





# **Income Tax Assessment Amendment Regulations 2007 (No. 3)<sup>1</sup>**

## **Select Legislative Instrument 2007 No. 103**

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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 *Income Tax Assessment Act 1997*.

Dated 26 April 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

PETER CRAIG DUTTON  
Minister for Revenue and Assistant Treasurer

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**1 Name of Regulations**

These Regulations are the *Income Tax Assessment Amendment Regulations 2007 (No. 3)*.

**2 Commencement**

These Regulations commence on 1 July 2007.

**3 Amendment of *Income Tax Assessment Regulations 1997***

- (1) Schedule 1 amends the *Income Tax Assessment Regulations 1997*, as amended by the *Income Tax Assessment Amendment Regulations 2007 (No. 2)*.
- (2) The amendments made by Schedule 1 apply in relation to a financial year that starts on or after 1 July 2007.

**Schedule 1 Amendments**

(regulation 3)

**[1] Part 2, before Subdivision 292-C**

*insert in Division 292*

**Subdivision 292-B Excess concessional contributions tax**

**292-25.01 Concessional contributions for a financial year**

- (1) For subsection 292-25 (3) of the Act, this regulation sets out conditions for the purpose of allocating an amount in a complying superannuation plan.

*Note* The effect of subsection 292-25 (3) of the Act is that an amount in a complying superannuation plan is covered under that subsection if it is allocated by the superannuation provider in relation to the plan for the year in accordance with conditions specified in the Regulations.

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- (2) Subject to subregulations (3) and (4), an amount that is:
- (a) allocated under Division 7.2 of the SIS Regulations; and
  - (b) an assessable contribution under Subdivision 295-C of the Act;
- is to be treated as having been allocated by the superannuation provider in a way that is covered by subsection 292-25 (3) of the Act.
- (3) Each of the following amounts is to be treated as not having been allocated by the superannuation provider in a way that is covered by subsection 292-25 (3) of the Act, even if subregulation (2) would also apply to the amount:
- (a) an amount mentioned in item 2 of the table in subsection 295-190 (1) of the Act;
  - (b) an amount mentioned in subsection 295-200 (2) of the Act;
  - (c) a contribution made to a constitutionally protected fund.
- (4) An amount that is allocated from a reserve is to be treated as having been allocated by the superannuation provider in a way that is covered by subsection 292-25 (3) of the Act:
- (a) unless:
    - (i) the amount is allocated, in a fair and reasonable manner:
      - (A) to an account for every member of the complying superannuation plan; or
      - (B) if the member is a member of a class of members of the complying superannuation plan, and the amount in the reserve relates only to that class of members — to an account for every member of the class; and
    - (ii) the amount that is allocated for the financial year is less than 5% of the value of the member's interest in the complying superannuation plan at the time of allocation; or
  - (b) unless:
    - (i) the amount is allocated from a reserve used solely for the purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as soon as

they become due, in respect of superannuation income stream benefits that are payable by the fund at that time; and

- (ii) any of the following applies:
    - (A) the amount has been allocated to satisfy a pension liability of the plan paid during the financial year;
    - (B) on the commutation of the income stream, except as a result of the death of the primary beneficiary, the amount is allocated to the recipient of the income stream, to commence another income stream, as soon as practicable;
    - (C) on the commutation of the income stream as a result of the death of the primary beneficiary, the amount:
      - (I) is allocated to a death benefits dependant to discharge liabilities in respect of a superannuation income stream benefit that is payable by the plan as a result of the death; or
      - (II) if sub-sub-subparagraph (I) does not apply — is paid as a superannuation lump sum and as a superannuation death benefit;
- as soon as practicable.

- (5) Subparagraph (4) (a) (ii) does not apply to an amount that:
  - (a) is required to be allocated under subregulation (2); or
  - (b) would be assessable income of the plan if it were made as a contribution.
- (6) If the amount has been allocated from a reserve in lieu of a contribution to the fund (less any allowance for tax) which would have been assessable income of the fund, the amount that is allocated is to be multiplied by 1.176.

*Example*

An employer has an obligation to make a \$1 000 contribution. Instead of the employer making a contribution to the fund, the trustee allocates \$850 to the

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member's account (which is an amount equivalent to the amount that would be credited to the account after tax was paid).

For subregulation (6), the amount of \$850 is to be multiplied by 1.176 to work out the amount that is taken to be allocated.

**[2] Part 2, after Subdivision 292-C**

*insert*

**Subdivision 292-D Modifications for defined benefit interests**

**292-170.01 Definitions**

In this Subdivision:

***employer-sponsor*** has the meaning given by subsection 16 (1) of the SIS Act.

***RSE licensee*** has the same meaning as in the SIS Act.

***sub-fund***, in relation to a defined benefit member of a superannuation fund, means an arrangement in the fund which satisfies the following conditions:

- (a) there are separately identifiable assets and separately identifiable beneficiaries;
- (b) the interest of each beneficiary is determined by reference only to the conditions governing that arrangement;
- (c) all defined benefit members have the same employer-sponsor;
- (d) the employer-sponsor deals with each of the defined benefit members at arm's length.

***superannuation fund*** includes a reference to a sub-fund relating to a defined benefit member or defined benefit members of the fund.

**292-170.02 Notional taxed contributions — contributions for funds with 5 or more defined benefit members**

- (1) For subsection 292-170 (1) of the Act, this regulation explains the meaning of *notional taxed contributions* for a financial year in respect of the defined benefit interest of a member of a superannuation fund:
  - (a) that has 5 or more defined benefit members; or
  - (b) to which subregulation (3), (4), (5) or (6) applies.
- (2) The notional taxed contributions are the contributions that are determined by the trustee to be notional taxed contributions, using the method set out in Schedule 1A.
- (3) If a superannuation fund has 5 or more defined benefit members on 1 July 2007, subregulation (2) is taken to continue to apply in relation to the fund even if the number of defined benefit members of the fund becomes less than 5 at any time on or after 1 July 2007.
- (4) If:
  - (a) a superannuation fund had 5 or more defined benefit members at any time before 1 July 2007; and
  - (b) the fund had fewer than 5 defined benefit members on 1 July 2007; and
  - (c) the fund had been in existence for 5 or more years at 1 July 2007; and
  - (d) the trustee of the fund is an RSE licensee; and
  - (e) the employer-sponsor deals with each of the defined benefit members at arm's length;subregulation (2) is taken to apply in relation to the fund.
- (5) If:
  - (a) a superannuation fund (*fund 1*) satisfies the conditions in subregulation (3) or (4); and
  - (b) the defined benefit members of the fund are transferred to another fund (*fund 2*) on or after 1 July 2007 (whether directly or through a series of transfers between superannuation funds); and
  - (c) the trustee of fund 2 is an RSE licensee; and

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(d) the employer-sponsor deals with each of the defined benefit members of fund 2 at arm's length;

subregulation (2) is taken to apply in relation to fund 2.

(6) If:

(a) a superannuation fund has no defined benefit members on 30 June 2007; and

(b) a person becomes a defined benefit member of the fund after that date;

subregulation (2) is taken not to apply in relation to the fund unless the number of defined benefit members (including the person) is at least 50 and the employer-sponsor of the fund deals with each of the defined benefit members at arm's length.

**292-170.03 Notional taxed contributions — contributions for funds where regulation 292-170.02 does not apply**

(1) For subsection 292-170 (1) of the Act, this regulation explains the meaning of *notional taxed contributions* for a financial year in respect of the defined benefit interest of a member of a superannuation fund if regulation 292-170.02 does not apply.

(2) If the trustee 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 comply with paragraph (a) — within a longer period that is reasonable in the circumstances.

(3) For subregulation (2), the trustee must allocate the contribution having regard to the present and prospective liabilities of the fund to its members.

(4) The notional taxed contributions are the amounts of assessable contributions under Subdivision 295-C of the Act which have been allocated to the member in the financial year.

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- (5) An amount that is allocated from a reserve is to be treated as having been allocated by the superannuation provider in a way that is covered by subsection 292-25 (3) of the Act unless:
- (a) the amount is allocated from a reserve used solely for the purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as soon as they become due, in respect of superannuation income stream benefits that are payable by the fund at that time; and
  - (b) any of the following applies:
    - (i) the amount has been allocated to satisfy a pension liability of the plan paid during the financial year;
    - (ii) on the commutation of the income stream, except as a result of the death of the primary beneficiary, the amount is allocated to the recipient of the income stream, to commence another income stream, as soon as practicable;
    - (iii) on the commutation of the income stream as a result of the death of the primary beneficiary, the amount:
      - (A) is allocated to a death benefits dependant to discharge liabilities in respect of a superannuation income stream benefit that is payable by the plan as a result of the death; or
      - (B) if sub-subparagraph (A) does not apply — is paid as a superannuation lump sum and as a superannuation death benefit;as soon as practicable.
- (6) If the amount has been allocated from a reserve in lieu of a contribution to the fund (less any allowance for tax) which would have been assessable income of the fund, the amount that is allocated is to be multiplied by 1.176.

*Example*

An employer has an obligation to make a \$1 000 contribution. Instead of the employer making a contribution to the fund, the trustee allocates \$850 to the member's account (which is an amount equivalent to the amount that would be credited to the account after tax was paid).

For subregulation (6), the amount of \$850 is to be multiplied by 1.176 to work out the amount that is taken to be allocated.

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**292-170.04 Notional taxed contributions — nil amount**

- (1) For subsection 292-170 (4) of the Act, this regulation sets out circumstances in which the amount of the notional taxed contributions for a financial year in respect of the defined benefit interest of a member of a superannuation fund is nil.
- (2) A circumstance is that:
  - (a) the defined benefit interest is held in a public sector superannuation scheme; and
  - (b) none of the interest is sourced to any extent from:
    - (i) contributions made into a superannuation fund; or
    - (ii) earnings on such contributions;unless the interest is an element taxed in the fund that is attributable to 1 or more roll-over superannuation benefits.
- (3) A circumstance is that:
  - (a) subregulation 292-170.02 (2) applies, or is taken to apply, in relation to the superannuation fund; and
  - (b) the member is a non-accruing member of the fund, in accordance with subregulations (4), (5) and (6), for the whole of the financial year.
- (4) For paragraph (3) (b), a defined benefit member of a superannuation fund is a non-accruing member of the fund for the whole of a financial year if, for the whole of the financial year:
  - (a) the member's membership of the fund consists only of the member receiving pension payments from the superannuation fund; and
  - (b) any of the following applies:
    - (i) the pension payments are always the same amount;
    - (ii) the pension payments are paid from an account that relates only to the member, and no employer contributions are paid to the account for the benefit of the member;
    - (iii) the pension payments increase at rates that are consistent with the rates prescribed under the rules of the fund that applied when the pension commenced to be paid.

- (5) For paragraph (3)(b), a defined benefit member of a superannuation fund is a non-accruing member of the fund for the whole of a financial year if, for the whole of the financial year:
- (a) the member has a benefit entitlement in the fund, but no employer-provided benefits have accrued to the member; and
  - (b) the rules of the fund provide that the benefit:
    - (i) is not to increase in nominal terms; or
    - (ii) is to increase at a rate that reflects general price increases (for example, in accordance with the Consumer Price Index); or
    - (iii) is to increase at a rate reflecting the general level of salary growth or salary growth for relevant fund membership (for example, in accordance with average weekly earnings, or average weekly ordinary time earnings, published by the Australian Statistician); or
    - (iv) is to increase at the rate (if any) at which the salary on which the member's benefit is based increases; or
    - (v) is to increase at a rate reflecting the earning rate of the assets of the fund or the part of the fund to which the member belongs; or
    - (vi) in the case of a deferred benefit — is to increase at a rate that reflects any reduction in the expected period in which pension payments are to be made and any deferral of the date when payments will start; or
    - (vii) is to increase at a regular rate, or a rate worked out using a formula, that an actuary considers will not result in an increase that is more than the greatest of the increases mentioned in subparagraphs (i) to (vi).
- (6) For the purposes of determining whether a defined benefit member is a non-accruing member of the fund for a period, any employer contributions paid to the fund for the period to meet partially, or wholly, unfunded benefit liabilities of the fund are not to be treated as employer contributions for the benefit of the member for the period.

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**292-170.05 Notional taxed contributions — other conditions  
(paragraph 292-170 (6) (d) of the Act)**

- (1) For paragraph 292-170 (6) (d) of the Act, this regulation:
- (a) applies in relation to a superannuation fund in relation to which subregulation 292-170.02 (2) applies, or is taken to apply; and
  - (b) sets out the conditions that are to be satisfied in relation to establishing whether notional taxed contributions for a financial year in respect of a defined benefit interest are equal to the concessional contributions cap for the financial year.

*Note* Subsection 292-170 (6) of the Act explains when a member's notional taxed contributions for the financial year in respect of a defined benefit interest are equal to the concessional contributions cap for the financial year. This includes satisfying conditions specified in the Regulations.

- (2) A condition is that between 5 September 2006 and the time at which the new entrant rate for the defined benefit member is worked out using Schedule 1A:
- (a) the rules of the superannuation fund have not changed to improve the member's benefit; and
  - (b) the member has not moved to a new benefit category.
- (3) A condition is that the new entrant rate for the defined benefit member, as worked out using Schedule 1A:
- (a) has not increased since it was first worked out using Schedule 1A; or
  - (b) has increased since it was first worked out using Schedule 1A only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change to a notional earnings base that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (4) A condition is that the method of calculating superannuation salary:
- (a) has not been changed, in a way that would increase the salary, since 5 September 2006; or

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- (b) has changed since 5 September 2006 only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change to a notional earnings base that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (5) A condition is that:
- (a) the rate of superannuation salary has increased, since 5 September 2006, by:
- (i) more than 50% in 1 year; or
- (ii) more than 75% over 3 years; and
- (b) the employer-sponsor advises the trustee that the increase in salary is on an arm's length basis.
- (6) A condition is that the trustee or employer-sponsor of the superannuation fund has not exercised a discretion to pay a benefit that is greater than the benefit that was assumed for the purpose of calculating the new entrant rate since 5 September 2006.
- (7) For subregulation (5), a trustee must notify the Commissioner, in writing, of an increase in the rate of superannuation salary that exceeds the rate specified in subparagraph (5) (a) (i) or (ii) as soon as practicable after the increase occurs.

**292-170.06 Notional taxed contributions — other conditions (paragraph 292-170 (7) (e) of the Act)**

- (1) For paragraph 292-170 (7) (e) of the Act, this regulation:
- (a) applies in relation to a superannuation fund in relation to which subregulation 292-170.02 (2) applies, or is taken to apply; and
- (b) sets out the conditions that are to be satisfied in relation to establishing whether notional taxed contributions for a financial year in respect of a defined benefit interest are equal to the concessional contributions cap for the financial year.

*Note* Subsection 292-170 (7) of the Act explains when a member's notional taxed contributions for the financial year in respect of a defined benefit interest that has been transferred to another fund are equal to the

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concessional contributions cap for the financial year. This includes satisfying conditions specified in the Regulations.

- (2) A condition is that between 5 September 2006 and the time at which the new entrant rate for the defined benefit member is worked out using Schedule 1A:
  - (a) the rules of the superannuation fund have not changed to improve the member's benefit; and
  - (b) the member has not moved to a new benefit category.
- (3) A condition is that the new entrant rate for the defined benefit member, as worked out using Schedule 1A:
  - (a) has not increased since it was first worked out using Schedule 1A; or
  - (b) has increased since it was first worked out using Schedule 1A only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change to a notional earnings base that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (4) A condition is that the method of calculating superannuation salary:
  - (a) has not been changed, in a way that would increase the salary, since 5 September 2006; or
  - (b) has changed since 5 September 2006 only as a result of a change to the rules of the superannuation fund that increases a benefit as a result of a change to a notional earnings base that is made to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992*.
- (5) A condition is that:
  - (a) the rate of superannuation salary has increased, since 5 September 2006, by:
    - (i) more than 50% in 1 year; or
    - (ii) more than 75% over 3 years; and
  - (b) the employer-sponsor advises the trustee that the increase in salary is on an arm's length basis.

- (6) A condition is that the trustee or employer-sponsor of the superannuation fund has not exercised a discretion to pay a benefit that is greater than the benefit that was assumed for the purpose of calculating the new entrant rate since 5 September 2006.
- (7) For subregulation (5), a trustee must notify the Commissioner, in writing, of an increase in the rate of superannuation salary that exceeds the rate specified in subparagraph (5) (a) (i) or (ii) as soon as practicable after the increase occurs.

**[3] Before Division 301**

*insert*

**Part 3 Superannuation benefits paid  
from complying plans etc**

**[4] Subregulation 301-225.01 (2)**

*substitute*

- (2) A requirement is that the member's benefit must be released under:
  - (a) item 104 or 111 of Part 1 of Schedule 1 to the SIS Regulations; or
  - (b) item 211 of Part 2 of Schedule 1 to the SIS Regulations; or
  - (c) item 111 of Schedule 2 to the RSA Regulations.

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**[5] Part 6, regulation 995-1.01, after definition of Act**

*insert*

***defined benefit member:***

- (a) means a member of a superannuation fund whose entitlements to superannuation benefits (other than benefits payable on death or disability) are defined by reference to 1 or more of the following matters:
- (i) the member's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (ii) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (iii) a specified amount;
  - (iv) specified conversion factors; but
- (b) does not include a member of a superannuation fund whose entitlements to superannuation are defined solely by reference to 1 or more of the following matters:
- (i) the member's disability superannuation benefits;
  - (ii) the member's superannuation death benefits;
  - (iii) payments of amounts mentioned in paragraph 307-10 (a) of the Act (which relates to temporary disability payments).

***new entrant rate*** means the rate of that kind worked out using Schedule 1A.

**[6] Part 6, regulation 995-1.01, definition of *superannuation income stream benefit***

*omit*

995-1.02

*insert*

995-1.03

[7] **Part 6, regulation 995-1.01, after definition of *superannuation income stream benefit***

*insert*

*superannuation salary* means the salary used to determine a person's entitlement to superannuation benefits.

[8] **After Schedule 1**

*insert*

**Schedule 1A Method of working out amount of notional taxed contributions**

(subregulations 292-170.02 (2), 292-170.05 (2) and (3) and 292-170.06 (2) and (3))

**Part 1 Preliminary**

**Meaning of *accruing member***

1.1 An *accruing member* in a financial year is a defined benefit member who is not a non-accruing member for at least some part of the financial year.

**Meaning of *benefit category***

1.2 A *benefit category* is a category of membership of a defined benefit fund as certified by an actuary.

1.3 An actuary must not certify a category of membership to be a benefit category unless the actuary is satisfied that:

- (a) each hypothetical new entrant to the benefit category with the same entry age would accrue retirement benefits on substantially the same basis; and
- (b) if any 2 hypothetical new entrants to the benefit category accrued retirement benefits on a different basis, the new entrant rates for each member calculated under Parts 2 and 3 would be equal.

*Example*

A defined benefit fund provides a benefit accrual of 10% plus twice member contribution rate of final average salary for each year of membership. Members can contribute at either 4% or 6% of salary. Member A contributes at 4% and member B contributes at 6%. An actuary must not certify that A and B are in the same benefit category unless the new entrant rates, as calculated under this Schedule, for members who contribute at 4% and 6%, are equal.

*Note* A member would not be expected to move from one benefit category to another unless 1 of the following relevant external events occurs:

- (a) the member ceases accruing benefits under one section of the fund rules but commences accruing benefits under another section of the fund rules as a result of a change in employment status, eg promotion;
- (b) the member continues accruing benefits under one section of the fund rules and commences accruing benefits under another section of the fund rules as a result of a change in employment status, eg promotion;
- (c) the member ceases accruing benefits under one section of the fund rules and commences or continues accruing benefits under another section of the fund rules as a result of reaching maximum accrual or a change in employment status, eg demotion;
- (d) the exercise of a member option which results in a material change in the level of employer support;
- (e) a change in fund rules which directly affected the member's rate of accrual of retirement benefits in respect of future membership after 1 July 2007.

*Example for paragraph (d)*

If the new entrant rates calculated for members with different member contribution rates are not equal, and, as a result, there are a number of benefit categories corresponding to the different member contribution rates, then a change in contribution rate would result in a move between benefit categories

**Accruing member must not belong to more than one benefit category at the same time unless certified by an actuary**

- 1.4 (1) An accruing member must not belong to more than one benefit category of the same defined benefit fund on the same day unless certified by an actuary.

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- (2) An actuary must not certify that a member belongs to more than one benefit category on the same day unless the actuary is satisfied that the amount of notional taxed contributions to be reported will not be materially different from the amount of notional taxed contributions that would have been reported had the member belonged to only one benefit category on each relevant day.

*Note* An accruing member would be ordinarily expected to belong to only one benefit category at a time. However, there might be circumstances in certain funds where it is materially more practical for the purpose of calculating the total amount of notional taxable contributions to deem that some members belong to more than one benefit category from time to time.

### **Meaning of *fund benefit***

- 1.5 That part of a defined benefit interest which is sourced from contributions made into a superannuation fund or earnings on such contributions is referred to as the *fund benefit*.

*Note* A superannuation benefit may be wholly sourced from contributions made into a superannuation fund or earnings on such contributions. A superannuation benefit paid from a public sector superannuation fund may be wholly or partly sourced, or not sourced to any extent, from contributions made into a superannuation fund or earnings on such contributions. If a superannuation benefit is not sourced to any extent from contributions made into a superannuation fund, or earnings on such contributions, the amount of the fund benefit is zero.

### **Standard method for working out amount of notional taxed contributions in respect of a benefit category for an accruing member of the benefit category if the fund benefit is wholly sourced from an accumulation of contributions made in respect of the member**

- 1.6 If the fund benefit is wholly sourced from an accumulation of concessional contributions made to a superannuation fund in respect of a member or earnings on such contributions, or an accumulation of member contributions or earnings on such contributions, the amount of notional taxed contributions for an accruing member for a financial year is the amount of concessional contributions made to the superannuation fund in respect of the member during the financial year.

**Standard method for working out amount of notional taxed contributions in respect of a benefit category for an accruing member of the benefit category if the fund benefit is not wholly sourced from an accumulation of contributions made in respect of the member**

- 1.7 If section 1.6 does not apply, the standard method for working out the amount of notional taxed contributions for an accruing member of a benefit category of a defined benefit fund for a financial year is:

$$1.2 \times \left( \text{New entrant rate} \times S \times \frac{D}{365} \right) - M$$

where, for the financial year:

*new entrant rate* is the new entrant rate for the benefit category worked out by an actuary under Parts 2 and 3.

*S* is the member's annual superannuation salary relevant to the benefit category on the first day of the financial year on which the member had a defined benefit interest in the scheme.

*D* is the number of days during the financial year that the member was an accruing member of the benefit category.

*M* is the amount of member contributions paid by or on behalf of the member in respect of the member's defined benefit interest in the fund during that part of the financial year that the member was an accruing member of the benefit category, and which are not assessable income of the fund.

**Standard method of working out total amount of notional taxed contributions for an accruing member of a defined benefit fund for a financial year**

- 1.8 The standard method for working out the total amount of notional taxed contributions for an accruing member of a defined benefit fund for a financial year is:

$$T + (1.2 \times (W + X + Y + Z))$$

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where, for the financial year:

*T* is the sum of the amounts of notional taxed contributions for each benefit category that the member belongs to during the financial year calculated under sections 1.6 and 1.7.

*W* is an amount worked out on advice from an actuary under Part 4.

*X* is an amount worked out on advice from an actuary under Part 5.

*Y* is an amount worked out on advice from an actuary under Part 6.

*Z* is an amount worked out on advice from an actuary under Part 7.

## Part 2 New entrant rate

### Method of working out new entrant rate for a benefit category

- 2.1 (1) The *new entrant rate* for a benefit category is the rate calculated under this Part and using the assumptions set out in Part 3.
- (2) The new entrant rate for a benefit category is the rate that represents the long-term cost, expressed as a percentage of superannuation salary, of providing as much of the fund benefit as is payable on a voluntary exit to a hypothetical new entrant to the benefit category.
- (3) The new entrant rate is calculated as the present value of the fund benefit payable on voluntary exit (resignation, early retirement, or retirement) under the rules of the defined benefit fund which are applicable to a new entrant to the benefit category divided by the present value of future superannuation salaries payable to the new entrant.
- (4) To put the matter beyond doubt, the new entrant rate is calculated assuming that the fund benefit is to be wholly sourced from concessional contributions made into the fund at the new entrant rate and earnings on those contributions.

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- (5) The present value of the fund benefit is to be calculated having regard to the rules and practice of the defined benefit fund including benefit structure, caps, member options, reasonably expected discretions and member contributions, and using the economic, decrement and other assumptions set out in Part 3.

**New entrant rate to be based on period of membership needed to reach maximum benefit accrual**

- 2.2 (1) If the rules of the defined benefit fund applicable to the benefit category provide for a maximum benefit accrual, the new entrant rate is to be calculated on the basis that the benefit is funded over the period to when maximum accrual is attained.
- (2) For practical purposes this means that, for the purpose of calculating the present value of future salaries payable to the new entrant, the superannuation salary is to be assumed to be zero at those ages after reaching maximum benefit accrual.

*Example*

If maximum accrual is attained after 20 years of membership, the superannuation salary for a 30-year-old new entrant will be assumed to be zero at age 50 and above for the purpose of calculating the present value of future salaries payable to the new entrant.

**New entrant rate to be rounded down**

- 2.3 The new entrant rate is to be rounded down to the lower 1 percentage point.

*Example*

10.6% would be rounded down to 10%.

**No allowance for administration expenses or income tax on assessable contributions**

- 2.4 The new entrant rate is to be calculated ignoring:
- (a) administration expenses; and
  - (b) income tax on assessable contributions.

*Note* These items are allowed for in the formula in section 1.7 by multiplying by 1.2.

**Certain discretions to be allowed for**

- 2.5 (1) The new entrant rate is to be calculated assuming that certain discretions are always exercised.
- (2) In particular, if a discretion exists in the fund rules to pay a higher benefit on voluntary exit, the actuary is to assume that the accrued retirement benefit is always paid on voluntary exit on or after age 55 whenever the accrued retirement benefit is higher than the standard benefit.
- (3) If the actuary believes that there is a reasonable expectation that a higher benefit than either the standard benefit or the accrued retirement benefit will be paid, then the actuary should assume that the benefit paid on voluntary exit on or after age 55 is always equal to the benefit reasonably expected to be paid.

*Note* In considering whether there is a reasonable expectation that a higher benefit will be paid, it would generally not be appropriate to assume payment unless such an assumption was adopted in the most recent actuarial review.

**Method of working out new entrant rate for a member**

- 2.6 (1) If a member belongs to exactly one benefit category at a particular time, the new entrant rate for the member at that time is the new entrant rate for that benefit category.
- (2) If a member belongs to more than one benefit category at a particular time, the new entrant rate for the member at that time is the sum of the new entrant rates for each benefit category to which the member belongs.

*Note* The new entrant rate for a member is relevant to regulations 292-170.05 and 292-170.06.

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## Part 3 Valuation parameters

### Application of economic, decrement and other parameters

- 3.1 For the purpose of working out the new entrant rate for a benefit category mentioned in Part 1 or 2, the actuary is to apply the economic, decrement and other parameters set out in this Part.

### Discount rate

- 3.2 (1) The discount rate to be used to discount projected future benefits and salaries is 8% per year.
- (2) The discount rate is not to be adjusted for investment expenses or investment-related taxation or for any other reason.

### Fund earning rate and crediting rate

- 3.3 (1) If necessary, the fund earning rate to be assumed is 8% per year.
- (2) If necessary, the assumed crediting rate is to be based on the assumed fund earning rate.

### Rate of future salary or wages growth

- 3.4 (1) The rate of salary or wages growth to be applied is 4.5% per year.
- (2) This rate is to be used:
- (a) to project the value of future salary or wages; and
  - (b) to project benefits that increase in accordance with a general wage index (for example, average weekly earnings).

### Rate of increase in price indices

- 3.5 If a benefit is linked to an increase in a price index (for example, the Consumer Price Index), the rate of increase in the price index to be applied is 2.5% per year.

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### New entrant age

- 3.6 (1) The age of new entrants to be assumed is based on the average age of entry to the fund of the persons who were defined benefit members of the fund at 1 July 2007.
- (2) The table sets out the age of new entrants that is to be assumed.

Average age last birthday at commencement in fund of defined benefit members of the fund at 1 July 2007	New entrant age to be assumed
<30	25
30-34	30
35-39	35
40-44	40
45-49	45
50+	50

- (3) If the actuary believes that there is insufficient information available to calculate the average age of entry, the actuary is to assume that the age of a new entrant is 40.

### Exit rates

- 3.7 (1) The table sets out the rates of voluntary exit from the fund that are to be assumed.

Age Band	Exit rate
<40	0.05
40-44	0.04
45-49	0.04
50-54	0.04
55-59	0.08
60	0.12
61-64	0.10
65	1.00

- (2) The rate of involuntary exit (including by redundancy, death or invalidity) to be assumed is zero.

### Pensions

- 3.8 (1) If the fund benefit is a single life pension, the pension is to be valued using the assumptions set out in this Part.
- (2) If the fund benefit is a reversionary pension, the value of the pension is to be taken as the value of the pension assuming it is a single life pension, increased by 10 %.

### Mortality of pensioners

- 3.9 The table sets out the rates of pensioner mortality ( $qx$ ) that are to be assumed.

Age	$qx$	Age	$qx$
35-49	0.003	70	0.023
50-54	0.004	71	0.026
55	0.005	72	0.029
56	0.006	73	0.032
57	0.006	74	0.035
58	0.007	75	0.039
59	0.008	76	0.043
60	0.008	77	0.048
61	0.009	78	0.053
62	0.010	79	0.059
63	0.012	80	0.064
64	0.013	81	0.070
65	0.014	82	0.077
66	0.016	83	0.085
67	0.017	84	0.095
68	0.019	85	0.106
69	0.021	86	0.116

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Age	qx	Age	qx
87	0.128	94	0.193
88	0.139	95	0.202
89	0.149	96	0.211
90	0.159	97	0.219
91	0.168	98	0.228
92	0.176	99	0.236
93	0.184	100	1.000

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### **Taxed and untaxed benefits**

- 3.10 If the rules of the fund provide for benefits to be paid on either a taxed or an untaxed basis, the actuary is to assume that the employer component of the fund benefit is paid as a taxed benefit.

*Note* This situation applies to a small number of funds where the employer component of the fund benefit is generally met by a last minute contribution to the superannuation fund.

### **Other assumptions to be set by the actuary**

- 3.11 (1) Any other assumptions which may be necessary are to be set by the actuary responsible for calculating the new entrant rate.
- (2) The assumptions are to be based on the assumptions used in the most recent actuarial valuation of the fund, unless the actuary believes, having regard to the expected future experience of the fund, that they are no longer appropriate.
- (3) If the actuary believes that the assumptions used in the most recent actuarial valuation are no longer appropriate, the assumptions should be set on a best estimate basis.

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## **Part 4      Exercise of discretion to pay a benefit greater than the benefit assumed in calculating the new entrant rate**

### **Method of working out $W$ in the formula in section 1.8**

4.1 (1) If a discretion is exercised to pay a benefit upon:

- (a) voluntary exit; or
- (b) redundancy that is not bona fide;

which is greater than the benefit assumed in calculating the new entrant rate, the excess of the actual benefit paid over the amount of the assumed benefit at the time the actual benefit is paid ( $W$ ) forms part of the amount of notional taxed contributions for the member for the financial year in which the benefit is paid.

(2) For the formula in section 1.8:

- (a) in a financial year in which the trustee does not exercise a discretion to pay a benefit to the member which is greater than the assumed benefit,  $W$  equals zero; and
- (b) in any other financial year,  $W$  equals an amount worked out on advice from an actuary that represents the excess of the actual benefit paid to the member over the amount of the assumed benefit at the time the actual benefit is paid.

*Note* If the trustee decides to pay an untaxed benefit rather than a taxed benefit, any excess of the amount of the untaxed benefit over the amount of the taxed benefit that would otherwise have been payable is not to be included in  $W$ .

## **Part 5      Member has changed benefit category**

### **Method of working out $X$ in the formula in section 1.8**

5.1 (1) If a member's accrued retirement benefit increases during a financial year as a result of a change of benefit category or as a result of an exercise of discretion, an additional amount ( $X$ ) may need to be included in the amount of notional taxed contributions for the financial year.

- (2) For the formula in section 1.8:
  - (a) in a financial year in which the member's accrued retirement benefit does not increase as a result of a change in benefit category or as a result of an exercise of discretion,  $X$  equals zero; and
  - (b) in any other financial year,  $X$  equals an amount worked out by an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in benefit category or as a result of the exercise of the discretion.

5.2 The economic and other assumptions to be used are set out in Part 3.

## **Part 6 Governing rules have changed**

### **Method of working out $Y$ in the formula in section 1.8**

- 6.1 (1) If:
- (a) the governing rules of the defined benefit fund are amended in a way that may result in an increase in a member's benefit; and
  - (b) the amendment is made for a reason other than to satisfy a legislative requirement;
- an additional amount ( $Y$ ) may need to be included in the amount of notional taxed contributions for the financial year.
- (2) For the formula in section 1.8:
- (a) in a financial year in which the fund rules are not changed in a way that may result in an increase in a member's benefit,  $Y$  equals zero; and
  - (b) in any other financial year:
    - (i) if the reason for the change in fund rules is to satisfy a legislative requirement,  $Y$  equals zero; and
    - (ii) if the change is for any other reason,  $Y$  equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in fund rules.

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- 6.2 The economic and other assumptions to be used are set out in Part 3.

## **Part 7 Non-arm's length increase in superannuation salary**

### **Method of working out Z in the formula in section 1.8**

- 7.1 (1) If a member's superannuation salary is increased in a non-arm's length way with the primary purpose being to achieve an increase in superannuation benefit, an additional amount (**Z**) may need to be included in the amount of notional taxed contributions for the financial year.
- (2) For the formula in section 1.8:
- (a) in a financial year where the member's superannuation salary is not increased in a non-arm's length way, **Z** equals zero; and
  - (b) in any other financial year, **Z** equals an amount worked out on advice from an actuary that represents the increase in the value of the accrued retirement benefit, if any, that accrued to the member as a result of the change in superannuation salary.
- 7.2 The economic and other assumptions to be used are set out in Part 3.

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### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).