



Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5)¹

Statutory Rules 2003 No. 251²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Industry (Supervision) Act 1993*.

Dated 9 October 2003

P. M. JEFFERY
Governor-General

By His Excellency's Command

HELEN COONAN
Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5)*.

2 Commencement

These Regulations commence on 1 July 2004.

3 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 1.03 (1), definition of *protected member*

substitute

protected member has the meaning given by regulation 1.03B.

[2] Subregulation 1.03 (1), after definition of *transferable benefits*

insert

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

[3] Subregulation 1.03 (3)

omit

[4] Subregulation 1.03AA (3)

omit

[5] After regulation 1.03AB

insert

1.03B Meaning of *protected member*

- (1) A *protected member* is a member of a regulated superannuation fund who has a withdrawal benefit, or a benefit of any other type that is payable on leaving the fund otherwise than voluntarily (not including any applicable exit fee), that:
 - (a) is less than \$1 000; and
 - (b) contains, or contained, benefits that are mandated employer-financed benefits (within the meaning of subregulation 5.01 (1)).
- (2) An excluded member is not a protected member.
- (3) If the trustee of a regulated superannuation fund has rolled over or transferred an amount that is the whole or part of a member's withdrawal benefit to another regulated superannuation fund or to an approved deposit fund, RSA or EPSSS in accordance with Division 6.5, the member is not a protected member of the fund from which the amount was rolled over or transferred.
- (4) For subregulation (1), a benefit in a fund is taken to contain or to have contained mandated employer-financed benefits unless:
 - (a) if the benefits arose in relation to contributions made before 1 July 1995 — the trustee of the fund reasonably believes otherwise; or
 - (b) if the benefits arose in relation to contributions made on or after 1 July 1995 — the trustee of the fund knows otherwise.

[6] Subparagraph 6.17 (2) (a) (ii)

omit

Division 6.4

insert

Division 6.4 or 6.5

[7] Subregulation 6.20A (6), except the note

omit

[8] Subregulation 6.20B (5), except the note

omit

[9] Division 6.4, heading

substitute

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

[10] Division 6.5

substitute

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

6.30 Application

- (1) This Division applies:
 - (a) to a regulated superannuation fund, other than a fund mentioned in paragraph (2) (a) or (b); and
 - (b) to an approved deposit fund.
- (2) This Division does not apply:
 - (a) to an unfunded public sector superannuation scheme; and
 - (b) to a self-managed superannuation fund; and
 - (c) in respect of a defined benefit component of a superannuation interest in a defined benefit fund, if the member who holds the interest is an employee of an employer-sponsor of the fund; and
 - (d) to benefits that are being paid as a pension (other than an allocated pension).
- (3) This Division does not apply in respect of a member who holds a superannuation interest in a superannuation fund at a particular time if, in the 6 months before that time, the fund has received an employer contribution for the benefit of the member.

6.31 Definitions for Division 6.5

- (1) Subject to subregulation (2), a *defined benefit component* of a superannuation interest is a component of the interest in which the benefits are defined by reference to 1 or more of the following:
 - (a) the amount of:
 - (i) the member's salary at the date of the termination of the member's employment, the date of the member's retirement, or another date; or
 - (ii) the member's salary averaged over a period; or
 - (iii) salary, or allowance in the nature of salary, payable to another person (for example, a judicial officer, a member of the Commonwealth or a State Parliament, a member of the Legislative Assembly of a Territory);
 - (b) a specified amount;
 - (c) specified conversion factors.
- (2) A component of a superannuation interest is not a defined benefit component if the only benefits defined by reference to any of the amounts or factors mentioned in subregulation (1) are benefits payable on death or disability.

6.32 Operating standards

- (1) For subsection 31 (1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds.
- (2) For subsection 32 (1) of the Act, a requirement set out in this Division is a standard applicable to the operation of approved deposit funds.

6.33 Request for rollover or transfer of withdrawal benefit

- (1) A member of a regulated superannuation fund or an approved deposit fund may, in writing, ask the trustee of the fund to roll over or transfer an amount that is the whole or part of the member's withdrawal benefit.

-
- (2) If the trustee of a fund requires further information in relation to the request, the trustee must, as soon as practicable after receiving the request, ask the member for the information.

6.34 Rollover or transfer of withdrawal benefit

- (1) Subject to regulations 6.35 and 6.38, if a trustee of a regulated superannuation fund or an approved deposit fund receives a request under regulation 6.33, the trustee must roll over or transfer the amount in accordance with the request.
- (2) Before a trustee of a regulated superannuation fund or an approved deposit fund rolls over or transfers the amount, the trustee must be satisfied that the member:
- (a) is aware that the member may ask the trustee for information that the member reasonably requires for the purpose of understanding any benefit entitlements that the member may have, including:
 - (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
 - (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the member may have; and
 - (b) does not require such information.

Note Under section 1017C of the *Corporations Act 2001*, a trustee of a fund must, on request by a member of the fund, give the member the information and documents mentioned in subsections 1017C (3) and (5). See also regulations 7.9.02, 7.9.45, 7.9.46 and 7.9.83 of the *Corporations Regulations 2001*.

- (3) The trustee must roll over or transfer the amount as soon as practicable, and in any case within 90 days, after:
- (a) receiving the request; or
 - (b) if the trustee required further information in relation to the request — receiving the further information; or
 - (c) if there is a suspension under regulation 6.36 or 6.37 — the end of the period of the suspension.

6.35 When a trustee may refuse to roll over or transfer an amount

- (1) A trustee may refuse to roll over or transfer an amount under regulation 6.34 if:
 - (a) the fund or RSA to which the member has requested the amount be rolled over or transferred will not accept the amount; or
 - (b) the amount to be rolled over or transferred is part only of the member's interest in the fund, and the effect of rolling over or transferring the amount would be that the member's interest in the fund from which the amount is to be rolled over or transferred would be less than \$5 000; or
 - (c) the trustee has, under regulation 6.34, rolled over or transferred an amount of the member's interest within 12 months before the request is received.
- (2) If a trustee refuses to roll over or transfer an amount under subregulation (1), the trustee must tell the member of the refusal in writing.

6.36 Suspension or variation of obligation to roll over or transfer amounts by APRA

- (1) This regulation applies if APRA believes, on reasonable grounds, that a rollover or transfer of an amount by the trustee of a regulated superannuation fund or approved deposit fund under regulation 6.34 would have a significant adverse effect on:
 - (a) the financial position of the fund; or
 - (b) the interests of other members of the fund.
- (2) APRA may, by notice in writing to the trustee, suspend or vary an obligation of the trustee under regulation 6.34.
- (3) A suspension or variation under subregulation (2) applies for the period specified by APRA in the notice.

6.37 Suspension or variation of obligation to roll over or transfer amounts by APRA — application by trustee

- (1) This regulation applies if the trustee of a regulated superannuation fund or approved deposit fund applies to APRA for a suspension or variation of the trustee's obligation to roll over or transfer amounts under regulation 6.34.
- (2) The application must contain information about the fund's financial position and the effect of any rollovers or transfers of amounts under regulation 6.34 on:
 - (a) the financial position of the fund; or
 - (b) the interests of other members of the fund.
- (3) APRA may ask the trustee to provide further information in relation to the application within the period specified by APRA.
- (4) If the trustee does not provide the further information within the specified period, APRA may treat the application as if it had been withdrawn by the trustee.
- (5) APRA must consider the application and notify the trustee of its decision in writing, within 30 days after the later of:
 - (a) the day APRA receives the application; and
 - (b) the day APRA receives the further information.
- (6) If APRA believes, on reasonable grounds, that a rollover or transfer of an amount under regulation 6.34 would have a significant adverse effect on:
 - (a) the financial position of the fund; or
 - (b) the interests of other members of the fund;APRA may, by notice in writing to the trustee, suspend or vary an obligation of the trustee under regulation 6.34.
- (7) A suspension or variation under subregulation (6) applies for the period specified by APRA in the notice.

6.38 Trustee's obligations if APRA suspends or varies obligation to roll over or transfer amounts

- (1) If, under regulation 6.36 or 6.37, APRA suspends a trustee's obligation to roll over or transfer amounts under regulation 6.34, the trustee must not roll over or transfer an amount under regulation 6.34 for the period of the suspension.
- (2) If, under regulation 6.36 or 6.37, APRA varies a trustee's obligation to roll over or transfer amounts under regulation 6.34, the trustee may roll over or transfer an amount under regulation 6.34 only in accordance with the variation.

Division 6.6 Additional standards for eligible rollover funds

6.39 Obligations of trustees

The trustee of an eligible rollover fund must comply, as soon as practicable, with a request by a member:

- (a) to pay a benefit of the member in the fund; or
- (b) to pay a benefit in the form of a lump sum.

Notes

1. These Regulations amend Statutory Rules 1994 No. 57, as amended by 1994 Nos. 189 and 432; 1995 Nos. 47, 64, 142, 158, 159, 240, 293, 384 and 430; 1996 Nos. 44, 57, 122 and 344; 1997 Nos. 69, 117, 152, 153, 221, 243, 293, 309, 343 and 415; 1998 Nos. 76, 83, 108, 175, 177, 193, 240 and 312; 1999 Nos. 14, 31, 115, 239, 317 and 356; 2000 Nos. 119, 151, 185, 280 and 281; 2001 Nos. 37, 352 and 353; 2002 Nos. 21, 91, 150, 171, 200 and 353; 2003 Nos. 42, 170, 171 and 196 (disallowed by the Senate on 18 September 2003).
2. Notified in the *Commonwealth of Australia Gazette* on 10 October 2003.