



# Superannuation Legislation Amendment Regulation 2012 (No. )<sup>1</sup>

## Select Legislative Instrument 2012 No.

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Corporations Act 2001*, the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Industry (Supervision) Act 1993*.

Dated 2012

Governor-General

By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**  
Minister for Financial Services and Superannuation

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**EXPOSURE DRAFT ONLY**

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### 1 Name of regulation

This regulation is the *Superannuation Legislation Amendment Regulation 2012* (No. ).

### 2 Commencement

This regulation commences on 1 July 2013.

### 3 Amendment of the *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

### 4 Amendment of *Superannuation Guarantee (Administration) Regulations 1993*

Schedule 2 amends the *Superannuation Guarantee (Administration) Regulations 1993*.

### 5 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 3 amends the *Superannuation Industry (Supervision) Regulations 1994*.

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## Schedule 1 **Amendments of Corporations Regulations 2001**

(section 3)

**[1] After subregulation 7.9.11H (1)**

*insert*

- (1A) For paragraph 1017B (1A) (c) of the Act, the transfer, on the suggestion or recommendation of the trustee, or an associate of the trustee, of a member's interest in a MySuper product to another class of beneficial interest in the fund is specified.

**[2] After regulation 7.9.11L**

*insert*

**7.9.11LA Attribution of accrued default amount to MySuper product—exemption from significant event notice requirements**

For paragraph 1020G (1) (a) of the Act, a person is exempt from section 1017B of the Act in relation to the attribution or transfer of an accrued default amount if the person:

- (a) is an RSE licensee within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
- (b) must comply with a requirement under regulation 9.46 of the *Superannuation Industry (Supervision) Regulations 1994* in relation to the attribution or transfer.

**Schedule 2 Amendments of  
Superannuation Guarantee  
(Administration) Regulations  
1993**

(section 4)

**[1] Subregulation 9A (1)**

*substitute*

- (1) For subsection 32C (2) of the Act, for a MySuper member, the requirement is that insurance be provided by the fund in the event of the death of the member, on the basis of the following criteria:
- (a) for a person of an age in an age range mentioned in an item in Schedule 1—at least the level mentioned in the item;
  - (b) for a person who has not attained the age of 56 years—at a premium of at least \$0.50 per week, or the equivalent;
  - (c) if the contribution is made to a defined benefit superannuation scheme on behalf of a defined benefit member—the scheme provides a death benefit with a future service component that is at least equivalent to the level of insurance in relation to death mentioned in paragraph (a).
- (1A) However, if a MySuper member has elected that insurance in relation to death not be provided, or that insurance in relation to death be provided at a lower level than provided for in subregulation (1), the requirement is that insurance be offered by the fund in the event of the death of the member, on the basis of the following criteria:
- (a) for a person of an age in an age range mentioned in an item in Schedule 1—at least the level mentioned in the item;
  - (b) for a person who has not attained the age of 56 years—at a premium of at least \$0.50 per week, or the equivalent;

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- (c) if the contribution is made to a defined benefit superannuation scheme on behalf of a defined benefit member—the scheme provides a death benefit with a future service component that is at least equivalent to the level of insurance in relation to death mentioned in paragraph (a).
- (1B) For subsection 32C (2) of the Act, for a member other than a MySuper member, the requirement is that insurance be offered by the fund in the event of the death of the member, on the basis of the following criteria:
- (a) for a person of an age in an age range mentioned in an item in Schedule 1—at least the level mentioned in the item;
  - (b) for a person who has not attained the age of 56 years—at a premium of at least \$0.50 per week, or the equivalent;
  - (c) if the contribution is made to a defined benefit superannuation scheme on behalf of a defined benefit member—the scheme provides a death benefit with a future service component that is at least equivalent to the level of insurance in relation to death mentioned in paragraph (a).

**[2] Subregulation 9A (2)**

*omit each mention of*  
subregulation (1)

*insert*  
subregulation (1), (1A) or (1B)

**Schedule 3 Amendments of  
*Superannuation Industry  
(Supervision) Regulations  
1994***

(section 5)

**[1] After regulation 1.03B**

*insert*

**1.03C Meaning of permanent incapacity**

For subsection 10 (1) of the Act, a member of a superannuation fund or an approved deposit fund is taken to be suffering permanent incapacity if a trustee of the fund is reasonably satisfied that the member's ill-health (whether physical or mental) makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**[2] Before regulation 4.08**

*insert*

**4.07C Definition**

In this Division:

*insured benefit*, for a member, means a benefit, other than an accrued amount attributable to the member, that satisfies a condition of release in item 102, 102A, 103 or 109 of Schedule 1.

**4.07D Operating standard—self-insurance**

- (1) This regulation is made for subsection 31 (1) of the Act.

*Note* See paragraph 31 (2) (eb) of the Act.

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- (2) A trustee of a regulated superannuation fund that does not self-insure on 1 July 2013 may, on and after 1 July 2013, provide an insured benefit to members of the fund only if the provision of the benefit is covered by an insurance policy provided by an insurer.
  - (3) A trustee of a regulated superannuation fund that self-insures on 1 July 2013:
    - (a) must, before 1 July 2016, if the governing rules of the fund do not allow the trustee to obtain, from an insurer, an insurance policy that covers the provision of an insured benefit to members of the fund, amend the rules of the fund, or take the rules to be amended, to allow the trustee to do so; and
    - (b) may, on and after 1 July 2016, provide an insured benefit to members of the fund only if the provision of the benefit is covered by the policy.
  - (4) Subregulation (3) does not apply to a trustee of a regulated superannuation fund, if the Commonwealth Government, or the government of a State or Territory:
    - (a) provides an insured benefit to members of the fund; or
    - (b) guarantees the provision of an insured benefit to members of the fund.
  - (5) Subregulation (3) does not apply, in relation to defined benefit members of a fund, if:
    - (a) on or before 1 July 2013, APRA has not imposed, under subsection 29EA (1) of the Act, a condition on the licence of the RSE licensee of a regulated superannuation fund that prohibits self-insurance in relation to defined benefit members; and
    - (b) on 1 July 2013, the fund self-insures in relation to defined benefit members.
  - (6) Despite subregulation (3), a member of a regulated superannuation fund who is mentioned in column 2 of the following table has the entitlement mentioned in column 3 of the table.

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<b>Item</b>	<b>If the member does the following immediately before 1 July 2016 ...</b>	<b>the member is entitled, on and after 1 July 2016, to ...</b>
1	receives an insured benefit	continue to receive the insured benefit
2	lodges a claim for an insured benefit	(a) have the claim determined; and (b) receive an insured benefit, if the trustee so determines
3	is eligible to make a claim for an insured benefit	(a) lodge a claim; and (b) have the claim determined; and (c) receive an insured benefit, if the trustee so determines

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- (7) In this regulation:  
*fund* includes a sub-fund.

#### **4.07E Operating standard—permitted types of insurance**

- (1) For subsection 31 (1) of the Act, the standard stated in subregulations (2), (3) and (4) applies to the operation of regulated superannuation funds.

*Note* See paragraph 31 (2) (ea) of the Act.

- (2) A benefit must not be provided by taking out insurance if the benefit is not consistent with a condition of release in item 102, 102A, 103 or 109 of Schedule 1.
- (3) However, subregulation (2) does not apply to:
- (a) the continued provision of benefits to members who joined a fund before 1 July 2013; or
  - (b) the provision of benefits under an approval granted before 1 July 2013 under subparagraph 62 (1) (b) (v) of the Act.



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- (4) If a trustee is unable to amend the governing rules of a fund, to make the governing rules comply with subregulation (2):
- (a) the rules that do not comply with subregulation (2) are taken to have been omitted from the governing rules; and
  - (b) the rules omitted under paragraph (a) are taken to have been replaced by rules that allow the provision of benefits that are permitted under subregulation (2).

**[3] Subregulation 6.01 (2), definition of *permanent incapacity***

*omit*

**[4] Paragraph 6.29 (1) (c)**

*omit*

fund.

*insert*

fund; or

**[5] After paragraph 6.29 (1) (c)**

*insert*

- (d) the trustee of the fund is required by a prudential standard made under section 34C of the Act, for section 29SAA, 29SAB, 387, 388 or 394 of the Act, to transfer the benefits.

**[6] After regulation 9.45***insert***Part 9A Requirements relating to  
MySuper products****9.46 Notification—accrued default amount attributed to  
MySuper product**

- (1) For subsection 29SAA (3) of the Act, the RSE licensee must, in writing, notify a member mentioned in paragraph 29SAA (3) (a) or 29SAA (3) (b) of the Act of an intended attribution or transfer of the member's accrued default amount at least 90 days before the attribution or transfer.
- (2) The notice must mention the following:
  - (a) the amount that will be attributed or transferred;
  - (b) the name of the MySuper product to which the amount will be attributed or transferred;
  - (c) how the member may obtain a product disclosure statement for the MySuper product;
  - (d) any other information that the member needs to understand the attribution or transfer.
- (3) However, the notice must comply with subregulation (4) if the attribution or transfer would result in any of the following:
  - (a) an increase in a fee or charge that applies to the amount;
  - (b) a reduction in an insured benefit that the member is entitled to receive;
  - (c) an increase in an insurance premium that is attributable to the member;
  - (d) a change in the investment strategy that relates to the amount.
- (4) For subregulation (3), the notice must mention the following:
  - (a) the amount that will be attributed or transferred;

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- (b) the name of the MySuper product to which the amount will be attributed or transferred;
  - (c) how the member can elect, in writing, to opt out of the attribution or transfer;
  - (d) how the member may obtain a product disclosure statement for the MySuper product;
  - (e) any change to a fee or charge that applies to the amount;
  - (f) any change to the member's insured benefits as a result of the attribution or transfer;
  - (g) any change to the investment strategy applicable to the amount as a result of the attribution or transfer;
  - (h) any other information that the member needs to understand the attribution or transfer.
- (5) For paragraph (4) (e), the fee or charge must be stated in dollars.
- (6) However, if ASIC determines that, for a compelling reason based on the nature of the fee or charge, it is not possible to state the fee or charge in dollars, ASIC may specify another way of stating the fee or charge.
- (7) A determination under subregulation (6) must be:
- (a) in writing; and
  - (b) published in the *Gazette*.

**9.47 Opt-out insurance for MySuper members cannot be obtained at reasonable cost**

For subsection 68AA (7) of the Act, the circumstances are that the trustee certifies, in writing, that the trustee is reasonably satisfied the risk that is to be insured cannot be placed with an insurer at a reasonable cost.

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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.comlaw.gov.au](http://www.comlaw.gov.au).

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