



# **Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2)<sup>1</sup>**

## **Statutory Rules 2004 No. 84<sup>2</sup>**

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I, JOHN SANDERSON, Administrator 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 10 May 2004

JOHN SANDERSON  
Administrator

By His Excellency's Command

HELEN COONAN  
Minister for Revenue and Assistant Treasurer

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**1 Name of Regulations**

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2)*.

**2 Commencement**

These Regulations commence on the date of their notification in the *Gazette*.

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

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

**Schedule 1 Amendments**

(regulation 3)

**[1] Subregulation 5.04 (2)**

*substitute*

(2) If the fund is an accumulation fund, the member's minimum benefits are all of the member's benefits in the fund.

**[2] Regulation 5.08**

*omit*

For the purposes of subsections 31 (1) and 32 (1) of the Act,

*insert*

(1) For subsections 31 (1) and 32 (1) of the Act,

### [3] Regulation 5.08

*insert*

- (2) Subregulation (1) does not apply in relation to an amount of a member's minimum benefits in an accumulation fund if:
  - (a) the amount is attributable only to employer contributions (other than mandated employer contributions); and
  - (b) there is a written agreement between the member of the fund and the member's employer that:
    - (i) was entered into before the commencement of this subparagraph; and
    - (ii) requires the employer to make the employer contributions (other than mandated employer contributions) to the fund for the benefit of the member; and
    - (iii) specifies that if the member's employment with the employer ends at or after the end of a period specified in the agreement, the employee is entitled to all of the amount; and
    - (iv) specifies that if the member's employment with the employer ends before the end of the specified period, the member is entitled only to a proportion of the amount; and
  - (c) the member's employment has ended before the end of the period mentioned in subparagraph (b) (iii).
- (3) In addition to subregulation (1), a trustee of an accumulation fund may allow an amount of a member's minimum benefits in the fund to be cashed as benefits of the member if:
  - (a) the cashing of the benefits is for the purpose of the member's temporary incapacity; and
  - (b) the amount:
    - (i) is not attributable to the member's member-financed benefits; and
    - (ii) is not attributable to the member's mandated employer-financed benefits.

**[4]      Before regulation 7.01**

*insert*

**Division 7.1              General**

**[5]      Regulation 7.01**

*omit each mention of*  
this Part

*insert*  
this Division

**[6]      Regulation 7.02, heading**

*substitute*

**7.02      Application of Division 7.1**

**[7]      Regulation 7.02**

*omit*  
Part  
*insert*  
Division

**[8]      Regulation 7.03**

*omit each mention of*  
Part  
*insert*  
Division

**[9] After regulation 7.05**

*insert*

**Division 7.2 Contributions to be allocated to members — accumulation funds**

**7.06 Application of Division 7.2**

This Division applies only to an accumulation fund.

**7.07 Operating standard**

For subsection 31 (1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds that are accumulation funds.

**7.08 Contributions to be allocated to members**

If a trustee of an accumulation fund receives a contribution in a month, the trustee must allocate the contribution to a member of the fund:

- (a) within 28 days after the end of the month; or
- (b) if it is not reasonably practicable to allocate the contribution to the member of the fund within 28 days after the end of the month — within such longer period as is reasonable in the circumstances.

**[10] After Division 9.2**

*insert*

**Division 9.2A Size of defined benefit funds**

**9.04A Application**

- (1) This Division applies to:
  - (a) a defined benefit fund established after the commencement of this Division; and

- (b) a fund that is converted to a defined benefit fund after the commencement of this Division; and
- (c) a defined benefit fund that wishes to accept a new defined benefit member after the commencement of this Division; and
- (d) a defined benefit fund that wishes to convert a member of the fund to a defined benefit member after the commencement of this Division.

(2) This Division does not apply to a fund that is part of:

- (a) the scheme established by the *Superannuation Act 1976*; or
- (b) the scheme established under the provisions of the *Superannuation Act 1990*; or
- (c) the Military Superannuation and Benefits Scheme; or
- (d) an exempt public sector superannuation scheme.

#### **9.04B Sub-funds to be treated as funds**

A sub-fund within a defined benefit fund is taken, for the purposes of this Division, to be a defined benefit fund if the sub-fund satisfies the following conditions:

- (a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries;
- (b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund.

#### **9.04C Operating standard**

For subsection 31 (1) of the Act, a requirement set out in this Division is a standard applicable to the operation of regulated superannuation funds that are defined benefit funds.

#### **9.04D Size of defined benefit funds**

(1) A defined benefit fund established after the commencement of this Division must have at least 50 defined benefit members.

- (2) A fund that is converted to a defined benefit fund after the commencement of this Division must have at least 50 defined benefit members.
- (3) A defined benefit fund may accept a new defined benefit member after the commencement of this Division only if the fund will have at least 50 defined benefit members after accepting the new defined benefit member.
- (4) A defined benefit fund may convert a member of the fund to a defined benefit member after the commencement of this Division only if the fund will have at least 50 defined benefit members after converting the member to a defined benefit member.

## **Division 9.2B      Provision of defined benefit pensions**

### **9.04E    Definition for Division 9.2B**

In this Division:

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

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

### **9.04F    Application of Division 9.2B**

- (1) This Division applies to:
  - (a) a regulated superannuation fund established after the commencement of this Division, the governing rules of which provide for the payment of a defined benefit pension; and

- (b) a regulated superannuation fund established before the commencement of this Division, the governing rules of which are amended after the commencement of this Division to provide for the payment of a defined benefit pension.
- (2) This Division does not apply to a fund that is part of:
  - (a) the scheme established by the *Superannuation Act 1976*; or
  - (b) the scheme established under the provisions of the *Superannuation Act 1990*; or
  - (c) the Military Superannuation and Benefits Scheme; or
  - (d) an exempt public sector superannuation scheme.

#### **9.04G Sub-funds to be treated as funds**

A sub-fund within a regulated superannuation fund is taken, for the purposes of this Division, to be a regulated superannuation fund if the sub-fund satisfies the following conditions:

- (a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries;
- (b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund.

#### **9.04H Operating standard**

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

#### **9.04I Provision of defined benefit pensions**

- (1) A regulated superannuation fund that has less than 50 members must not provide a defined benefit pension.
- (2) Subregulation (1) has effect despite anything in the governing rules of the fund.

## 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, 196 (disallowed by the Senate on 18 September 2003) and 251; 2004 No. 12.
2. Notified in the *Commonwealth of Australia Gazette* on 12 May 2004.