke the decision within 21 days he will be taken to have confirmed the decision.

Subregulation (5) provides that if the Commissioner varies or revokes the decision then he or she must provide the Commissioner of Taxation the details of the decision in writing.

Regulation 12.18 - Review by Tribunal of reconsidered decisions

Regulation 12.18 provides that application may be made to the Administrative Appeals Tribunal for review of the Commissioner's decision to vary or confirm a decision.

Regulation 12.19 - Actuaries to certify in relation to determinations

Regulation 12.19 provides that an actuary who makes a determination under Part 12 must certify that the determination is in accordance with the Part and any professional standards imposed by The Institute of Actuaries of Australia.

Regulation 12.20 - Substituted Accounting periods

Regulation 12.20 provides that superannuation funds who use a 'substituted accounting period' and therefore do not balance their books on 30 June, may elect to use their substituted balancing date for funding credit purposes.

PART 13 - MISCELLANEOUS

BACKGROUND

This Part deals with four kinds of regulations:

- transitional regulations;
- miscellaneous operating standards;
- regulations dealing with various prescribed matters; and
- regulations to be repealed.

The transitional regulations deal with the transition from the OSS Act and Regulations to the Act and proposed regulations in respect of the disclosure and contribution standards.

The miscellaneous operating standards are operating standards which do not fall within any of the other categories of the regulations.

These operating standards deal with matters such as:

- the assignment of superannuation interests in superannuation funds and approved deposit funds;
- charges over minimum benefits, preserved benefits, non-commutable income streams and assets of superannuation funds and approved deposit funds;
- accrued benefits in superannuation funds; and
- lending and investing of moneys by approved deposit funds.

This Part also contains regulations which deal with various prescribed matters including:

- the prescription of age 65 for the sole purpose test in section 62 of the Act;
- the prescription of \$5 million for custodian requirements in section 123 of the Act; and
- a number of other matters for the purpose of subsection 142(7) , subparagraph 284(3) (c) (iv) and subsection 290(7) of the Act.

The regulations also provide for the repeal of the Superannuation Industry (Supervision) (Approval of Trustees) Regulations.

Division 13.1 - Transitional provisions

Subdivision 13.1.1 - Information to be given to members

Regulation 13.01 - Interpretation

Regulation 13.01 provides definitions of a number of words and expressions for the purposes of Subdivision 13.1.1.

Regulation 13.02 - Application

Subdivision 13.1.1 applies to prescribed funds.

Regulation 13.03 - Operating standard - OSS provisions

Regulation 13.03 ensures that there are no 'reporting gaps' as a result of the repeal of the OSS Act occurring prior to the SIS information disclosure regulations (in Part 2) taking effect.

The regulations in Part 2 only cover events (such as a member joining or leaving a fund) that occur after commencement of a fund's 1994/95 year of income, or reporting periods that commence after commencement of a fund's 1994/95 year of income.

While the OSS Regulations would generally cover events or reporting periods commencing prior to that date there is generally a time lag between when an event occurs (for example, a member joining a fund) and when information must be given in respect of such an event. Effectively, therefore, the requirement to give information may be operative in the year following the year in which the event occurred. As a result of the repeal of the OSS Act that requirement would not, however, carry over into a fund's 1994/95 year of income.

Regulation 13.03 ensures that the requirement will carry over into the 1994/95 year of income by making the requirement a requirement under the SIS Regulations, thus ensuring a smooth transition from the OSS regime to the SIS regime and that no 'reporting gaps' arise in the changeover from the OSS requirements to the SIS requirements.

Subdivision 13.1.2 - Contribution standards and benefit accrual

Regulation 13.04 - Transitional - Part 7.

Regulation 13.04 provides a transitional exception to the general requirement that contributions cannot be accepted or benefit accruals granted in respect of the period after the member has reached 65.

This regulation also provides that Part 7 is subject to this regulation.

Regulation 13.05 to 13.10

Regulations 13.05 to 13.10 have been reserved for future regulations to be made in this Part.

Division 13.2 - Various operating standards**Regulation 13.11 - Interpretation**

Regulation 13.11 provides definitions for the words 'charge' and 'recognise'.

Regulation 13.12 - Assignments of superannuation interests

Subregulation 13.12 provides 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, a 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.

Regulation 13.13 - Charges over minimum or preserved benefits or non-commutable income stream

Regulation 13.13 provides 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, a trustee of a fund must not recognise, or in any way encourage or sanction, a charge over, or in relation to, a minimum benefit or preserved benefit of a member or beneficiary or a non-commutable income stream.

Regulation 13.14 provides 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, a fund must not give a charge over, or in relation to, an asset of the fund.

Regulation 13.15 - Restriction on the standards.

Regulation 13.15 provides that the standards stated in regulations 13.12, 13.13 and 13.14 do not apply to an assignment or charge, as the case may be, that is permitted, expressly or by necessary implication, by the Act or these regulations.

Regulation 13.16 - Accrued benefits - restriction on alteration

Regulation 13.16 provides for the purposes of subsections 31(1) of the Act a standard applicable to the operation of regulated superannuation funds, that the member's right or claim to accrued benefits or the amount of the accrued benefits must not be altered adversely to the member except in certain circumstances.

Regulation 13.17 - Loans etc. by trustees of approved deposit funds.

Regulation 13.17 provides for the purposes of subsection 32(1) of the Act a standard applicable to the operation of approved deposit funds, a standard that the trustee of the fund must not lend money to, or invest money in a related body corporate other than an approved bank.

Division 13.3 - Various prescribed matters**Regulation 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.

Regulation 13.19 - Custodians of superannuation entities - specified amounts

For the purposes of subparagraphs 123 (1) (b) (i) and (ii) of the Act, \$5,000,000 is the prescribed amount.

Regulation 13.20 - Advertisement of scheme for winding-up or dissolution of superannuation entity

Regulation 13.20 prescribes, by reference to Schedule 3 and pursuant to subsection 142 (7) of the Act, the form in which the Commissioner must advertise a scheme for the winding-up or dissolution (or both) of a superannuation entity.

Regulation 13.21 - Report of inspector - prescribed agencies

Regulation 13.21 prescribes, for the purposes of subparagraph 284(3) (c) (iv) of the Act, a list of agencies to whom the Commissioner may give a copy of an inspector's report.

Regulation 13.22 - statements made at an examination - manner of authentication

Regulation 13.22 prescribes for the purpose of subsection 290(7) the circumstances (in addition to that in the Act) in which a written record of an examination of a person is prima facie evidence of the statements it records.

Division 13.4 - Repeal**Regulation 13.23 - Superannuation Industry (Supervision) (Approval of Trustees) Regulations**

Regulation 13.23 provides for the repeal of Statutory Rules 1993 No 373.

SCHEDULES

Schedule 1 - Conditions of Release and Cashing restrictions -preserved benefits and restricted non-preserved benefits

Part 1 - Regulated superannuation funds

Part 1 of Schedule 1 provides for the purposes of Part 6 of the regulations the conditions which will precipitate a release of superannuation moneys from regulated superannuation funds. The precipitating event and the cashing restrictions are listed in this Schedule.

Part 2 - Approved deposit funds

Part 2 of Schedule 1 provides for the purposes of Part 6 of the regulations the conditions which will precipitate a release of superannuation moneys from approved deposit funds. The precipitating event and the cashing restrictions are listed in this Schedule.

Schedule 2 - Modifications of the OSS laws with effect from the commencement day in relation to preserved benefits in regulated superannuation funds

Part 1 - Modifications of the Occupational Superannuation Standards Act 1987

Part 1 of Schedule 2 provides that section 7 (Operating Standards for superannuation funds) is amended by inserting after subsection 7(3) a new subsection (4) as follows:

‘Despite any other provision of this Act, superannuation funds must comply with the standards prescribed for the purposes of this section.’

Part 2 - Modifications of the Occupational Superannuation Standards Regulations

Part 2 of Schedule 2 provides that a number of regulations in the Occupational Superannuation Standards Regulations are, for the purposes of the definition of preserved benefits amended or omitted.

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

Schedule 3 provides details in relation to regulation 13.20 in respect of the form in which an advertisement must appear in respect to the winding-up or dissolution of the fund that has been implemented by the Commissioner. The precise wording appears in this Schedule.