



Superannuation Industry (Supervision) Amendment Regulation 2012 (No.)¹

Select Legislative Instrument 2012 No.

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 *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

DRAFT ONLY

1 Name of regulation

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

2 Commencement

This regulation commences on the day after it is registered.

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

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

Schedule 1 Amendments

(section 3)

[1] Paragraph 6.30 (2) (d)

omit

allocated pension

insert

account-based pension, allocated pension or market linked pension

[2] Subregulation 6.31 (3)

omit each mention of

subregulation 6.34 (5)

insert

subregulation 6.34 (3)

[3] Regulations 6.33 and 6.34

substitute

6.33 Request for rollover or transfer of withdrawal benefit

Request from member

- (1) A member of a regulated superannuation fund or an approved deposit fund may, in writing, ask the trustee of the fund to roll over or transfer an amount that is the whole or part of the member's withdrawal benefit.
- (2) A request under subregulation (1) to roll over or transfer an amount that is the whole of the member's withdrawal benefit may be made:
 - (a) using the form specified in Schedule 2A; or
 - (b) in another manner.
- (3) A request under subregulation (1) to roll over or transfer an amount that is part of the member's withdrawal benefit may include:
 - (a) the information that would be required by the form specified in Schedule 2A; and
 - (b) any other information that is reasonably required by the trustee of the fund to process the request.

Note The form in Schedule 2A deals with information about tax file numbers that is required in accordance with Part 25A of the Act, and approvals under that Part.

It is recommended that applicants use the form of request in Schedule 2A to allow trustees to roll over or transfer whole balance amounts as quickly and efficiently as possible. Making the request in another way may require a trustee to seek further information from the member under regulation 6.33A.

Request through Commissioner of Taxation

- (4) The Commissioner of Taxation, under the scheme established under Part 6A, may give to the trustee of a regulated superannuation fund or an approved deposit fund a request made by a member to roll over or transfer an amount that is the whole of the member's withdrawal benefit.

6.33A Trustee may request information or documentation

General

- (1) If:
 - (a) a trustee of a fund requires further information to roll over or transfer a withdrawal benefit after receiving a request under regulation 6.33; and
 - (b) the request relates to the whole transfer of the member's withdrawal benefit; and
 - (c) the trustee requires further information that is mandatory information in the form in Schedule 2A;the trustee must ask the member for the mandatory information within 10 working days after receiving the request.
- (2) If:
 - (a) a trustee of a fund requires further information to roll over or transfer a withdrawal benefit after receiving a request under regulation 6.33; and
 - (b) the request relates to the partial transfer of the member's withdrawal benefit; and
 - (c) the trustee requires further information that is reasonably required to process the request;the trustee must ask the member for the information within 10 working days after receiving the request.
- (3) If the trustee does not receive the information requested in subregulation (1) or (2) within 10 working days after making the request, the trustee must make reasonable further inquiries of the member to obtain the information.

Note If a request under regulation 6.33 does not include all of the mandatory information in the form in Schedule 2A (whether or not the request is made using the form) the trustee may still roll over or transfer the amount without asking for the rest of the mandatory information.

Transfers to a self managed superannuation fund

- (4) If:

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- (a) a request under regulation 6.33 is made by a member (*member 1*) to roll over or transfer an amount that is the whole or part of the member's withdrawal benefit to a self managed superannuation fund; and
 - (b) the trustee of the transferring superannuation fund is aware that:
 - (i) another request has been made to roll over or transfer an amount to the same self managed superannuation fund; and
 - (ii) the other request was made by another member who is not a relative of member 1, within the meaning of subsection 17A (9) of the Act; and
 - (iii) the other request:
 - (A) has been processed; or
 - (B) is currently with the trustee of the transferring superannuation fund to be processed;

the trustee may require member 1 to provide with the request a copy of documentation, complying with the requirements of certification in the form in Schedule 2A, that shows that member 1 is a member or trustee of the self managed superannuation fund before the trustee processes member 1's request.

Examples of documents showing that a member is a member or trustee of a self managed superannuation fund

- 1 A trust deed.
- 2 The member's contribution statement.
- 3 The annual return of the self managed superannuation fund.

- (5) If a trustee of a fund requires a copy of documentation under subregulation (4):
 - (a) the trustee must, within 10 working days after receiving the request under regulation 6.33, ask the member for a copy of the documentation; and
 - (b) if the trustee has not received a copy of the documentation within 10 working days after making the request, the trustee must make reasonable further inquiries of the member to obtain a copy of the documentation.

6.34 Rollover or transfer of withdrawal benefit

General

- (1) Subject to regulations 6.35 and 6.38, if a trustee of a regulated superannuation fund or an approved deposit fund receives a request under regulation 6.33, the trustee must roll over or transfer the amount in accordance with the request.
- (2) Before the trustee rolls over or transfers an amount, the trustee must be satisfied that the member:
 - (a) is aware that the member may ask the trustee for information that the member reasonably requires for the purpose of understanding any benefit entitlements that the member may have, including:
 - (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
 - (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the member may have; and
 - (b) does not require such information.

Note Under section 1017C of the *Corporations Act 2001*, a trustee of a fund must, on request by a member of the fund, give the member the information and documents mentioned in subsections 1017C (3) and (5). See also regulations 7.9.02, 7.9.45 and 7.9.46 of the *Corporations Regulations 2001*.

- (3) Subject to subregulations (4) and (5), the trustee must roll over or transfer the amount (or the part of the amount requested to be transferred) as soon as practicable, and in any case within 30 days, after:
 - (a) the trustee receives a request under regulation 6.33; or
 - (b) if the trustee requires information or documentation—the time when the trustee receives the information or documentation in accordance with regulation 6.33A; or
 - (c) if there is a suspension or variation under regulation 6.36 or 6.37—the end of the period of the suspension or variation.

Illiquid investment before 1 July 2007

- (4) For an investment that was made before 1 July 2007, a trustee is not required to roll over or transfer the whole amount of a member's interest in the fund (or the part of the amount requested to be transferred) within the 30 day period mentioned in subregulation (3) if:
- (a) any part of the member's interest was an illiquid investment immediately before 1 July 2007; and
 - (b) the trustee informed the member, before 1 July 2008, of the nature of the illiquid investment, the impact of the investment on the portability of the member's interest, and the period within which the investment can be rolled over to another fund.

Illiquid investment on or after 1 July 2007

- (5) If, on or after 1 July 2007, a member makes an investment choice under regulation 4.02, and the investment strategy chosen is an illiquid investment, the trustee is not required to roll over or transfer the whole of the member's withdrawal benefit (or a partial amount requested to be transferred) within the 30 day period mentioned in subregulation (3) if the trustee:
- (a) informs the member of:
 - (i) the effect of this subregulation before the member makes the investment choice; and
 - (ii) the reasons why the investment is illiquid; and
 - (iii) the maximum period in which a transfer must be effected; and
 - (b) obtains written consent that the member understands and accepts that a period longer than the 30 days mentioned in subregulation (3) is required (in respect of the whole or part of the requested transfer amount) because of the illiquid nature of the investment.

Note The trustee may effect a roll over or transfer in more than one transaction to ensure that only the illiquid investment is rolled over or transferred outside the 30 day period.

[4] Subregulation 6.45 (2)

omit

90 days

insert

30 days

[5] After Part 6

insert

Part 6A Portability forms

6A.01 Establishment of scheme

- (1) The purpose of this Part is to establish a scheme under which:
 - (a) a member of a regulated superannuation fund or approved deposit fund may give the Commissioner of Taxation a request to roll over or transfer the member's withdrawal benefit held by the fund; and
 - (b) the Commissioner of Taxation may pass the request mentioned in paragraph (a) to the trustee of the fund.
- (2) This Part is made for section 34A of the Act.
- (3) Words and expressions in this Part have the same meaning as in Part 6.

6A.02 Request to rollover or transfer withdrawal benefit

- (1) A member of a regulated superannuation fund or an approved deposit fund may give the Commissioner of Taxation a request to roll over or transfer the member's withdrawal benefit held by the fund if:
 - (a) Division 6.5 of Part 6 applies to the fund and withdrawal benefit; and
 - (b) the Commissioner of Taxation holds information about the member's interest in the regulated superannuation fund or approved deposit fund; and

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- (c) the request is to roll over or transfer an amount that is the whole of the member's withdrawal benefit.
 - (2) The request to the Commissioner of Taxation must:
 - (a) be in the approved form; and
 - (b) contain the information required by the Commissioner.

6A.03 Consideration of rollover or transfer request

- (1) As soon as practicable after receiving a request under regulation 6A.02:
 - (a) the Commissioner of Taxation must take reasonable steps to:
 - (i) confirm the identity of the member; and
 - (ii) confirm the ownership of the withdrawal benefit; and
 - (b) if the matters in paragraph (a) are confirmed, the Commissioner must give the request to the trustee of the fund that holds the member's withdrawal benefit.
- (2) Despite subregulation (1), the Commissioner may decline to give the request to the trustee if:
 - (a) the member fails to give the Commissioner his or her tax file number; or
 - (b) the request cannot be received electronically by the trustee; or
 - (c) the Commissioner is not satisfied that it is reasonably practicable to give the request to the trustee.

[6] **After Part 13**

insert

Part 14 Transitional matters

14.1 Amendments made by *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 1)*

- (1) The amendments made by items [2], [3] and [5] of Schedule 1 to the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 1)* apply in relation to a request to roll over or transfer a withdrawal benefit in a regulated superannuation fund or an approved deposit fund made on or after the commencement of this regulation.
- (2) The amendment made by item [4] of Schedule 1 to the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 1)* applies in relation to an application that is accepted by a trustee under subregulation 6.45 (1) on or after the commencement of this regulation.
- (3) The amendment made by item [8] of Schedule 1 to the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 1)* applies in relation to a superannuation interest that becomes subject to a payment split on or after the commencement of this regulation.

[7] **Schedule 2A, heading**

**Schedule 2A Request to transfer whole
balance of
superannuation benefits
between funds form**

(regulation 6.33)

[8] **Further amendments**

The following provisions are amended by omitting ‘90 days’ and inserting ‘30 days’:

- subparagraph 7A.03J (2) (a) (i)
- paragraphs 7A.03J (2) (b) and (c)
- paragraph 7A.03K (2) (a)
- subparagraph 7A.12 (4) (a) (i)
- paragraphs 7A.12 (4) (b) and (c)
- paragraph 7A.13 (7) (a)
- paragraph 7A.16 (3) (a).

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.