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REGULATION AUTHORITY**

**SUPERANNUATION CIRCULAR  
NO. I.C.1**

**MINIMUM BENEFITS STANDARDS**

**DECEMBER 1998**

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## **IMPENDING CHANGES**

The 1998 Budget and the Assistant Treasurer’ s press release of 28 May 1998 foreshadowed changes covering the transfer of the responsibility for the regulation for certain small funds (currently known as excluded superannuation funds) to the Australian Taxation Office and the tightening of existing investment rules covering all superannuation funds.

These impending changes may impact on the information contained in this Circular and trustees should seek current information on the arrangements and how they apply to each entity’ s circumstances.

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# Objective

1. The aim of this Circular is to provide guidance on minimum benefits which trustees of regulated superannuation funds and approved deposit funds must identify and maintain for their members under the *Superannuation Industry (Supervision) Act 1993* (“SIS”).
2. This Circular replaces Superannuation Circular I.C.1 “Minimum Benefits Standards for Regulated Superannuation Funds and Approved Deposit Funds” which was released by the former Insurance and Superannuation Commission in February 1995.

# Introduction

*Regulations 5.01(1), 5.04 and 5.08*

3. Consistent with the retirement income policy objectives of superannuation, SIS requires trustees to identify and maintain minimum benefits. Generally, minimum benefits in superannuation funds arise from member contributions, mandated employer-contributions, amounts rolled over or transferred in as minimum benefits and consequential earnings.
4. These minimum benefits must be maintained in the regulated superannuation fund or approved deposit fund until they are cashed, rolled over or transferred in accordance with the payment standards. Information on the payment standards is provided in Superannuation Circulars I.C.2 entitled “Payment Standards for Regulated Superannuation Funds” and I.C.3 entitled “Payment Standards for Approved Deposit Funds”.
5. While SIS provides particular standards for minimum benefits, trustees must, of course, properly identify, maintain and pay all fund benefits and not just those identified as minimum benefits and discussed in this Circular.

# Protection of minimum benefits

*Section 62(1)(b)(v), Regulations 5.08, 13.16 and Division 5.5*

6. The significance of the minimum benefit provisions is not only to identify and maintain minimum benefits but also to protect these amounts as required under specific SIS provisions. The provisions described in paragraphs 7 to 11 operate in conjunction with the minimum benefit provisions to protect members’ minimum benefits.

7. Regulation 13.16 effectively prohibits any adverse alteration (whether by amendment to the governing rules or by any act carried out or consented to by the trustee) of a member's right or claim to minimum benefits that have accrued. For example a trustee upon converting a defined benefit fund to an accumulation fund must consider whether the conversion will adversely affect members' rights or claim to minimum benefits. This includes both present and future rights.

8. The "member protection" rules protect certain minimum benefits such as benefits in an eligible rollover fund (ERF), a small account in a superannuation fund or amounts where the member is lost. Information on member protection is contained in Superannuation Circular I.B.1 entitled "Protection of Member Benefits".

9. Regulation 5.08 specifically prohibits the payment of temporary incapacity payments from minimum benefits. These benefits may, however, be provided in accordance with the SIS payment standards in the form of a non-commutable income stream if they are paid from benefits other than minimum benefits. Premiums paid towards insurance policies to cover temporary incapacity may be deducted from a member's minimum benefits.

10. In the limited circumstances where welfare and long service leave benefits can still be paid, these must not be provided from minimum benefits. Refer to Circular III.A.4 entitled "The Sole Purpose Test and Ancillary Purposes" for further information.

11. SIS does not protect benefits, including minimum benefits, from the effects of any adverse investment experience.

## **Minimum benefits**

*Regulations 5.01, 5.07, 10.01 and 10.06*

12. Regulation 5.07 provides that all benefits in approved deposit funds are minimum benefits.

13. All benefits in an eligible rollover fund (ERF) must be treated as minimum benefits at all times. An ERF is a regulated superannuation fund or an approved deposit fund where either:

- the trustee has notified APRA, in writing, that the fund wishes to be an ERF and the fund has not ceased to be an ERF; or

- the fund was an ERF immediately before 1 July 1995, and has not ceased to be an ERF.
14. Not all benefits in regulated superannuation funds are minimum benefits. The minimum benefit standard that applies to a particular regulated superannuation fund depends on:
- whether it is a defined benefit fund or an accumulation fund; and
  - the nature or source of the contribution or benefit.
15. Minimum benefits include investment earnings and returns generated by the portion of overall benefits that are minimum benefits, less any costs.
16. As a consequence, a vesting scale can only be applied in respect of non-minimum benefits (eg. voluntary employer contributions which exceed the Superannuation Guarantee minimum).

### **Defined benefit funds**

*Regulations 1.03, 5.04, 5.05 and 5.06*

17. Generally, a superannuation fund (other than a public sector superannuation scheme – refer to paragraph 18) is a defined benefit fund if it is a regulated superannuation fund where:
- there is at least one “defined benefit member” (ie. a member whose final benefit is defined by reference to the member's salary or a specified amount or both); and
  - some or all of the contributions are paid into the fund and accumulated on an aggregated or pooled basis (ie. not allocated in respect of individual members).
18. A public sector superannuation scheme can also be a defined benefit fund if:
- it is a regulated superannuation fund; and
  - it has at least one “defined benefit member”.
19. Regulation 5.04(3) provides that a member’s minimum benefits in a defined benefit fund depend on whether or not the member belongs to a class of employees for which a benefit certificate applies. A benefit certificate is one certified by an actuary in relation to an employer sponsor's obligations under the *Superannuation Guarantee (Administration) Act 1992* (“SGA”).

20. Where a member of a defined benefit fund belongs to a class of employees for which a benefit certificate applies, the member's minimum benefits will be the amount specified in the certificate as being the member's "minimum requisite benefit". For information on how this is calculated refer to Guidance Note 456 issued by the Institute of Actuaries of Australia. Copies may be obtained by contacting the Institute at Level 7, Challis House, 4 Martin Place, Sydney NSW 2000, or telephone 02 9233 3466.

21. Where a member of a defined benefit fund does not belong to a class of employees for which a benefit certificate applies their "minimum benefits" are made up of:

- the member's member-financed benefit (refer to paragraphs 25 to 27); and
- the member's mandated employer-financed benefit (refer to paragraph 28).

22. Note that certain funds that are deemed to be defined benefit funds under the SGA are not defined benefit funds for the purpose of the minimum benefits standards. For further information contact the Australian Taxation Office on 13 10 20 or [www.ato.gov.au](http://www.ato.gov.au).

## **Accumulation funds**

*Regulations 1.03, 5.04(2) and 5.06*

23. Regulation 1.03 defines an accumulation fund as any regulated superannuation fund that is not a defined benefit fund.

24. Minimum benefits in an accumulation fund are made up of member's:

- member-financed benefits (refer to paragraphs 25 to 27); and
- mandated employer-financed benefits (refer to paragraph 28).

## **Types of benefits and contributions**

### **Member-financed benefits**

*Regulation 5.01*

25. Regulation 5.01 provides that member-financed benefits in relation to a member of a regulated superannuation fund at any particular time are the total of:

- member contributions (if any) made to the fund to that time (refer to paragraphs 26 to 27); **and**

- member-financed benefits (if any) paid, rolled over or transferred into the fund in relation to a member to that time (refer to paragraphs 33 to 38); **and**
- investment earnings on those member contributions and member-financed benefits to that time (refer to paragraph 39 to 52); **less**
- costs applicable to those contributions, benefits and earnings to that time (refer to paragraphs 53 to 60).

26. Member contributions are contributions made by or on behalf of a member, other than contributions made by their employer. These include contributions that a member has authorised their employer to deduct from salary or wages and pay to the fund, but do not include “salary sacrifice” or other employer contributions. Nor do they include benefits rolled over or transferred to a fund for the member as discussed in paragraphs 33 to 38.

27. Benefits arising from eligible spouse contributions on behalf of a member are regarded as member contributions and are consequently minimum benefits. Contribution rules relating to eligible spouse contributions are discussed in Superannuation Circular I.A.1. entitled “Contributions and Benefit Accrual Standards for Regulated Superannuation Funds”.

## **Mandated employer-financed benefits**

### *Regulation 5.01*

28. Mandated employer-financed benefits at any particular time are:

- mandated employer contributions (if any) made to the fund in relation to a member to that time (refer to paragraphs 29 to 32); **and**
- mandated employer-financed benefits (if any) paid, rolled over or transferred into the fund in relation to a member to that time (refer to paragraphs 33 to 38); **and**
- investment earnings on those mandated employer contributions and mandated employer-financed benefits to that time (refer to paragraphs 39 to 52); **less**
- costs applicable to those contributions, benefits and earnings to that time (refer to paragraphs 53 to 60).

## **Mandated employer contributions**

### *Regulation 5.01*

29. Regulation 5.01 provides that mandated employer contributions are contributions made by or on behalf of an employer that are equal to the sum of:

- contributions for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (“SGA”); and
- Superannuation Guarantee shortfall components (ie. the amount of a Superannuation Guarantee charge payment received by the fund from the Australian Taxation Office. Further information may be obtained from the Tax Office on 13 10 20 or [www.ato.gov.au](http://www.ato.gov.au)); and
- award-related contributions (ie. contributions which are made by or on behalf of the employer to satisfy an obligation under an industrial award made, or agreement certified, by an industrial authority on or after 1 July 1986). Award-related contributions may also constitute Superannuation Guarantee contributions. If so, they should **not** be counted twice in determining the amount of mandated employer contributions for a member.

### **Presumed mandated employer contributions**

#### *Regulation 5.05*

30. As a general rule, trustees must treat any contributions as if they are mandated employer contributions unless the trustees have satisfactory evidence that they are not such contributions.

31. If within one year of the fund receiving the contributions, the trustee is satisfied that the contributions are not mandated employer contributions, they are no longer treated as mandated employer contributions.

32. If after one year of the fund receiving the contributions, the trustee is satisfied that they are not mandated employer contributions, the trustee has discretion whether or not to continue to treat the contributions as mandated employer contributions (eg. for administrative convenience). Regulation 5.05(4) provides that the trustee has this option, despite anything in the governing rules that might otherwise prevent this.

### **Rolled over or transferred benefits**

#### *Regulations 5.06, 5.06A and 10.06(3)*

33. A trustee of a regulated superannuation fund (other than an ERF which must treat all benefits as minimum benefits) must treat a benefit that is rolled over, or transferred to the fund from another superannuation entity, as a minimum benefit, subject to the exceptions mentioned in paragraphs 36 and 37.

34. The information provided by the rolling over or transferring entity for tax purposes (eg. on rollover forms) does not normally distinguish between minimum benefits and other benefits. Thus the trustee would need additional information in order to be satisfied that the benefits are not minimum benefits.

35. In limited circumstances the amount transferred or rolled over may be greater than the member's current withdrawal benefit. This could occur, for example, where benefits are determined by a vesting scale based on years of service with an employer-sponsor and part of the amount transferred or rolled over is to finance benefits for future service. In these cases, it will be important to identify which benefits are to be treated as minimum benefits which cannot be reduced and which benefits are not.

36. If within one year of a benefit being rolled over or transferred to a superannuation fund the trustee is satisfied that the benefit (or part of it) is not a minimum benefit, the benefit (or part of it) is no longer treated as a minimum benefit.

37. If after one year of the rollover or transfer being received the trustee becomes satisfied that the benefit (or part of it) is not a minimum benefit, the trustee has discretion whether or not to continue to treat the benefit (or part of it) as a minimum benefit. Regulation 5.06(5) provides that the trustee has this option, despite anything in the governing rules that might otherwise prevent this.

38. Regulation 5.06A requires that all benefits rolled over or transferred to a superannuation fund from Retirement Savings Accounts are minimum benefits in the superannuation fund.

## **Investment earnings and return**

*Regulations 5.01, 5.01A and 5.03*

39. "Investment earnings" in relation to a member's benefit is a component of their minimum benefit. Regulation 5.01 provides that "investment earnings" are the total amounts credited less the total amounts debited by way of "investment return" in respect of those benefits up until a particular point in time. Investment earnings

may be positive or negative ie. investment earnings may increase or decrease a member' s minimum benefit.

40. The meaning of “investment return” differs depending on whether an approved deposit fund, accumulation fund or a defined benefit fund is involved, and whether reserves are maintained.

### **Investment return in accumulation funds and approved deposit funds**

#### ***Regulation 5.03(1)***

41. In the case of an accumulation fund or an approved deposit fund in which reserves are not maintained, regulation 5.01 provides that the investment return for a particular period is the proportion of the return to the fund on its investments over that period that is attributable to the member' s benefits.

42. Where a trustee of an accumulation fund or an approved deposit fund maintains reserves, regulation 5.03(1) requires that the investment return credited (or debited) to a member' s benefit in respect of a particular period must have regard to:

- the level of the fund's reserves;
- the return to the fund on its investments; and
- the extent to which the whole fund's actual costs are greater or less than the aggregate of the costs charged directly to members.

43. The requirements of regulation 5.03 relating to the allocation of investment earnings are standards that apply not only to minimum benefits, but to all member benefits.

### **Investment return in defined benefit funds**

#### ***Regulation 5.01***

44. For a defined benefit fund, a benefit certificate establishes the total minimum benefits of the members of a class of employees for which it applies (refer to paragraph 19 and 20).

45. For a member of such a fund who does not belong to a class of employees for which a benefit certificate applies, regulation 5.01 provides that the investment return in relation to a member' s benefit over a particular period is:

- the proportion of the return to the fund on investments over that period that is attributable to those benefits; or

- the return on those benefits over that period that is fair and reasonable to all members of the fund, being a return based either on the actual return earned on the fund's investments, or a commercially available interest rate; or
- the return on those benefits that is derived by increasing the benefits in proportion with the increase in the salary of the member over that period.

46. The first two methods typically apply to accumulation type benefits, even when found in a defined benefit fund. The last method recognises the form of growth of a defined benefit where the growth is determined by reference to increases in a member's salary over time, as well as other factors such as age and contributory service.

47. Where these methods are combined in one fund care must be taken to ensure that the respective methods for distributing earnings and for using and valuing reserves (eg. smoothing reserves) take appropriate account of the different types of benefits.

### **Fair and reasonable investment return**

*Regulations 5.01B, 5.03(2) and Division 6.1*

48. Trustees of all regulated superannuation funds or approved deposit funds must determine the investment return in a way that is fair and reasonable between:

- all the members of the fund; and
- the various kinds of benefits of each member of the fund.

49. In determining the investment return a trustee should ensure universal fairness between the interests of all members and not adopt a course which advantages the interests of any particular member or class of members. For example, if the trustee knows that a member is retiring from the fund shortly before the fund receives substantial income on an investment, and the investment was maintained by the fund while the person was a member, the trustee should take this into account.

50. It is not necessarily appropriate for a trustee to determine a uniform investment return for all members of the fund for it to be considered as fair and reasonable. For example, where members choose particular investment strategies, it is fair and reasonable to determine investment return in relation to member's benefits taking into account the returns obtained from the assets backing the particular investment strategies members have chosen. Member choice of investment strategies is discussed in Superannuation Circular II.D.1. entitled "Investment Strategies and

Beneficiary Investment Choice”.

51. The requirement that investment returns are allocated fairly and reasonably applies not only in respect of minimum benefits, but also to **all** member benefits.

52. Investment returns are also subject to the member protection standards.

## Costs

### Determination of Costs

*Regulations 5.01, 5.01A, 5.02, 5.02B and 5.02C*

53. Regulation 5.02 provides that certain costs may be charged against a member's minimum benefits. These costs may include:

- the direct costs of establishing, operating and terminating the fund; and
- any administrative, insurance and taxation costs relating to the establishment, operation and termination of the fund.

54. For the purposes of this provision, a reference to taxation costs includes contributions tax and superannuation contributions surcharge.

55. When determining costs, trustees must take into account the member protection standards (see Superannuation Circular I.B.1 entitled “Protection of Member Benefits”) and ensure the costs are distributed in a fair and reasonable manner as between:

- all the members of the fund; and
- the various kinds of benefits of each member of the fund.

56. It is a matter for the trustee to determine what is fair and reasonable in distributing the fund's costs. The factors to take into account vary but trustees must ensure that their decisions are fair and reasonable in the circumstances and ensure an actual fair decision, not just a procedural one.

57. For instance, it is not fair and reasonable to charge **all** administration costs against a particular type of contribution (such as a Superannuation Guarantee contribution) and not other types.

58. On the other hand, where a cost relates solely to a particular kind of benefit of a group of members, it will generally be fair and reasonable to charge the cost solely to that kind of benefit of that group. For example, a particular group may have chosen to have more death benefit coverage than other members, in which case it

would be reasonable for those members to bear the insurance costs associated with their extra coverage. It may also be reasonable to charge the costs of collecting the superannuation surcharge against those members to which it applies, provided that the surcharge is deducted in accordance with the requirements of regulation 5.02B.

59. These requirements apply not only in respect of minimum benefits, but also to **all** member benefits.

## **Refund of costs**

### *Regulation 5.02C*

60. Regulation 5.02C provides that a trustee of a regulated superannuation fund may refund costs charged against a member's benefit. In doing so, the trustee must ensure that the total amount to be refunded is distributed in a fair and reasonable manner to all members of the fund against whom the costs were charged.

## **Withdrawing members' benefits**

61. Minimum benefits include investment earnings less costs up until a particular time. Where a member's minimum benefit is cashed, rolled over or transferred from the fund, the relevant point in time is generally the date of payment of the benefit.

62. If difficulties arise, eg. due to the timing of the withdrawal, which preclude an exact calculation of minimum benefits being made it is sufficient to calculate a member's minimum benefit as accurately as is reasonably possible in the circumstances and in the light of the information available.

63. Trustees should take into account all relevant factors to make an estimate of investment earnings and costs, bearing in mind the general requirements to distribute investment earnings and costs in a fair and reasonable manner between fund members.

## **Penalties**

64. Most of the requirements outlined in this Circular are operating standards which must be complied with at all times.

65. Significant penalties may apply to trustees for failing to comply with these standards.