



Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. 84²

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

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.