



Corporations Amendment Regulations 2001 (No.)¹

[Product disclosure]

Statutory Rules 2001 No. ²

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 2001

Governor-General

By His Excellency's Command

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

DRAFT ONLY

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2001* (No.).

2 Commencement

These Regulations commence on ^Date^.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 7.6.01

substitute

7.6.01 Need for Australian financial services licence

- (1) For paragraph 911A (2) (k) of the Act, the provision of the following services is covered by an exemption from the requirement to hold an Australian financial services licence:
- (a) dealing in a financial product by a person in the capacity of the trustee of a superannuation entity (other than the trustee of a public offer entity within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
 - (b) dealing in a financial product by a person in the capacity of the trustee of a public offer entity within the meaning of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) that is a pooled superannuation trust within the meaning of that Act; and

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- (ii) the funds of which are not used for investment of the assets of a self managed superannuation fund within the meaning of that Act; and
 - (iii) the funds of which are not used for investment of the assets of a regulated superannuation fund within the meaning of the Act that has net assets of less than \$10 000 000;
- (c) a financial service provided by a person (*person 1*) in the following circumstances:
- (i) the service consists only of referring a person (*person 2*) to a financial services licensee, a an authorised representative of a financial services licensee or a member of a declared professional body;
 - (ii) the referral is carried out under an arrangement with the financial services licensee, authorised representative or member;
 - (iii) the arrangement requires that, before any financial products, or financial products in a class of financial products, are recommended, issued or sold to person 2, the financial services licensee, authorised representative or member will provide person 2 with personal advice in relation to the product or class;
- (d) a financial service provided in the following circumstances:
- (i) a person (*person 1*) is a person that is not in the jurisdiction;
 - (ii) person 1 arranges, on behalf of another person (*person 2*), for a holder of an Australian financial services licence to deal in a financial product;
 - (iii) person 1 believes on reasonable grounds that person 2 is not in the jurisdiction;

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- (e) a financial service provided in the following circumstances:
- (i) a person (*person 1*) is a person that is not in the jurisdiction;
 - (ii) person 1 believes on reasonable grounds that another person (*person 2*) is not in the jurisdiction;
 - (iii) person 1 deals on behalf of person 2 in a financial product that cannot be traded on a licensed market; and
 - (iv) person 1 believes on reasonable grounds that each person who is a party to the dealing or any transaction to which the dealing relates is a person that is not in the jurisdiction.
- (2) Paragraph (1)(c) is not intended to affect the determination of whether the provision of a service that is not described by that paragraph is, or is not, the provision of a financial service.
- (3) For paragraph 911A (5) (a) of the Act, the exemptions from the requirement to hold an Australian financial services licence provided for in paragraphs 911A (2) (ea), (eb) and (ec) of the Act apply subject to the condition that the person providing financial product advice must, when providing the advice:
- (a) provide a statement to the effect that the financial product advice has been prepared without taking into account the particular circumstances of an individual; and
 - (b) provide a statement of any of the following matters, to the extent to which they would reasonably be expected to influence, or be capable of influencing, the person in the provision of financial product advice:
 - (i) all remuneration, commission and other benefits that the person is to receive for providing financial product advice;

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- (ii) any pecuniary or other interest that the person, or an associate of the person, has in relation to the financial product advice;
 - (iii) any association or relationship that exists between the person, or an associate of the person, and an issuer of financial products.

[2] **Part 7.9**
substitute

Part 7.9 **Financial product disclosure and other provisions relating to issue and sale of financial products**

Division 1 **Preliminary**

7.9.01 Interpretation

(1) In this Part:

amount includes a nil amount.

building society has the same meaning as in section 16 of the RSA Act.

capital guaranteed, for a policy, means that the contributions and accumulated earnings may not be reduced by a negative investment return or a reduction in the value of an asset in which the policy is invested.

capital guaranteed fund means a public offer superannuation fund, or a sub-fund of a public offer superannuation fund, that has the following characteristics:

- (a) its investments comprise 1 or more of the following only:
 - (i) deposits with an ADI;
 - (ii) deposits with a building society;
 - (iii) deposits with a credit union;

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- (iv) investments in a capital guaranteed policy;
 - (b) the contributions and accumulated earnings of its members cannot be reduced by negative investment returns (within the meaning of subregulation 5.01 (1) of the SIS Regulations) or by any reduction in the value of its assets.

capital guaranteed member means a member whose interest in a public offer superannuation fund is fully invested in a capital guaranteed fund.

charge:

- (a) includes a charge made by a trustee, service provider or other person; and
- (b) does not include a government charge, tax or duty.

contact details, in relation to a superannuation entity, means:

- (a) the name of the superannuation entity and, if relevant, of the sub-plan; and
- (b) a contact address for the superannuation entity; and
- (c) a contact person and telephone number for the contact person.

contact person, in relation to a superannuation entity, means a named individual, or a person holding a designated office or position, who is available to receive and deal with inquiries or complaints by members or unit-holders (as the case may be).

contribution includes a benefit that is rolled over or transferred to a fund.

contribution charge means a charge that:

- (a) is not a death and disability insurance charge; and
- (b) is made:
 - (i) against contributions made in respect of a member; or
 - (ii) when the member joins the fund, against:
 - (A) the member's benefits in a fund; or
 - (B) the member, or another person on the member's behalf.

credit union has the same meaning as in section 16 of the RSA Act.

death and disability insurance charge means a charge that:

- (a) is made against:
 - (i) contributions made in respect of a member; or
 - (ii) a member's benefits in a fund; or
 - (iii) the investment earnings of a fund; or
 - (iv) the assets of a fund; or
 - (v) a member or another person on the member's behalf; and
- (b) is used by the trustee solely to pay:
 - (i) an insurance premium, including stamp duty on the premium, to an insurer; or
 - (ii) a charge by the trustee; for insurance against:
 - (iii) the trustee's liability to provide a benefit payable by the trustee:
 - (A) for the member on or after the death of the member; or
 - (B) to the member when the member stops work because of illness; or
 - (iv) either:
 - (A) the death of the member; or
 - (B) the member's inability to work because of illness.

direct account charge means a charge that:

- (a) is made against a member's benefits in a fund; and
- (b) is not a contribution charge, death and disability insurance charge or exit charge.

earning rate means the investment return on the assets of a fund after payment of transaction costs, government charges, taxes and duties and charges relating to the investment of fund assets.

exit charge means a charge that:

- (a) is made against:
 - (i) a member's benefits in a fund; or
 - (ii) a member or another person on the member's behalf; and
- (b) is only made when a payment:
 - (i) is made to the member; or
 - (ii) is transferred to an RSA, a deferred annuity, an annuity or another fund.

fund information means information:

- (a) relating to the management, financial condition and investment performance of the entity and/or of any relevant sub-plan (within the meaning of section 1017C of the Act; and
- (b) required to be given under Subdivision 4.5.

fund reporting period means a reporting period for fund information under Subdivision 4.5.

investment management charge means a charge that:

- (a) is made against the assets or investment earnings of a fund because the fund's expenses exceed direct account charges; and
- (b) is not a transaction cost, direct account charge, contribution charge, death and disability insurance charge or exit charge.

managed investment scheme means a managed investment scheme mentioned in subparagraph 764A (1) (l) (i) of the Act.

member information means information:

- (a) to which paragraph 1017D (5) (g) of the Act applies; and
- (b) required to be given under Subdivision 4.3.

member reporting period means a reporting period for member information under Subdivision 4.3.

ongoing management charge means a charge that:

- (a) is made against:
 - (i) a member's benefits in a fund; or
 - (ii) the assets or investment earnings of the fund; or
 - (iii) a member or another person on the member's behalf; and
- (b) is not:
 - (i) a contribution charge, death and disability insurance charge, exit charge or switching charge; or
 - (ii) a charge that:
 - (A) is made for a service requested by the member that the member could not reasonably expect to receive unless the member asked for it and paid a reasonable charge; and
 - (B) is reasonable; and
- (c) is worked out in accordance with Schedule 10.

Note Also see subregulation (4).

policy has the same meaning as in section 16 of the RSA Act.

prescribed earning rate, in relation to a fixed-rate option offered by a capital guaranteed fund for a period, means the earning rate declared, in advance, by the fund.

publication date, for a Product Disclosure Statement, means the date required under section 1013G of the Act.

remuneration, for an authorised representative, means a payment that:

- (a) is made to the authorised representative because a superannuation interest is issued to a member; and
- (b) is not made under an agreement by which the member, or another person on the member's

behalf, has retained the authorised representative on a fee-for-service basis.

Note Also see subregulation (5).

RSA Act means the *Retirement Savings Accounts Act 1997*.

RSA Regulations means the *Retirement Savings Accounts Regulations 1997*.

service provider means:

- (a) a person who provides the trustee of a superannuation entity, for the fund or an underlying investment, with services relating to management, administration or investment management, including any of the following areas:
 - (i) management;
 - (ii) administration;
 - (iii) audit;
 - (iv) actuarial matters;
 - (v) accountancy;
 - (vi) custodianship;
 - (vii) investment management;
 - (viii) investment advice;
 - (ix) law;
 - (x) insurance;
 - (xi) insurance broking; or
- (b) a collective investment trustee or manager.

significant benefit means a financial benefit about which a trustee reasonably believes a member would reasonably expect to be told.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994*.

sub-fund, in relation to a capital guaranteed fund, means a segment of a public offer superannuation fund that has the following characteristics:

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- (a) the sub-fund has separately identifiable assets and separately identifiable beneficiaries;
 - (b) the interest of each beneficiary of the sub-fund is determined by reference only to the conditions governing that sub-fund;
 - (c) there is no transfer of assets, benefits or money between the sub-fund and another sub-fund without a transfer of a corresponding beneficial interest;
 - (d) the insurance and administration costs of the sub-fund are attributable only to that sub-fund.

sub-plan, in relation to a regulated superannuation fund, means a segment of the fund comprising a member or members of the fund, being a sub-plan that the trustee determines should be made.

switching charge means a charge that:

- (a) is made against:
 - (i) a member's benefits in a fund; or
 - (ii) the member or another person on the member's behalf; and
- (b) is made for the transfer of all or part of the member's benefits in the fund from 1 investment strategy to another.

transaction cost means:

- (a) brokerage paid because of an investment transaction; or
- (b) a cost arising from maintenance of a property investment; or
- (c) stamp duty on an investment transaction.

underlying investment means an investment, including an investment in a managed investment scheme, that:

- (a) is made directly by a fund; and
- (b) is not made through an interposed trust or company.

unfunded defined benefits fund means a defined benefits fund under which all or some of the amounts that will be required for the payment of a benefit are

not paid into the fund until the member concerned becomes entitled to receive the benefit.

- (2) In this Part, where the context allows, a reference to a member is taken to mean:
- (a) in relation to a superannuation entity — a person who:
 - (i) is a member of the entity; or
 - (ii) receives a pension from the entity; or
 - (iii) has deferred his or her entitlement to receive a benefit from the entity; and
 - (b) in relation to an approved deposit fund — a depositor in the fund; and
 - (c) in relation to a pooled superannuation trust — a unit-holder.
- (3) In a Division of this Part, a reference to a fund is a reference to a fund of the kind to which the Division applies.
- (4) For the definition of *ongoing management charge*, if:
- (a) a premium (including government charges, taxes or duties for the premium) for an insurance policy is charged against a member; and
 - (b) the insurer:
 - (i) repays part of the premium to the trustee; or
 - (ii) pays to the trustee an amount worked out by reference to the premium;the part paid to the trustee and not paid or credited to the member is taken to be an ongoing management charge made against the member.
- (5) For the definition of *remuneration*, payment is taken to have been given to an authorised representative for issuing an interest to a member if:
- (a) issuing the interest is taken into account to increase the payment given to the authorised representative for other matters (for example, bonus commission); or

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- (b) the payment is given after the interest is issued and only if the member remains a member of the fund (for example, trailing commission).

7.9.02 Sub-plans

- (1) This regulation applies if the trustee of a regulated superannuation fund proposes to make a determination as to whether a sub-plan should be made.
- (2) In making a determination, the trustee must have regard to all relevant matters, including each of the following:
 - (a) whether there is a common factor in a segment of the fund (for example, whether a group of members of the fund have the same employer);
 - (b) whether the governing rules of the fund provide for a particular segment to be a sub-plan.
- (3) For subsection 1017C (9) of the Act, the sub-plan is a relevant sub-plan.
- (4) For paragraph 761E (7) (a) of the Act, if:
 - (a) a person is a member of a superannuation fund in relation to a sub-plan; and
 - (b) the person's membership changes to membership in relation to another sub-plan;the change to membership of the other sub-plan is the issue of a financial product.
- (5) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to the fund as set out in Part 1 of Schedule 10A.

Division 2 Arrangements for Product Disclosure Statements in relation to superannuation products and RSA products

Subdivision 2.1 Preliminary

7.9.03 Application of Division 2

This Division applies in relation to superannuation products and RSA products.

Note See paragraphs 764A (1) (g) and (h) of the Act.

Subdivision 2.2 Product Disclosure Statement for standard employer-sponsor and successor funds

7.9.04 Modification of Act: standard employer-sponsors and successor funds

- (1) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to superannuation products and RSA products as set out in Part 2 of Schedule 10A.
- (2) For section 1012F of the Act, a superannuation product to which Part 2 of Schedule 10A applies is specified.

Subdivision 2.3 Product Disclosure Statement for new member of regulated superannuation fund, public offer superannuation fund or successor fund

7.9.05 Specified superannuation products

For subsection 1012D (3) of the Act, if:

- (a) an interest in the superannuation fund is an interest in a particular sub-plan; and

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- (b) the sub-plan is different from a sub-plan already held by the same member;

the sub-plan mentioned in paragraph (a) is taken to be a financial product of the same kind as the sub-plan already held by the same member.

7.9.06 Product Disclosure Statement to be provided later

For section 1012F of the Act, a superannuation product provided by:

- (a) a regulated superannuation fund that is not a public offer superannuation fund; and
- (b) a public offer superannuation fund that is not a successor fund, but only in respect of:
 - (i) standard employer-sponsored members of the fund; and
 - (ii) in the case of an eligible rollover fund — persons who become members of the fund by being issued with a superannuation interest under section 243 of the SIS Act; or
 - (iii) in the case of an eligible rollover fund — persons who became members of the fund in the following way:
 - (A) the employer was a standard employer-sponsor of a fund (*fund 1*);
 - (B) the benefits of members in fund 1 were transferred to a successor fund;
 - (C) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (D) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred; or
 - (iv) in the case of an eligible rollover fund — persons who became members of the fund in

the circumstances mentioned in section 89 of the RSA Act; and

- (c) a successor fund;
is a specified superannuation product.

Subdivision 2.4 Product Disclosure Statement for retirement savings account

7.9.07 Application forms

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA product as set out in Part 3 of Schedule 10A.

Subdivision 2.5 Product Disclosure Statement for eligible rollover fund

7.9.08 Additional persons to which Product Disclosure Statement must be given

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA product as set out in Part 4 of Schedule 10A.

Division 3 Content of Product Disclosure Statements

Subdivision 3.1 Preliminary

7.9.09 Application of Division 3

- (1) This Division applies in relation to superannuation products and RSA products.

Note See paragraphs 764A (1) (g) and (h) of the Act.

- (2) Each of the Subdivisions of this Division has an application provision:

- (a) stating the types of entity in relation to which the Subdivision applies; and

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- (b) referring to any provisions that limit or restrict the application of the Subdivision or a particular provision.

Note Information content requirements are set out in the main provisions of section 1013D of the Act. These Regulations set out further advice about the information that the clients of superannuation entities and RSAs would reasonably require for the purpose of making a decision whether to acquire a financial product.

Subdivision 3.2 Product Disclosure Statement for public offer superannuation funds and certain approved deposit funds

7.9.10 Application

- (1) This Subdivision applies to:
- (a) a regulated superannuation entity; and
 - (b) an RSA.
- (2) However, this Subdivision does not apply to information to be given to a member in relation to a benefit that the member would receive under a policy of life insurance that is not a single-premium product.
- (3) For subregulation (2):
- single-premium product*** means a superannuation interest for which:
- (a) either:
 - (i) no contribution charge is made; or
 - (ii) if a contribution charge is made:
 - (A) it is made against each contribution; and
 - (B) the way it is worked out is the same for each contribution; and
 - (b) each charge, other than an exit charge, is worked out in the same way while the person holds the interest; and

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- (c) the person to whom the interest was issued does not have to make more contributions for which another interest would be issued to the person.
 - (4) For sub-subparagraph (3) (a) (ii) (B), the contribution charge may vary between contributions if:
 - (a) it is not more than the maximum amount of contribution charge that may be made for each contribution under sub-subparagraph (3) (a) (ii) (B); and
 - (b) the variation occurs only because of a variation of the amount of remuneration paid to an authorised representative in relation to the interest.
 - (5) For sub-subparagraph (3) (a) (ii) (B) and paragraph (3) (b), the basis of calculation may be changed from time to time if the new basis of calculation applies to each contribution from that time.

7.9.11 Modification of Act: Product Disclosure Statement in relation to insurance options

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to the entity or RSA as set out in Part 5 of Schedule 10A.

7.9.12 Information in Product Disclosure Statement

- (1) For subsection 1013D (4) (b) of the Act, the more detailed information that must be included in a Product Disclosure Statement that relates to the entity or RSA is:
 - (a) for a regulated superannuation fund that is not a self managed fund, a capital guaranteed fund or a defined benefit fund — the information mentioned in Schedule 10B, where relevant, in the way specified in that Schedule; or
 - (b) for a defined benefit fund, if the defined benefit member's benefits are not fully defined — the information mentioned in Schedule 10B, where relevant, in the way specified in that Schedule.

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- (c) for a capital guaranteed fund or an RSA — the information mentioned in Schedule 10C, where relevant, in the way specified in that Schedule.

Note Sections 1013D, 1013E and 1013F of the Act set out content requirements for other superannuation funds, such as self managed superannuation funds and fully defined schemes.

- (2) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to the entity or RSA as set out in Part 6 of Schedule 10A.

Subdivision 3.3 Other arrangements for Product Disclosure Statements

7.9.13 Application form

- (1) For subparagraph 1016A (1) (e) (iv) of the Act, an application form attached to a Product Disclosure Statement that relates to a prospective superannuation product holder or a prospective RSA holder must include the following information:
- (a) the applicant's name;
 - (b) the applicant's date of birth;
 - (c) the applicant's address;
 - (d) the applicant's occupation.
- (2) For subparagraph 1016A (1) (e) (iv) of the Act, an application form attached to a Product Disclosure Statement that relates to the employer of an employee who is a prospective RSA holder must include the following information:
- (a) the employer's name and address;
 - (b) the employee's name;
 - (c) the employee's date of birth (if known by the employer);
 - (d) the employee's address (if known by the employer);
 - (e) the employee's occupation.

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- (3) For subsection 1016A (2) (f) of the Act, section 1016A does not apply to an employer that became a standard employer-sponsor of a fund in the following way:
- (a) the employer was a standard employer-sponsor of a fund (*fund 1*);
 - (b) the benefits of members in fund 1 were transferred to a successor fund;
 - (c) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (d) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred.

7.9.14 Offer of superannuation interest without application or eligible application

- (1) For paragraph 1016A (4) (a) of the Act, if a trustee of a public offer entity issues a superannuation interest in the entity to a person without first receiving an application, or an eligible application, the trustee is taken not to contravene section 1016A of the Act if:
- (a) the entity is a standard employer-sponsored fund; and
 - (b) the person holds the interest as a standard employer-sponsored member of the entity; and
 - (c) after issuing the interest, the trustee makes reasonable efforts:
 - (i) to obtain an application or eligible application from the person's standard employer-sponsor; or
 - (ii) to obtain an eligible application from the person; and
 - (d) if the trustee has not obtained the application or eligible application within 90 days after issuing the interest, the trustee does not accept any more contributions from the standard employer-sponsor in respect of the person until the trustee receives the application or eligible application.

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- (2) For paragraph 1016A (4) (b) of the Act, if a trustee has not obtained the application or eligible application under subregulation (1) within 90 days after issuing the interest, the trustee must not accept any more contributions from the standard employer-sponsor in respect of the person until the trustee receives the application or eligible application.

Penalty: *TBA*

7.9.15 Remedies for person acquiring financial product under defective Product Disclosure Statement

- (1) This regulation applies to a financial product:
- (a) to which the requirements of the SIS Act relating to preservation rules and conditions apply; and
 - (b) that has been issued or sold in contravention of section 1016E of the Act.
- (2) For subsection 1016F (3) of the Act, to exercise the right to return the financial product, the client must:
- (a) nominate a superannuation fund, approved deposit fund or RSA into which money is to be repaid; and
 - (b) make the nomination not later than 1 month after notifying the responsible person.

Division 4 Ongoing requirements for product disclosure after person becomes a member

Subdivision 4.1 Preliminary

7.9.16 Application of Division 4

This Division applies in relation to the following entities:

- (a) a regulated superannuation fund;

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- (b) an approved deposit fund;
 - (c) a pooled superannuation trust;
 - (d) an RSA.

Subdivision 4.2 Reporting periods

7.9.17 Reporting periods: general

- (1) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to an entity to which this Division applies as set out in Part 7 of Schedule 10A.
- (2) For subsection 1017DA (2) of the Act, fund information in relation to a particular member that is provided in accordance with an obligation under section 1017DA of the Act need not be given in respect of the same fund reporting period.

Example

A fund may choose to report:

- (a) some *fund information* in respect of a 6-month period; and
- (b) further *fund information*, and all *member information*, in respect of a 9-month period; and
- (c) the remaining *fund information* in respect of a 12-month period.

7.9.18 Application of reporting periods

In relation to a reporting period:

- (a) Subdivision 4.5 applies only in respect of persons who are members of the fund on the last day of the member reporting period; and
- (b) information required to be given under Subdivision 4.3 need only be given to persons who are members of the fund on the day on which the report containing that information is completed.

Subdivision 4.3 Periodic statements for retail clients for financial products that

**have an investment component:
member information for regulated
superannuation funds and ADFs**

7.9.19 Application of Subdivision 4.3

This Subdivision applies in relation to:

- (a) a regulated superannuation fund; and
- (b) an approved deposit fund.

7.9.20 Specific requirements: fund other than a self managed superannuation fund

For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for a member (other than a capital guaranteed member) of a fund (other than a self managed superannuation fund) must include all of the following:

- (a) the contact details of the fund;
- (b) the amount of the member's withdrawal benefit at the start of the reporting period;
- (c) the amount of the member's withdrawal benefit at the end of the reporting period and the method by which that amount was worked out;
- (d) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2 of the SIS Regulations;
- (e) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 6.1.3 of the SIS Regulations;
- (f) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4 of the SIS Regulations;

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- (g) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:
 - (i) details of those circumstances; and
 - (ii) the contact details of the eligible rollover fund; and
 - (iii) a statement of the effect of the payment of benefits to the eligible rollover fund.

**7.9.21 Specific requirements in particular cases:
fund other than a self managed
superannuation fund**

- (1) For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for a member (other than a capital guaranteed member) of a fund (other than a self managed superannuation fund) must include details of the following matters in respect of the member so far as they are applicable:
 - (a) the amount of the member's contributions during the reporting period;
 - (b) the amount of benefits rolled-over or otherwise transferred into the fund during the reporting period;
 - (c) the amount of withdrawals during the reporting period;
 - (d) the amounts of fees, charges and other expenses deducted by the fund during the reporting period from amounts held in any accounts in respect of the member;
 - (e) the amount of any allotment of employer contributions during the reporting period;
 - (f) the amount of any allotment of net earnings during the reporting period;
 - (g) the rate of any allotment of net earnings during the reporting period;
 - (h) the amount of bonuses that have accrued at the end of the reporting period;
 - (i) the amount of the sum assured;

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- (j) the amount payable in the event of the member's death:
 - (i) at the end of the reporting period; or
 - (ii) on the first day of the next reporting period;or the method by which that amount is worked out;
 - (k) details, including the amount or method of working out, of other significant benefits, including, in particular, disability benefits;
 - (l) if the trustee is aware of contributions that are due and payable during the reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid.
- (2) The periodic statement must also include the following information in respect of the member, so far as it is applicable:
- (a) if the fund is an unfunded defined benefits fund — details of the surcharge debt account kept by the trustee, under subsection 16 (2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:
 - (i) the balance of the account at the start of the reporting period; and
 - (ii) the amount debited to the account for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and
 - (iii) the amount of interest debited, under subsection 16 (4) of that Act, to the account during the reporting period; and
 - (iv) the balance of the account at the end of the reporting period;

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- (b) if the trustee reduced the member's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:
 - (i) the amount deducted; and
 - (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15 (1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15 (2) of that Act — a statement explaining the difference.
 - (3) A nil amount need not be disclosed.

7.9.22 Specific requirements: capital guaranteed funds

- (1) For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for a member of a capital guaranteed fund must include the following:
 - (a) the contact details of the fund;
 - (b) a statement that outlines the means by which the fund is to be maintained as a capital guaranteed fund and sets out the name of the institution providing the investments that back the fund;
 - (c) the amount of the member's withdrawal benefit at the start of the reporting period;
 - (d) the amount of the member's withdrawal benefit at the end of the reporting period and the method by which that amount was worked out;
 - (e) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2 of the SIS Regulations;
 - (f) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of restricted non-preserved benefits

within the meaning of Subdivision 6.1.3 of the SIS Regulations;

- (g) the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4 of the SIS Regulations;
 - (h) if there are circumstances in which the trustee would pay the member's benefit to an eligible rollover fund:
 - (i) details of those circumstances; and
 - (ii) the contact details of the eligible rollover fund; and
 - (iii) a statement of the effect of the payment of benefits to the eligible rollover fund;
 - (i) a statement:
 - (i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and
 - (ii) that there are other superannuation arrangements that may provide a greater return over the long term; and
 - (iii) that the member may wish to seek information about the rates of return of those superannuation arrangements.
- (2) The periodic statement details of the following matters in respect of the member so far as they are applicable:
- (a) the amount of the member's contributions during the reporting period;
 - (b) the amount of benefits rolled-over or otherwise transferred into the fund during the reporting period;
 - (c) the amount of withdrawals during the reporting period;
 - (d) the amounts of fees, charges and other expenses deducted by the fund during the reporting period from amounts held in any accounts in respect of the member;

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- (e) the amount of any allotment of employer contributions during the reporting period;
 - (f) the amount of any allotment of net earnings during the reporting period;
 - (g) the rate of any allotment of net earnings during the reporting period;
 - (h) the amount of bonuses that have accrued at the end of the reporting period;
 - (i) the amount of the sum assured;
 - (j) the amount payable in the event of the member's death:
 - (i) at the end of the reporting period; or
 - (ii) on the first day of the next reporting period;or the method by which that amount is worked out;
 - (k) details, including the amount or method of working out, of other significant benefits, including, in particular, disability benefits;
 - (l) if the trustee is aware of contributions that are due and payable during the reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid.
- (3) A nil amount need not be disclosed.

7.9.23 Information for capital guaranteed fund: benefits reach \$10 000

- (1) For paragraph 1017D (5) (g) of the Act, if the amount of the benefits of a member in a capital guaranteed fund at the end of a reporting period is at least \$10 000, the periodic statement for that reporting period must include the following:
 - (a) a statement of that fact;

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- (b) a statement that the information contained in the notice is important and that the notice must be read carefully;
 - (c) a statement that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term;
 - (d) a suggestion that the member may wish to consider:
 - (i) other superannuation arrangements that may provide a greater return over the long term; and
 - (ii) seeking advice on alternative investment strategies that may be more suitable.

7.9.24 Periodic statement: trustee required to provide benefits

- (1) For paragraph 1017D (5) (g) of the Act, if, at the time member information is required to be given under regulation 7.9.22, there is in force a notice given to the trustee by a member under subregulation 6.17A (4) of the SIS Regulations, the periodic statement must include a statement calling the member's attention to:
 - (a) the person, persons or class, or classes, of persons mentioned in the notice; and
 - (b) the fact that, in accordance with the notice, the trustee will pay a benefit in respect of the member, on or after the death of the member, to the person, persons or class, or classes, of persons mentioned in the notice if:
 - (i) the person, or each person, mentioned in the notice is the legal personal representative or a dependant of the member; and
 - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice or a statement under regulation 6.17B of the SIS Regulations; and

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- (iii) the notice is in effect; and
 - (c) the statement of the member about:
 - (i) the proportion of the benefit that will be paid to the person, or to each person, mentioned in the notice; or
 - (ii) how that proportion is to be determined; and
 - (d) the fact that the member may confirm, amend or revoke the notice in accordance with subregulation 6.17A (5) of the SIS Regulations; and
 - (e) the date when the notice ceases to have effect under paragraph 6.17A (7) (a) or (b) of the SIS Regulations.
- (2) The periodic statement must also include information that the member may use to confirm, amend or revoke the notice.
- (3) In this regulation, a reference to a notice includes a reference to the notice as confirmed, or amended, under subregulation 6.17A (5) of the SIS Regulations.

7.9.25 Modification of Act: pensioners, members subject to compulsory protection of small amounts and members with small amounts that are expected to grow quickly

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to a fund to which this Subdivision applies as set out in Part 8 of Schedule 10A.

Subdivision 4.4 Periodic statements for retail clients for financial products that have an investment component: member information for RSAs

7.9.26 Application of Subdivision 4.4

This Subdivision applies in relation to an RSA provider.

7.9.27 Specific requirements

For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for an RSA holder must include the following:

- (a) the contact details of the RSA provider;
- (b) a statement:
 - (i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and
 - (ii) that there are other superannuation arrangements that may provide a greater return over the long term; and
 - (iii) that the RSA holder may wish to seek information about the rates of return of those superannuation arrangements;
- (c) the amount of the withdrawal benefit at the start of the reporting period;
- (d) the amount of the withdrawal benefit at the end of the reporting period;
- (e) the amount (if any) of the withdrawal benefit at the end of the reporting period that consists of preserved benefits within the meaning of Subdivision 4.1.2 of the RSA Regulations;
- (f) the amount (if any) of the withdrawal benefit at the end of the reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 4.1.3 of the RSA Regulations;
- (g) the amount (if any) of the withdrawal benefit at the end of the reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 4.1.4 of the RSA Regulations;
- (h) details (in summary form) of arrangements that the RSA provider has to deal with inquiries or complaints;
- (i) a statement that other information is available on request.

7.9.28 Specific requirements where applicable: RSAs

- (1) For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for an RSA holder must include details of the following matters in respect of the RSA holder so far as they are applicable:
 - (a) the amount of the RSA holder's contributions during the reporting period;
 - (b) the amount of employer contributions during the reporting period;
 - (c) the amount of benefits rolled-over or transferred into the RSA during the reporting period;
 - (d) the amount of withdrawals during the reporting period;
 - (e) the amounts of fees, charges and other expenses deducted from the RSA during the reporting period;
 - (f) the amount of interest credited to the RSA during the reporting period;
 - (g) the actual or notional rate of net interest applied to the RSA during the reporting period;
 - (h) a statement of:
 - (i) the annual actual or notional rate of net interest applied to the RSA for each year of the previous 5 years ending at the end of the reporting period; and
 - (ii) the compound average of the annual actual or notional rate of net interest applied to the RSA for each year of the previous 5 years ending at the end of the reporting period;
 - (i) the effect of the RSA holder-protection standards;
 - (j) the amount of bonuses that have accrued at the end of the reporting period;
 - (k) if an insurance policy is held by the RSA provider — the amount of the sum assured;
 - (l) the circumstances when benefits may be paid to an eligible rollover fund, the effect of that

payment and the contact details of the eligible rollover fund;

- (m) the amount payable in the event of the RSA holder's death:
 - (i) at the end of the reporting period; or
 - (ii) on the first day of the next reporting period; or the method by which that amount is worked out;
- (n) the amount, or method of working out, of other benefits including, in particular, disability benefits;
- (o) if the RSA provider reduced the RSA holder's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:
 - (i) the amount deducted; and
 - (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15 (1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15 (2) of that Act — a statement explaining the difference.

(2) A nil amount need not be disclosed.

(3) If, at the end of a reporting period, an RSA has not been in existence for 5 years, the references in paragraph (1) (h) to 5 years are taken to be references to the whole period of existence of the RSA.

7.9.29 Modification of Act: RSA holders subject to compulsory protection of small amounts and RSA holders with small amounts that are expected to grow quickly

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to a fund

to which this Subdivision applies as set out in Part 9 of Schedule 10A.

7.9.30 Duty to give information

- (1) For subsection 1017DA (1) of the Act, if, at the end of a reporting period, the amount of an RSA is at least \$10 000, the RSA provider must give written notice of that fact to the holder of the RSA at the time when the RSA provider gives to the RSA holder the items of information mentioned in regulation 7.9.27 for that period.
- (2) The notice must include:
 - (a) a statement that the information contained in the notice is important and that the notice must be read carefully; and
 - (b) a statement that outlines the effect of the lower-risk/lower-return nature of the RSA on possible benefits in the long term; and
 - (c) a suggestion that the RSA holder may wish to consider:
 - (i) other superannuation arrangements that may provide a greater return over the long term; and
 - (ii) seeking advice on alternative investment strategies that may be more suitable.
- (3) The notice must be prominent and set in bold type on a separate sheet of paper.

Subdivision 4.5 Periodic fund statements for retail clients for financial products that have an investment component: fund information for regulated superannuation funds and ADFs

7.9.31 Application of Subdivision 4.5

This Subdivision applies in relation to:

- (a) the following entities:
 - (i) a regulated superannuation fund; and
 - (ii) an approved deposit fund; and
- (b) fund information provided in accordance with an obligation under section 1017DA of the Act.

7.9.32 General requirement

For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic fund statement must include all information that the trustee reasonably believes a member would reasonably need for the purpose of:

- (a) understanding the management and financial condition of the fund and of the relevant sub-plan (if any); and
- (b) understanding the investment performance of the relevant sub-plan or, if none, of the fund.

7.9.33 Specific requirements in all cases

For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement must include all of the following items of information:

- (a) the contact details of the fund;
- (b) in respect of the relevant sub-plan or, if none, of the fund — a description of:

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- (i) the investment strategy of the fund trustee, having regard to the requirements of paragraph 52 (2) (f) of the SIS Act; and
 - (ii) the investment objectives;
 - (c) a statement to the effect that other information is available on request;
 - (d) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints.

7.9.34 Specific requirements in particular cases

- (1) For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement must include all of the following, so far as they are applicable:
 - (a) in respect of the relevant sub-plan or, if none, of the fund — the names of investment managers appointed by the trustee;
 - (b) in the case of a standard employer-sponsored fund that is not a public offer superannuation fund and does not have a trustee approved under subsection 92 (10) of the SIS Act:
 - (i) if the trustee of the fund is a body corporate, the name of that body corporate and the names of all its directors during the whole or any part of the reporting period and, in respect of each of those directors, details of how and by whom they were appointed;
 - (ii) if the trustees of the fund are individuals, the names of the trustees of the fund during the whole or any part of the relevant reporting period and, in respect of each of those trustees, details of how and by whom they were appointed;
 - (c) in the case of a fund other than a fund mentioned in paragraph (b):
 - (i) the name of each corporate trustee of the fund during the relevant reporting period; and

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- (ii) in respect of the relevant policy committee (if any), details of the committee (including the names of the committee members as at the end of that reporting period and, in respect of each of the members, details of how and by whom they were appointed);
 - (d) a statement as to whether or not any indemnity insurance has been taken out by the trustee;
 - (e) either:
 - (i) the audited fund accounts, the auditor's report and, if there is a relevant sub-plan, abridged financial information relating to that sub-plan; or
 - (ii) each of the following:
 - (A) abridged financial information relating to the relevant sub-plan or, if none, to the fund;
 - (B) information as to when the audited fund accounts and the auditor's report will be sent to members or will be available to members on request, as the case may be;
 - (f) in respect of the relevant sub-plan or, if none, of the fund — a statement of assets as at the end of:
 - (i) the relevant reporting period; and
 - (ii) the immediately preceding reporting period;that includes all information that the trustee reasonably believes a member would reasonably need to understand the asset allocation at those times;
 - (g) details of:
 - (i) each investment that has a value in excess of 5% of the total assets of the relevant sub-plan or, if none, of the fund; and
 - (ii) each combination of investments that the trustee knows or ought reasonably to know are invested in, directly or indirectly, a single enterprise or single group of associated enterprises and that have a

combined value in excess of 5% of the total assets of the relevant sub-plan or, if none, of the fund;

- (h) if the derivatives charge ratio of the fund (as defined in subregulation (6)) exceeded 5% at any time during the reporting period:
- (i) the derivatives charge ratio as at the end of the reporting period; and
 - (ii) the highest derivatives charge ratio attained during the reporting period; and
 - (iii) an explanation of why the derivatives charge ratio exceeded 5%; and
 - (iv) an explanation of the meaning of **derivatives charge ratio** in, or to the effect of, the following:
‘The derivatives charge ratio is the percentage of the total market value of the assets of the fund (other than cash) that the trustee has charged as security for derivatives investments made by the trustee.’
- (i) in respect of the relevant sub-plan or, if none, of the fund:
- (i) the annual effective rate of net earnings in each of the most recent reporting periods that, in total, constitute a period of at least 5 years; and
 - (ii) the compound average actual or notional rate of net earnings for the period of 5 years ending at the end of the reporting period;

Note As to funds and subplans in existence for less than 5 years, see subregulation (4).

- (j) if the fund is an accumulation fund or an approved deposit fund and the fund maintains reserves — then in respect of the relevant sub-plan or, if none, of the fund, details of movements of reserves during the most recent reporting periods that, in total, constitute at least 3 years; and

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- (k) if the net earnings of the fund are allotted to members' accounts — in respect of the relevant sub-plan or, if none, of the fund, the manner in which the allotment is made; and
 - (l) if the fund maintains reserves — in respect of the relevant sub-plan or, if none, of the fund, a description of the management strategy of the fund trustee in relation to the reserves, having regard to the requirements of paragraph 52 (2) (g) of the SIS Act;
 - (m) in respect of the relevant sub-plan or, if none, of the fund — a statement (in outline terms) of:
 - (i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to members (including details of the points at which, or occasions on which, they are levied or deducted); and
 - (ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages — those amounts or percentages; and
 - (iii) where subparagraph (ii) does not apply — a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined;
 - (n) details of any penalties imposed on the trustee under the Act or the SIS Act;
 - (o) if the fund is:
 - (i) a defined benefit fund; and
 - (ii) the contributions paid by the employer-sponsor in the reporting period are less than the amount that an actuary has approved as sufficient contributions in that period; and
 - (iii) the difference is material;
- in respect of the relevant sub-plan or, if none, of the fund — a statement to the effect that the

matters stated in subparagraphs (ii) and (iii) apply, and statements of:

- (iv) the consequences for the fund of the shortfall; and
 - (v) any action that the trustee has taken, or proposes to take, in relation to the matter;
- (p) the ultimate source (including, for example, the fund's reserves, the members' accounts or the employer) from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn;
- (q) a statement of whether indemnity insurance has been taken out in relation to the fund, approved deposit fund or RSA, and, if so, details of the insurance policy.
- (2) A nil amount need not be disclosed.
- (3) For subparagraph (1) (g) (ii), investments in a trust are taken not to be invested in the trustee of the trust.
- (4) If, at the end of a reporting period, a fund or sub-plan has not been in existence for 5 years, the references in paragraph (1) (i) to 5 years are taken to be references to the whole period of existence of the fund or sub-plan, as the case requires.
- (5) In this regulation:
- abridged financial information***, in relation to a reporting period of a fund or a sub-plan, means information derived from the fund's accounts or records that gives a reasonable summary of either:
- (a) both:
 - (i) changes in the financial position of the fund or sub-plan during the reporting period; and
 - (ii) the financial position of the fund or sub-plan at the end of the reporting period; or
 - (b) both:
 - (i) changes in the net assets of the fund or sub-plan during the reporting period; and

(ii) the net assets of the fund or the sub-plan at the end of the reporting period.

(6) For the purposes of paragraph (1) (h), the derivatives charge ratio of a fund is:

$$\frac{X}{Y}$$

expressed as a percentage, where:

X is the market value of the assets of the fund (other than cash) that are subject to a charge in relation to a derivatives contract (as defined in subregulation 15A (2)); and

Y is the market value of all the assets of the fund.

(7) If paragraph (1) (h) applies, the trustee must give the information mentioned in that paragraph to APRA as soon as practicable, and in any event within 6 months, after the end of the reporting period to which the information relates.

7.9.35 Periodic reporting: self managed superannuation fund

For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for a self managed superannuation fund must include only the information mentioned in paragraph 7.9.34 (1) (p).

7.9.36 Benefits determined by life policies

Paragraphs 7.9.34 (1) (e), (f) and (g) do not apply to funds from which the benefits paid to each individual member:

- (a) are wholly determined by reference to policies of life insurance; or
- (b) if paragraph (a) does not apply only because shares in the life insurance company issuing the policies were acquired because the company was demutualised:

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- (i) would otherwise be wholly determined by reference to policies of life insurance; and
 - (ii) the shares have been held for no longer than 18 months from the date of acquisition.

Subdivision 4.6 Periodic statements for retail clients for financial products that have an investment component: additional information for superannuation entities and RSA providers

7.9.37 Application of Subdivision 4.6

This Subdivision applies in relation to a superannuation entity and an RSA provider.

7.9.38 Additional information for change to choices

- (1) For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement for a holder of a financial product must include either of the following:
 - (a) details of:
 - (i) other investment strategies available to the holder; and
 - (ii) other contribution levels available to the holder; and
 - (iii) other insurance coverage available to the holder in relation to the financial product;
 - (b) a statement:
 - (i) that the details in paragraph (a) are available on request from the responsible person; and
 - (ii) about how to ask for the details.
- (2) The details or statement must relate to:
 - (a) an interest in the same sub-plan; or
 - (b) if there is no sub-plan — an interest in the same financial product.

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- (3) For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity and an RSA provider as set out in Part 10 of Schedule 10A.

Subdivision 4.7 Periodic statements for retail clients for financial products that have an investment component: fund information for pooled superannuation trusts

7.9.39 Application of Subdivision 4.7

This Subdivision applies in relation to:

- (a) a pooled superannuation trust; and
- (b) fund information provided in accordance with an obligation under section 1017DA of the Act.

7.9.40 Specific requirements in all cases

For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, a periodic statement must include the following:

- (a) in respect of the pooled superannuation trust — a description of the investment strategy of the pooled superannuation trust trustee, having regard to:
 - (i) the requirements of paragraph 52 (2) (f) of the Act; and
 - (ii) the investment objectives of the pooled superannuation trust;
- (b) a statement to the effect that other information is available on request.

7.9.41 Specific requirements in particular cases

- (1) For paragraph 1017D (5) (g) and subsection 1017DA (1) of the Act, and subject to subregulations (2) and (3), a periodic statement must include the following, so far as they are applicable:

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- (a) in respect of the pooled superannuation trust — the names of investment managers appointed by the trustee;
 - (b) the name of each approved trustee of the pooled superannuation trust during the relevant reporting period;
 - (c) either:
 - (i) the audited accounts of the pooled superannuation trust and the auditor's report; or
 - (ii) each of the following:
 - (A) abridged financial information (as defined in subregulation (4)) relating to the pooled superannuation trust;
 - (B) information as to when the audited accounts of the pooled superannuation trust and the auditor's report will be sent to unit-holders or will be available to unit-holders on request, as the case may be;
 - (d) in respect of the pooled superannuation trust — a statement of assets as at the end of:
 - (i) the relevant reporting period; and
 - (ii) the immediately preceding reporting period; that includes sufficient information to enable unit-holders to understand the asset allocation at those times;
 - (e) details of:
 - (i) each investment that has a value in excess of 5% of the total assets of the pooled superannuation trust; and
 - (ii) details of each combination of investments that the trustee knows or ought reasonably to know are invested, directly or indirectly, in a single enterprise or single group of associated enterprises and that have a combined value in excess of 5% of the total assets of the pooled superannuation trust;

-
- (f) in respect of the pooled superannuation trust — the actual or notional rate of net earnings of the pooled superannuation trust in the most recent reporting periods that, in total, constitute a period of at least 3 years;
- (g) a statement (in outline terms) of:
- (i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to unit-holders (including details of the points at which, or occasions on which, they are levied or deducted); and
 - (ii) where the fees, charges, expenses and administrative or other operational costs are pre-determined fixed amounts or percentages — those amounts or percentages; and
 - (iii) where subparagraph (ii) does not apply — the general manner in which the fees, charges, expenses and administrative or other operational costs are determined;
- (h) details of any penalties imposed under the Act on the trustee.
- (2) A nil amount need not be disclosed.
- (3) For subparagraph (1) (e) (ii), investments in a trust are taken not to be invested in the trustee of the trust.
- (4) In this regulation:
- abridged financial information***, in relation to a reporting period of a pooled superannuation trust, means information derived from the pooled superannuation trust's accounts that gives a reasonable summary of:
- (a) changes in the pooled superannuation trust's financial position during the reporting period; and
 - (b) the pooled superannuation trust's financial position at the end of the reporting period.

Subdivision 4.8 Ongoing disclosure of material changes and significant events

7.9.42 Modification of Act: disclosure of material changes and significant events for regulated superannuation funds and ADFs

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to:

- (a) a regulated superannuation fund (other than a self managed superannuation fund); and
- (b) an approved deposit fund (other than an excluded approved deposit fund);

as set out in Part 11 of Schedule 10A.

7.9.43 Modification of Act: disclosure of material changes and significant events for RSAs

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA as set out in Part 12 of Schedule 10A.

7.9.44 Modification of Act: disclosure of material changes and significant events for pooled superannuation trusts

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to a pooled superannuation trust as set out in Part 13 of Schedule 10A.

Subdivision 4.9 Information on request: members

7.9.45 Regulated superannuation funds and ADFs

- (1) This regulation applies in relation to:
 - (a) a regulated superannuation fund (other than a self managed superannuation fund); and

-
- (b) an approved deposit fund (other than a self managed superannuation fund).
- (2) For paragraph 1017C (5) (a) of the Act, the following are prescribed documents:
 - (a) the governing rules of the fund;
 - (b) audited accounts of the fund, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
 - (c) the most recent actuarial report (as referred to in regulation 9.30 of the SIS Regulations) on the fund, and any subsequent written advice by an actuary to the trustee, to the extent that those documents are relevant to:
 - (i) the overall financial condition of the fund; or
 - (ii) the entitlements of a person;
 - (d) a copy of information given under Subdivision 4.5 that was most recently given to the members.
 - (3) If the person requesting the information is not a concerned person or an employer-sponsor, the documents mentioned in paragraphs (1) (a) and (c) are not prescribed documents.

7.9.46 RSAs

- (1) This regulation applies in relation to an RSA.
- (2) For paragraph 1017C (5) (a) of the Act, the terms and conditions of the RSA are a prescribed document.

7.9.47 Pooled superannuation trusts

- (1) This regulation applies in relation to a pooled superannuation trust.
- (2) For paragraph 1017C (5) (a) of the Act, the following are prescribed documents:
 - (a) the governing rules of the pooled superannuation trust;

-
- (b) audited accounts of the pooled superannuation trust, together with (whether or not specifically requested) the auditor's report in relation to the accounts;
 - (c) the most recent actuarial report (as referred to in regulation 9.30) on the pooled superannuation trust, and any subsequent written advice by an actuary to the trustee, to the extent that those documents are relevant to:
 - (i) the overall financial condition of the pooled superannuation trust; or
 - (ii) the entitlements of a person;
 - (d) a copy of the relevant information required under section 1017D of the Act that was most recently given to the members.
- (3) If the person requesting the information is not a concerned person or an employer-sponsor, the documents mentioned in paragraphs (1) (a) and (c) are not prescribed documents.

Subdivision 4.10 Information on request: payments

7.9.48 Modification of Act: charges for information requested

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to a superannuation entity or an RSA provider as set out in Part 14 of Schedule 10A.

Subdivision 4.11 Information about complaints

7.9.49 Complaints: regulated superannuation fund or approved deposit fund

- (1) This regulation applies if:
 - (a) a trustee of a regulated superannuation fund or an approved deposit fund receives a complaint from a

person referred to in subsection 101 (1A) of the SIS Act; or

- (b) a decision is made in relation to a complaint made in accordance with arrangements established under section 47 of the RSA Act.
- (2) For subparagraph 1017DA (1) (iii) of the Act, the trustee or RSA provider must give to the person:
- (a) details of the existence of the Superannuation Complaints Tribunal; and
 - (b) (in outline terms) the functions of the Tribunal.

Subdivision 4.12 Information when a member leaves a fund: regulated superannuation funds and ADFs

7.9.50 Application of Subdivision 4.12

For subsection 1017DA (1) of the Act, this Subdivision applies in relation to:

- (a) a regulated superannuation fund; and
- (b) an approved deposit fund.

7.9.51 Exit reporting period and consequence of continuation option being available after death

In this Subdivision, *exit reporting period*, in relation to a person who ceases to be a member of a fund, means the period mentioned in paragraph 1017D (2) (d) of the Act.

7.9.52 Modification of Act: time for compliance

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to the fund as set out in Part 15 of Schedule 10A.

7.9.53 General requirement

For subsection 1017DA (1) of the Act, if a person ceases to be a member of a fund (other than a capital guaranteed fund), the trustee of the fund must give all information to:

- (a) if the person is alive — the person; or
- (b) if the person is deceased — each person receiving a benefit as a result of the first-mentioned person's death;

that the trustee reasonably believes such a person would reasonably need for the purpose of understanding his or her benefit entitlements.

7.9.54 Specific requirements in all cases

For subsection 1017DA (1) of the Act, the trustee of a fund (other than a self managed superannuation fund) must give to a person who ceases, otherwise than by death, to be a member of the fund, the following:

- (a) the contact details of the fund;
- (b) the amount of the member's withdrawal benefit at the start of the exit reporting period;
- (c) the amount of the member's withdrawal benefit at the end of the exit reporting period and the method by which that amount was worked out;
- (d) the amount (if any) of the member's withdrawal benefit at the end of the exit reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2 of the SIS Regulations;
- (e) the amount (if any) of the member's withdrawal benefit at the end of the exit reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 6.1.3 of the SIS Regulations;
- (f) the amount (if any) of the member's withdrawal benefit at the end of the exit reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4 of the SIS Regulations;

-
- (e) for a death or disability benefit that ceases or reduces, or will cease or reduce, because the person has left the fund:
 - (i) either:
 - (A) the amount of the death or disability benefit immediately before the person left the fund or at the end of the last member reporting period; or
 - (B) the method of working out the death or disability benefit; and
 - (ii) whether a continuation option is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person;
 - (f) details (in summary form) of arrangements that the fund has to deal with inquiries or complaints.

7.9.55 Specific requirements in particular cases

- (1) For subsection 1017DA (1) of the Act, the trustee of a fund (other than a self managed superannuation fund) must give to each person who ceases, otherwise than by death, to be a member of the fund the following in respect of the member so far as they are applicable:
 - (a) the amount of the member's contributions during the exit reporting period;
 - (b) the amount of benefits rolled-over or otherwise transferred into the fund during the exit reporting period;
 - (c) the amount of withdrawals during the exit reporting period;
 - (d) the amounts of fees, charges and other expenses deducted by the fund during the exit reporting period from amounts held in any accounts in respect of the member;
 - (e) the amount of any allotment of employer contributions during the exit reporting period;

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- (f) the amount of any allotment of net earnings during the exit reporting period;
 - (g) the rate of any allotment of net earnings during the exit reporting period;
 - (h) the amount of bonuses that have accrued at the end of the exit reporting period;
 - (i) the amount of the sum assured;
 - (j) if the trustee is aware of contributions that are due and payable during the exit reporting period but have not been paid to the fund at, or shortly before, the date of issue of the report, details of the amount of those contributions and of action that the trustee has taken, or proposes to take, to have the contributions paid.
- (2) For subsection 1017DA (1) of the Act, a periodic statement must also include the following in respect of the member, so far as it is applicable:
- (a) if the fund is an unfunded defined benefits fund — details of the surcharge debt account kept by the trustee, under subsection 16 (2) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, for the member, including:
 - (i) the balance of the account at the start of the exit reporting period; and
 - (ii) the amount debited to the account for superannuation contributions surcharge assessed, by the Commissioner of Taxation, to be payable on the member's surchargeable contributions; and
 - (iii) the amount of interest debited, under subsection 16 (4) of that Act, to the account during the exit reporting period; and
 - (iv) the balance of the account at the end of the exit reporting period;
 - (b) if the trustee reduced the member's benefits in connection with payment of a superannuation

contributions surcharge or an advance instalment of surcharge:

- (i) the amount deducted; and
- (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15 (1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15 (2) of that Act — a statement explaining the difference.

(3) A nil amount need not be disclosed.

7.9.56 Exceptions to exit reporting period provisions

This Subdivision does not apply in relation to a member to whom an event described in Part 11 of Schedule 10A applies.

7.9.57 Exception — members subject to compulsory protection of small amounts

Despite the other provisions of this Subdivision, if a protected member of a fund ceases to be a member of the fund, the trustee need give the member only the following for the exit reporting period:

- (a) the contact details of the fund;
- (b) the amount of the member's withdrawal benefit.

Subdivision 4.13 Information when a member leaves a fund: pooled superannuation trusts

7.9.58 Application of Subdivision 4.13

This Subdivision applies in relation to:

- (a) a pooled superannuation trust; and
- (b) member information provided in accordance with an obligation under section 1017D of the Act.

7.9.59 Information when a person ceases to be a unit-holder

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to the pooled superannuation trust as set out in Part 16 of Schedule 10A.

7.9.60 Persons ceasing to be unit-holders

For paragraph 1017D (5) (g) of the Act, the trustee of a pooled superannuation trust must include in a periodic statement for a person who ceases to be a unit-holder all information the trustee reasonably believes a person reasonably needs for the purpose of understanding their interest in the pooled superannuation trust on the day on which the person ceased to be a unit-holder.

Subdivision 4.14 Information on closing RSA

7.9.61 Application of Subdivision 4.14

This Subdivision applies in relation to:

- (a) an RSA; and
- (b) member information provided in accordance with an obligation under section 1017D of the Act.

7.9.62 Exit reporting period

In this Subdivision, *exit reporting period*, in relation to a person who ceases to be the holder of an RSA, means the period mentioned in paragraph 1017D (2) (d) of the Act.

7.9.63 Time for compliance

For paragraph 1020G (1) (c) of the Act. Part 7.9 of the Act is modified in its application in relation to an RSA as set out in Part 17 of Schedule 10A.

7.9.64 Information to be given in cases other than death of RSA holder

For subsection 1017DA (1) of the Act, the RSA provider must give to a person who ceases, otherwise than by death, to be an RSA holder, the following:

- (a) the contact details of the RSA provider;
- (c) the amount of the withdrawal benefit at the start of the exit reporting period;
- (d) the amount of the withdrawal benefit at the end of the exit reporting period;
- (e) the amount (if any) of the withdrawal benefit at the end of the exit reporting period that consists of preserved benefits within the meaning of Subdivision 4.1.2 of the RSA Regulations;
- (f) the amount (if any) of the withdrawal benefit at the end of the exit reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 4.1.3 of the RSA Regulations;
- (g) the amount (if any) of the withdrawal benefit at the end of the exit reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 4.1.4 of the RSA Regulations;
- (h) details (in summary form) of arrangements that the RSA provider has to deal with inquiries or complaints;
- (i) a statement that other information is available on request.

7.9.65 Information to be given where applicable

- (1) For subsection 1017DA (1) of the Act, the RSA provider must give, to each person who ceases, otherwise than by death, to be an RSA holder, the following in respect of the RSA holder so far as they are applicable:
 - (a) the amount of the RSA holder's contributions during the exit reporting period;

-
- (b) the amount of employer contributions during the exit reporting period;
 - (c) the amount of benefits rolled-over or transferred into the RSA during the exit reporting period;
 - (d) the amount of withdrawals during the exit reporting period;
 - (e) the amounts of fees, charges and other expenses deducted from the RSA during the exit reporting period;
 - (f) the amount of interest credited to the RSA during the exit reporting period;
 - (g) the actual or notional rate of net interest applied to the RSA during the exit reporting period;
 - (h) the amount of bonuses that have accrued at the end of the reporting period;
 - (i) if an insurance policy is held by the RSA provider — the amount of the sum assured;
 - (j) in the case of a death benefit that ceases or reduces, or will cease or reduce, because the person has closed the RSA:
 - (i) either:
 - (A) the amount of the death benefit immediately before the person closed the RSA or at the end of the last RSA holder reporting period; or
 - (B) the method of working out the death benefit; and
 - (ii) whether a continuation option for insurance cover is available to the person and, if it is, details of the option, a contact person who is available to discuss the option and a telephone number for the contact person;
 - (k) the amount, or method of working out, of other benefits including, in particular, disability benefits;
 - (l) if the RSA provider reduced the RSA holder's benefits in connection with payment of a

superannuation contributions surcharge or an advance instalment of surcharge:

- (i) the amount deducted; and
- (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15 (1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15 (2) of that Act — a statement explaining the difference.

(2) A nil amount need not be disclosed.

7.9.66 Information to be given in case of death of RSA holder

For subsection 1071DA (1) of the Act, if a person ceases by death to be an RSA holder, the RSA provider must give to each person receiving a benefit from the RSA as a result of the death of the person:

- (a) a statement setting out details (in summary form) of arrangements that the RSA provider has to deal with inquiries or complaints; or
- (b) a statement that those details are available on request.

7.9.67 Modification of Act: exceptions to exit reporting period provisions

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to an RSA as set out in Part 18 of Schedule 10A.

7.9.68 Exception — RSA holders subject to compulsory protection of small amounts

For paragraph 1017D (5) (g) of the Act, if a protected RSA holder ceases to be an RSA holder, a periodic statement must include the following information for the exit reporting period:

-
- (a) the contact details of the RSA provider;
 - (b) the amount of the RSA holder's withdrawal benefit;
 - (c) the amount of any deduction, from the RSA holder's benefits, in connection with payment of a superannuation contributions surcharge, or an advance instalment of surcharge, during the exit reporting period;
 - (d) if there is a difference between the amount deducted and the amount assessed under subsection 15 (1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15 (2) of that Act — a statement explaining the difference.

Subdivision 4.15 General requirements for ongoing disclosure

7.9.69 Modification of Act: disclosure

For paragraph 1020G (1) (c) of the Act, Part 7.9 of the Act is modified in its application in relation to the obligation to give information about financial products as set out in Part 19 of Schedule 10A.

Division 5 Confirmation of transactions

7.9.70 Confirmation of transaction: superannuation products and RSAs

- (1) For paragraph 1017F (4) (e) of the Act, a transaction is not required to be confirmed by the trustee of a superannuation fund, an ADF or pooled superannuation trust in the following circumstances:
 - (a) the transaction relates to a superannuation product;
 - (b) the trustee has provided information in accordance with section 1017DA of the Act about leaving the

superannuation fund, ADF or pooled superannuation trust.

- (2) For paragraph 1017F (4) (e) of the Act, a transaction is not required to be confirmed by an RSA provider in the following circumstances:
 - (a) the transaction relates to an RSA;
 - (b) the trustee has provided information in accordance with section 1017DA of the Act about closing the RSA.

7.9.71 Confirmation of transactions: precise costs of transaction not known

- (1) For subparagraph 1017F (8) (c) (iii) of the Act, the confirmation of a transaction of a financial product is not required to give details of the amount payable by the holder of the financial product if the amount is not known at the time of the confirmation.
- (2) For subparagraph 1017F (8) (c) (iv) of the Act, the confirmation of a transaction of a financial product is not required to give details of the taxes and stamp duties payable in relation to the transaction if the amount of the taxes and stamp duties is not known at the time of the confirmation.
- (3) For paragraph 1017F (9) (c) of the Act, section 1017F of the Act is modified in relation to its application to a transaction of a financial product as set out in Part 20 of Schedule 10A.

Division 6 Cooling-off periods

7.9.72 Cooling-off periods not to apply

- (1) For paragraph 1019A (2) (a) of the Act, the following subclasses of financial products are excluded from paragraph 1019A (1) (a) of the Act:

-
- (a) a financial product offered or issued under a distribution reinvestment plan or switching facility;
 - (b) a financial product the acquisition of which is an additional contribution under an existing legal relationship or contract;
 - (c) a financial product issued as consideration for an offer made under a takeover bid under Chapter 6 of the Act;
 - (d) an interim contract of insurance (as defined in subsection 11(2) of the *Insurance Contracts Act 1984*);
 - (e) a managed investment scheme that is not liquid in accordance with section 601KA of the Act.
- (2) For paragraph 1019A (2) (c) of the Act, Division 5 of Part 7.9 of the Act does not apply in relation to the provision of a financial product that:
- (a) is a superannuation product; and
 - (b) is not a public offer superannuation product.

7.9.73 Cooling-off period for return of financial product

- (1) For subsection 1019B (2) of the Act, it is a requirement of the exercise of the right to return a superannuation product that is a restricted non-preserved benefit or a preserved benefit that the holder of the superannuation product must nominate a superannuation fund, approved deposit fund or RSA into which the money paid to acquire the superannuation product is to be repaid.
- (2) For subsection 1019B (5) of the Act, the right to return the risk insurance product for an event that will start and end within the 14 day period mentioned in subsection 1019B (3) of the Act (and have money paid to acquire it repaid) cannot be exercised at any time after the end of the period starting when the risk insurance product was provided and ending on the earlier of:

-
- (a) 14 days; and
 - (b) the start of the event.

Example

Short-term travel insurance.

7.9.74 Variation of amount to be repaid: difference in investment-linked contracts

- (1) For subsection 1019B (8) of the Act, the amount to be repaid on an exercise of the right to return a financial product is to be varied in accordance with this regulation.

Investment-linked product

- (2) If:
 - (a) the financial product is:
 - (i) an investment-linked product within the meaning given by the *Insurance Contracts Act 1984*; or
 - (ii) a managed investment product; or
 - (iii) a superannuation product (subject to the governing rules of the issuer of the superannuation product relevant to the redemption of superannuation interests); and
 - (b) on the day on which the right to return is exercised, the amount that would have been the price at which the product was acquired (the ***allocation price***) if the product had been acquired on that day is less than the allocation price on the day on which the product was acquired;
the amount that would otherwise be repaid is reduced by the adjustment amount.
- (3) If:
 - (a) the financial product is:
 - (i) an investment-linked product within the meaning given by the *Insurance Contracts Act 1984*; or

-
- (ii) a managed investment product; or
 - (iii) a superannuation product (subject to the governing rules of the issuer of the superannuation product relevant to the redemption of superannuation interests); and
- (b) on the day on which the right to return is exercised, the amount that would have been the price at which the product was acquired (the *allocation price*) if the product had been acquired on that day is greater than the allocation price on the day on which the product was acquired;
- the amount that would otherwise be repaid is increased by the adjustment amount.
- (4) For subregulations (2) and (3), the adjustment amount is the difference between:
- (a) the price at which the product was acquired; and
 - (b) the price of the product on the day on which the right to return is exercised.

Tax

- (5) If:
- (a) tax of any kind has been paid, or is payable, by the product issuer because of the issue of the financial product; and
 - (b) either:
 - (i) if the tax has been paid, the issuer is unable to obtain a refund of the tax; or
 - (ii) if the tax has not been paid, the tax does not cease to be payable as a result of the exercise of the right to return the financial product;
- the amount that would otherwise be repaid is reduced by the amount of the tax.

All financial products

- (6) The amount that would otherwise be repaid may be reduced to account for reasonable administrative

expenses associated with the acquisition of the financial product and the subsequent termination of the contract or legal relationship.

Financial product issued for specific period

- (7) If:
- (a) the financial product is:
 - (i) a risk insurance product; or
 - (ii) that part of a financial product that is a risk insurance product; and
 - (b) the financial product has been issued for a specific period; and
 - (c) a proportion of that period has already passed when the right to return the superannuation product is exercised;
- the amount that would otherwise be repaid is reduced by a proportion equal to the proportion of the period that has passed.

Division 7 Other requirements

7.9.75 Content of periodic statements: costs of transactions

- (1) For paragraph 1017D (5) (g) of the Act, the details in relation to a financial product for which:
 - (a) a transaction has occurred during the reporting period; and
 - (b) advice of the cost of the transaction has not been included in the confirmation of the transaction;include the cost of the transaction, including the amount payable and the amount of taxes and charges in relation to the transaction.
- (2) For paragraph 1017D (5) (g) of the Act, the prescribed details in relation to a financial product include:
 - (a) the amounts paid by the holder of the financial product in respect of the financial product during

the period, and the times at which those amounts were paid; and

- (b) if the amounts paid in respect of the financial product, and amounts paid in respect of other financial products, are paid into a common fund — any amounts deducted from the common fund by way of fees, expenses or charges.

7.9.76 Consents to certain statements

- (1) For subsection 1013K (2) of the Act, the period for which a person must keep a consent or a copy of a consent is 7 years from the date of the consent.
- (2) The copy of the consent may be kept:
- (a) in its physical form; or
- (b) in an electronic form that is capable of being reproduced in physical form.

[3] After Schedule 9

insert

Schedule 10 Ongoing management charge

(subregulation 7.9.01 (1), definition of **ongoing management charge**)

1. The ongoing management charge for a year of income is:

$$\frac{MC}{AV}$$

expressed as a percentage, where:

AV is the average value of the net assets of the fund during the year of income, worked out in the following way:

- (a) add each of the net asset valuations made during the year of income; and

-
- (b) divide the result by the number of values added under paragraph (a).

MC is the total amount of ongoing management charges charged for the year of income, excluding the amount of a charge paid or payable by a standard employer-sponsor of the fund.

2. For a managed investment scheme, a charge must be included in **MC** if it is deducted from the investment return before the amount of the return is worked out and paid to the fund.
3. For item 2, if the trustee cannot determine the amount of charge, the trustee must make a reasonable estimate of the amount.

Schedule 10A Modifications of Part 7.9 of the Act

(regulations 7.9.02, 7.9.04, 7.9.07, 7.9.08, 7.9.11, 7.9.12, 7.9.17, 7.9.25, 7.9.29, 7.9.38, 7.9.42, 7.9.43, 7.9.44, 7.9.48, 7.9.52, 7.9.59, 7.9.63, 7.6.67, 7.9.69 and 7.9.71)

Part 1 Modifications relating to sub-plans

1.1 After subsection 1012A (3)

insert

- (3A) Subsection (3) applies to a financial product that is a sub-plan:
- (a) to be issued to a member or a client; and
 - (b) different from a sub-plan already held by the member or client.

1.2 After subsection 1012B (4)

insert

- (4A) Subsections (3) and (4) apply to a financial product that is a sub-plan:
- (a) to be issued to a member or a client; and
 - (b) different from a sub-plan already held by the member or client.

1.3 Paragraph 1012D (10) (1) (b)

substitute

- (b) a superannuation product is the same as another superannuation product only if the other superannuation product is:
- (i) an interest in the same sub-plan; or
 - (ii) if there is no sub-plan — an interest in the same fund.

1.4 After section 1012F

insert

- (2) This section applies to the change of a person's membership of a sub-plan to membership in relation to another sub-plan in the same way as it applies to the issue to a person of an interest in a superannuation fund as a member or an employer-sponsor.

1.5 After subsection 1012I (1)

insert

- (1A) At or before the time when a standard employer-sponsor of a superannuation entity fund becomes a standard employer-sponsor in respect of another sub-plan under the fund, the person (the *issuer*) who is to provide the sub-plan to the employer-sponsor's employees must give the employer-sponsor a Product

Disclosure Statement in accordance with this Division for each sub-plan.

1.6 After subsection 1016E (1)

insert

- (1A) For subsection (1), subsection (2B) applies if the financial product is a superannuation product (including an interest in a sub-plan additional to a sub-plan already held by the applicant); or
- (2B) If the money received from the applicant is in the form of a preserved benefit, the responsible person must repay the money they received from the applicant into a superannuation fund, approved deposit fund or RSA nominated by the applicant.

1.7 After subsection 1016F (1)

insert

- (1A) For subsection (1), if:
 - (a) the financial product is:
 - (i) a superannuation product (including an interest in a sub-plan additional to a sub-plan already held by the applicant); or
 - (ii) an RSA product (including an interest in a sub-plan additional to a sub-plan already held by the applicant); and
 - (b) the money received from the applicant is in the form of a preserved benefit;
the responsible person must repay the money they received from the applicant into a superannuation fund, approved deposit fund or RSA nominated by the applicant.

1.8 After subsection 1017F (3)

insert

- (3A) For subsection (3), a change to a sub-plan is not a variation of the terms of a financial product.

Part 2 Modifications relating to Product Disclosure Statements for standard employer-sponsor

2.1 After subsection 1016A (2)

insert

- (2A) Subsection (2) does not apply in relation to a superannuation product if:
- (a) the issuer is a public offer entity; and
 - (b) an employer became a standard employer-sponsor of a fund in the following way:
 - (i) the employer was a standard employer-sponsor of a fund (***fund 1***);
 - (ii) the benefits of members in fund 1 were transferred to a successor fund;
 - (iii) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (iv) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred.

2.2 After subsection 1012D (9)

insert

Recommendation, issue or sale situation — public offer entity and standard employer-sponsor

- (9A) In a recommendation situation, issue situation or sale situation, an issuer does not have to give a member a Product Disclosure Statement if:

-
- (a) the issuer is a public offer entity; and
 - (b) an employer became a standard employer-sponsor of a fund in the following way:
 - (i) the employer was a standard employer-sponsor of a fund (*fund 1*);
 - (ii) the benefits of members in fund 1 were transferred to a successor fund;
 - (iii) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (iv) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred.

Recommendation, issue or sale situation — successor fund

- (9B) In a recommendation situation, issue situation or sale situation, an issuer need not give a member a Product Disclosure Statement if an interest has been issued by the trustee of a public offer entity, as trustee of a successor fund, in relation to the transfer of benefits to the successor fund.

Part 3 Modifications relating to Product Disclosure Statements for RSA products

3.1 After subsection 1012D (9)

insert

Recommendation, issue or sale situation — takeover or merger

- (9A) In a recommendation situation, issue situation or sale situation, the issuer does not have to give a Product Disclosure Statement if a person:
 - (a) becomes the holder of an RSA with an RSA institution; and

-
- (b) does so as a direct result of:
- (i) the takeover of the RSA provider with which the person previously held an RSA by:
 - (A) the RSA institution; or
 - (B) a corporation that is a related corporation of the RSA institution; or
 - (ii) a merger involving the RSA provider with which the person previously held an RSA and which results in the creation of the RSA institution; or
 - (iii) the transfer of any, or all of, the assets and liabilities of the RSA provider with which the person previously held an RSA to the RSA institution:
 - (A) under a provision of the *Banking Act 1959*, the *Life Insurance Act 1995* or of any other law of the Commonwealth, a State or a Territory; or
 - (B) under a voluntary transfer of engagements; or
 - (C) on request of a regulatory agency mentioned in subsection (9B).

- (9B) For sub-subparagraph (1) (b) (iii) (C), the agencies are:
- (a) Australian Financial Institutions Commission;
 - (b) Financial Institutions Authority (Western Australia);
 - (c) Financial Institutions Commission (New South Wales);
 - (d) Financial Institutions Commission (Victoria);
 - (e) Office of Financial Supervision (Queensland);
 - (f) Office of Financial Supervision (South Australia);
 - (g) Office of Financial Supervision (Tasmania);

-
- (h) Registrar of Financial Institutions (Australian Capital Territory);
 - (i) Territory Supervisory Authority constituted by the Registrar of Financial Institutions.

3.2 After subsection 1016A (2)

insert

- (2A) Subsection (2) does not apply in relation to an RSA product if:
 - (a) the issuer is a public offer entity; and
 - (b) an employer became a standard employer-sponsor of a fund in the following way:
 - (i) the employer was a standard employer-sponsor of a fund (***fund 1***);
 - (ii) the benefits of members in fund 1 were transferred to a successor fund;
 - (iii) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (iv) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred.

Part 4 Modifications relating to trustees of transferor funds and RSA providers

4.1 After subsection 1012B (4)

insert

- (4A) A regulated person that is the trustee of an eligible rollover fund must give a Product Disclosure Statement for a financial product to the following persons:

-
- (a) the trustee of a transferor fund in relation to which a beneficiary is to be issued with a superannuation interest under section 243 of the SIS Act; or
 - (b) the RSA provider in relation to which an RSA holder is to be issued with a superannuation interest under section 89 of the RSA Act; or
 - (c) the trustee of an EPSSS in relation to which a beneficiary of the EPSSS is to be issued with a superannuation interest in the following circumstances:
 - (i) the issuer is a public offer entity; and
 - (ii) an employer became a standard employer-sponsor of a fund in the following way:
 - (A) the employer was a standard employer-sponsor of a fund (*fund 1*);
 - (B) the benefits of members in fund 1 were transferred to a successor fund;
 - (C) the employer was a standard employer-sponsor of fund 1 immediately before those benefits were so transferred;
 - (D) the employer was a standard employer-sponsor of the successor fund immediately after those benefits were so transferred.

Part 5 Modifications relating to insurance options under contact associated with superannuation interest

5.1 After subsection 1012D (9)

insert

Recommendation, issue or sale situation—insurance options

-
- (9A) In a recommendation situation, issue situation or sale situation, the trustee of a fund does not have to give a Product Disclosure Statement if a person if:
- (a) a member of the fund seeks to change the coverage of insurance options under a contract associated with a superannuation interest; and
 - (b) information in relation to the change of insurance options has not already been given in a periodic statement or in accordance with other periodic reporting requirements under Division 3.
- (9B) If subsection (9A) does not apply, the trustee of the fund must give the member a Product Disclosure Statement in relation to the insurance options before the coverage of the options is changed.

Part 6 Modifications relating to content of Product Disclosure Statement

6.1 After subsection 1013D (2)

insert

- (2A) For this section, a sub-plan is taken to be a financial product.

6.2 After subsection 1013D (4)

insert

- (5) The regulations may also make arrangements for the format of a Product Disclosure Statement, including:
- (a) the location of particular statements or information; and
 - (b) the style or appearance of particular statements or information.

Part 7 Modifications relating to reporting periods

7.1 Paragraph 1017D (2) (a)

substitute

- (a) a fund reporting period or member reporting period lasts for:
 - (i) 12 months; or
 - (ii) a longer period fixed by ASIC on the application of the entity to which the period relates;
- (aa) a unit-holder reporting period or a pooled superannuation trust reporting period lasts for:
 - (i) 12 months; or
 - (ii) a longer period fixed by ASIC on the application of the entity to which the period relates;
- (ab) a reporting period for an RSA lasts for:
 - (i) 12 months; or
 - (ii) a longer period fixed by ASIC on the application of the entity to which the period relates;

Part 8 Modifications relating to life pensioners, members subject to compulsory protection of small amounts and members with small amounts that are expected to grow quickly

8.1 After subsection 1017D (7)

insert

- (8) The trustee of a fund need not give a periodic statement or other information to a member:

-
- (a) in relation to any period during which the member is a life pensioner of the fund; or
 - (b) if the member is a pensioner of the fund, and has requested that that information not be provided.
- (9) Subsection (8) does not apply to information mentioned in subregulation 7.9.21 (2) of the *Corporations Regulations 2001*.
- (10) If, at the end of a member reporting period, a member of a regulated superannuation fund is a protected member, the trustee need give the member only the following information in the periodic statement for that member reporting period:
- (a) the contact details of the fund; and
 - (b) either:
 - (i) the amount of the member's withdrawal benefit at the end of the member reporting period; or
 - (ii) the total of the amounts that have been received by the fund in respect of the member; and
 - (c) in so far as applicable, the information mentioned in paragraph 7.9.21 (2) (a) or (b) of the *Corporations Regulations 2001*, as appropriate.
- (11) If, in relation to a member of a fund, the trustee of the fund takes advantage of subsections (12) to (15), the trustee must not, in relation to that member, take advantage of subsection (10).
- (12) If, at the end of a member reporting period, the trustee of a fund has a reasonable expectation that a particular protected member will have a withdrawal benefit of at least \$1 500 within 12 months after the end of that member reporting period, the trustee need not show, in the periodic statement, the effect of the member-protection standards.
- (13) For subsection (11), a trustee is not taken to have a reasonable expectation that a member will have a withdrawal benefit of \$1,500 within the period of 12

months referred to in that subregulation if termination of the member's employment with a current employer (not being an employer who or that is an associate, within the meaning of paragraph 70 (a) of the SIS Act, of the member) would be likely to result in the member's withdrawal benefit being below \$1,500 at the end of that period.

- (14) If, at the end of the 12-month period, the member's withdrawal benefit has not reached \$1 500, the trustee must show, in the periodic statement provided to the member for each member reporting period ending on or after the end of the 12-month period, the effect of the member-protection standards.
- (15) The trustee of a fund must not take advantage of subsection (12) in respect of a person more than once unless, after an occasion on which the trustee does so but before the next occasion, the member leaves and rejoins the fund.

Part 9 Modifications relating to periodic statements for RSA providers

9.1 After subsection 1017D (7)

insert

- (8) If:
- (a) a person ceases to be an RSA holder before RSA information in respect of a particular reporting period (the *relevant period*) is given; and
 - (b) either:
 - (i) the RSA provider gives, or intends to give, information to the person in respect of a reporting period that is the same as, or includes the whole of, the relevant period; or
 - (ii) if the person ceases to be an RSA holder by reason of death — the RSA provider complies in relation to the person with the

relevant requirements of this Act and the regulations;

the RSA provider need not give RSA information, in respect of the relevant period, to or in relation to the person.

- (9) If, at the end of a reporting period, an RSA holder is a protected RSA holder, the RSA provider need give the RSA holder only the following information for the reporting period:
- (a) the contact details of the RSA provider;
 - (b) either:
 - (i) the amount of the RSA holder's withdrawal benefit at the end of the reporting period; or
 - (ii) the total of the amounts that have been received by the RSA provider in respect of the RSA holder;
 - (c) the annual actual or notional rate of net interest applied to the RSA for each year of the previous 5 years ending at the end of the reporting period;
 - (d) the compound average of the annual actual or notional rate of net interest applied to the RSA for each year of the previous 5 years ending at the end of the reporting period;
 - (e) details (in summary form) of arrangements that the RSA provider has to deal with inquiries or complaints;
 - (f) a statement that other information is available on request;
 - (g) a statement:
 - (i) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and
 - (ii) that there are other superannuation arrangements that may provide a greater return over the long term; and
 - (iii) that the RSA holder may wish to seek information about the rates of return of those superannuation arrangements;

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- (h) if the RSA provider reduced the RSA holder's benefits in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge:
- (i) the amount deducted; and
 - (ii) if there is a difference between the amount deducted and the amount assessed under subsection 15 (1) of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or between the amount deducted and the amount determined under subsection 15 (2) of that Act — a statement explaining the difference.
- (10) A nil amount need not be disclosed.
- (11) If, in relation to an RSA holder, the RSA provider takes advantage of subsections (13) to (16), the RSA provider must not, in relation to the RSA holder, take advantage of subregulation (9).
- (12) If, at the end of a reporting period, an RSA has not been in existence for 5 years, the references in paragraphs (9) (c) and (d) to 5 years are taken to be references to the whole period of existence of the RSA.
- (13) If, at the end of a reporting period, an RSA provider has a reasonable expectation that an RSA holder will have a withdrawal benefit of at least \$1 500 within 12 months after the end of the reporting period, the RSA provider need not show, in RSA information provided to the RSA holder, the effect of the RSA holder-protection standards.
- (14) For subsection (12), an RSA provider is not taken to have a reasonable expectation that the RSA holder will have a withdrawal benefit of \$1 500 within the period of 12 months mentioned in that subregulation if termination of the RSA holder's employment with a current employer would be likely to result in the RSA holder's withdrawal benefit being below \$1 500 at the end of that period.

-
- (15) If, at the end of the 12-month period, the RSA holder's withdrawal benefit has not reached \$1 500, the RSA provider must show, in RSA information provided to the RSA holder for each reporting period ending on or after the end of the 12-month period, the effect of the RSA holder-protection standards.
- (16) An RSA provider must not take advantage of subsection (13) in respect of a person more than once unless, after an occasion on which the RSA provider does so but before the next occasion, the person ceases to be the holder of the RSA and subsequently becomes the holder of an RSA provided by the same RSA provider.

Part 10 Modifications relating to periodic statements for superannuation entities and RSA providers

10.1 After subsection 1017C (7)

insert

- (7A) If:
- (a) a concerned person requests information under subsection (2) or (3) in relation to a facility, under the concerned person's existing holding of a superannuation product, to modify:
 - (i) an investment strategy; or
 - (ii) a contribution level; or
 - (iii) insurance coverage; and
 - (b) the information has not already been given in a periodic statement or in accordance with other periodic reporting requirements under Division 3;
it is sufficient compliance with a requirement imposed by this section if the responsible person provides an up to date Product Disclosure Statement that includes advice on the ability and effect of making the modification.

Part 11 Modifications relating to ongoing disclosure of material changes and significant events for regulated superannuation funds and ADFs

11.1 After subsection 1017B (5)

insert

If a member would expect to be informed before an event

(5A) If a member would reasonably expect to be informed of:

- (a) a decision of the trustee; or
- (b) the winding-up or termination of the fund;

before it occurs, the trustee must give the member information about that event as soon as practicable after it becomes reasonable for the trustee to expect that the event will happen (except that the periodic statement need not be given more than 3 months before the expected date of the event).

Changes to governing rules

(5B) If:

- (a) the governing rules of a fund are changed or, because of any other act carried out, or consented to, by the trustee, a change occurs in relation to a fund; and
- (b) the change is of a kind that:
 - (i) has an adverse effect on a member's right or claim to accrued benefits or the amount of those benefits; or
 - (ii) has an adverse effect on the benefits to which a member may become entitled; or
 - (iii) has an adverse effect for the member on the circumstances in which those benefits would become payable; or

(iv) has an adverse effect for the member on the manner in which those benefits would be worked out; or

(v) has an adverse effect on the security of the member's benefits;

the trustee of the fund must give information concerning the change to each member affected by the change.

Fund transfers

(5C) The trustee of a fund must give to a member information concerning an incident affecting the member if the incident is one of the following kinds:

(a) the member is transferred to a different category of membership or to a different fund;

(b) the benefits of the member are transferred to an RSA or to an EPSSS.

(5D) If the trustee of a fund receives a notice of non-compliance, the trustee must give to each member:

(a) a statement of the circumstances (including details of the non-compliance) that gave rise to the issue of the notice; and

(b) a statement of the effect on the fund of the issue of the notice (including details of the effect on the fund's taxation position); and

(c) details of action that the trustee has taken, or proposes to take, to have the fund become a complying fund; and

(d) any information concerning the non-compliance that APRA requires to be given for the purposes of this paragraph.

(5E) For subsection (5D), a *notice of non-compliance* means a notice issued under section 40 of the SIS Act to the trustee of a fund stating that the fund is not a complying fund.

Benefit to be paid to eligible rollover fund

-
- (5F) For subsection (4), if the benefits of a member of a fund (*the transferor fund*) will be paid to an eligible rollover fund unless he or she chooses, within a specified period, another superannuation entity, an EPSSS or an RSA to which those benefits will be paid, the notice to the member must include:
- (a) information about the payment to the eligible rollover fund that will assist the member to decide between having the benefits paid to that other superannuation entity, the EPSSS, the RSA or the eligible rollover fund; and
 - (b) so much of the information described in subsection (5G) as is relevant to the circumstances.
- (5G) For subsection (5F), the information is:
- (a) an explanation why the trustee intends to pay the member's benefits to the eligible rollover fund if the member does not make the choice within the period; and
 - (b) a statement of the effect of the payment of benefits to the eligible rollover fund; and
 - (c) the contact details of the eligible rollover fund; and
 - (d) the amount, or, subject to subregulation (3), the approximate amount, of the member's benefits that will be paid from the transferor fund; and
 - (e) a statement to the effect that if the member chooses a superannuation entity, EPSSS or RSA that refuses to accept the payment of the member's benefit, or the member makes no choice within the specified period, the trustee will pay the member's benefits to the eligible rollover fund.
- (5H) A fund may inform a member under paragraph (5G) (d) of the approximate amount of the member's benefits if, at the time the information is to be given, the trustee of the fund cannot determine the exact amount of the member's benefits that will be paid from the fund.

-
- (5I) This regulation does not require the trustee of the transferor fund to provide information about RSAs, EPSSSs or superannuation entities other than the eligible rollover fund.

Part 12 Modifications relating to ongoing disclosure of material changes and significant events for RSAs

12.1 After subsection 1017B (5)

insert

- (5A) For subsection (5B):

event means:

- (a) any event, or decision, in relation to an RSA that the RSA provider should reasonably believe the RSA holder would reasonably expect to be informed of; and
- (b) a change to the terms and conditions of an RSA, or,
- (c) a change in relation to an RSA, because of any act carried out, or consented to, by an RSA provider, that:
 - (i) has an adverse effect on the amount of the RSA; or
 - (ii) has an adverse effect on the benefits to which the RSA holder may be entitled; or
 - (iii) has an adverse effect on the circumstances in which those benefits would be payable; and
- (d) a transfer of the amount of an RSA to:
 - (i) another RSA offered by an RSA institution; or
 - (ii) a superannuation entity; or
 - (iii) an EPSSS.

General rule

- (5B) Subject to subsections (5D) and (5E), the time within which an RSA provider must give information about an event to an RSA holder is:
- (a) if the event has an adverse effect:
 - (i) before the expected occurrence of the event; or
 - (ii) within 30 days after the occurrence of the event;
 - (b) in any other case — within 3 months after the occurrence of the event.
- (5H) Despite subsection (4), this section does not require the RSA provider to provide information about:
- (a) an RSA institution; or
 - (b) a superannuation entity other than the eligible rollover fund; or
 - (c) an EPSSS.

Part 13 Modifications relating to ongoing disclosure of material changes and significant events for pooled superannuation trusts

13.1 After subsection 1017B (5)

insert

Meaning of event

- (5A) For subsections (5B) and (5C), **event** means:
- (a) any event in relation to the pooled superannuation trust that the trustee reasonably believes the unit-holder would reasonably expect to be informed of; and
 - (b) the receipt of a notice of non-compliance.

Note A notice of non-compliance is a notice issued under section 40 of the SIS Act stating that the entity is not a PST.

Significant event information — general rule

- (5B) The time within which the trustee of a pooled superannuation trust must give information about an event to a unit-holder or class of unit-holders is:
- (a) before the expected occurrence, or as soon as practicable after the occurrence, of the event; or
 - (b) in any case, within 3 months after the occurrence of the event.

Significant event information — event not adverse

- (5C) Despite subsection (5B), the information may be given more than 3 months after the occurrence of the event if:
- (a) the trustee reasonably believes that the event is not adverse to the unit-holder's interests and accordingly the unit-holder would not be expected to be concerned about the delay in giving the information; and
 - (b) the information is given no later than 12 months after the occurrence of the event.

Meaning of event

- (5D) For the purposes of subsection (5E), **event** means:
- (a) a decision of the trustee; or
 - (b) the winding-up or termination of the pooled superannuation trust;
- whichever is applicable.

Significant event information — unit-holder expects to be informed before event

- (5E) Where a unit-holder would reasonably expect to be informed of an event before it occurs, the trustee of a pooled superannuation trust must give the information to the unit-holder as soon as practicable after it becomes reasonable for the trustee to expect that the event will happen (except that the information need not be given more than 3 months before the expected date of the event).

Information concerning other significant events

- (5F) The trustee of a pooled superannuation trust must give to each unit-holder information concerning any event in relation to the pooled superannuation trust that the trustee reasonably believes the unit-holder would reasonably expect to be informed of.
- (5G) Information under this subsection (5F) concerning an event is information that the trustee reasonably believes a unit-holder would reasonably need:
- (a) if there is a nature or purpose to the event — to understand the nature or purpose; and
 - (b) to make an informed judgment about the effect (generally and in respect of the unit-holder's current and future entitlements) of the event.
- (5H) If the trustee of a pooled superannuation trust receives a notice of non-compliance, the trustee must give to each unit-holder:
- (a) a statement of the circumstances (including details of the non-compliance) that gave rise to the issue of the notice; and
 - (b) a statement of the effect on the pooled superannuation trust of the issue of the notice (including details of the effect on the pooled superannuation trust's taxation position); and
 - (c) details of action that the trustee has taken, or proposes to take, to have the pooled superannuation trust become a pooled superannuation trust for the purposes of Division 2 of Part 5 of the Act; and
 - (d) any information concerning the non-compliance that APRA requires to be given for the purposes of this paragraph.

Note A notice of non-compliance is a notice issued under section 40 of the SIS Act stating that the entity is not a PST.

Part 14 Modifications relating to charges for information requested

14.1 After subsection 1017C (8)

insert

- (8A) The obligation of a responsible person under this section to give information on request by a person arises only if the person pays the amount specified by the responsible person as the charge for giving the information.
- (8B) The amount of the charge must not exceed the reasonable cost to the responsible person of giving the information (including all reasonably related costs — for example, costs of searching for, obtaining and collating the information).
- (8C) A policy committee is not liable to any charge for information given to it.
- (8D) In the case of information to be supplied to a concerned person under Subdivision 4.9 of Part 7.9 of the *Corporations Regulations 2001*, a charge may be made only if:
 - (a) the person to whom the information is to be given has requested the information; and
 - (b) the person had been given the same information during the period of 12 months immediately preceding the date on which the request is made.

Part 15 Modifications relating to information when member leaves a fund

15.1 After subsection 1017D (3)

insert

- (3A) The trustee of a fund must give information under this section to a person as soon as practicable after the trustee becomes aware that that or another person (*the former member*) has ceased to be a member of the fund, and in particular the trustee must make reasonable efforts to give the information within 1 month after becoming aware that the former member has ceased to be a member of the fund.
- (3B) The trustee of a fund must make all reasonable efforts to give information about the amount of insured death or disability benefits the former member may have had in the fund and the amount of insured death or disability benefits the former member may have had in the fund and a continuation option (if any) applying to those benefits in a reasonable time before the option lapses.
- (3C) Subject to subsection (3D), if a person ceases to be a member of a fund:
- (a) after the end of a completed member reporting period (the *completed period*); and
 - (b) before member information is issued for that period;
- the information required by this section to be given to or in relation to the person may be given in respect of the period consisting of:
- (c) the completed period; and
 - (d) the period from the end of that period to the end of the day on which the person ceased to be a member of the fund;

instead of in respect of the person's exit reporting period.

- (3D) If the period mentioned in paragraph (3C) (d) exceeds 6 months in a particular case, subsection (3C) does not apply in respect of that case.

15.2 After subsection 1017DA (3)

insert

- (3A) If a person ceases by death to be a member of a fund (other than a self managed superannuation fund), the trustee of the fund must give to each person receiving a benefit from the fund as a result of the death of the person:
- (a) a statement setting out details (in summary form) of arrangements that the fund has to deal with inquiries or complaints; or
 - (b) a statement that those kinds of details are available on request.
- (3B) If:
- (a) a death or disability benefit exists in relation to a member of a fund; and
 - (b) a continuation option is available in relation to the member;
- the trustee of the fund must provide the member with a Product Disclosure Statement in relation to the continuation option.

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Part 16 Modifications relating to giving information for pooled superannuation trusts

16.1 After subsection 1017D (7)

insert

- (8) The trustee of a pooled superannuation trust must give information under regulation 7.9.60 of the *Corporations Regulations 2001* to a person as soon as practicable after the trustee becomes aware that the person has ceased to be a unit-holder of the pooled superannuation trust, and in particular the trustee must make reasonable efforts to give the information within 1 month after becoming aware that the person has ceased to be a unit-holder of the pooled superannuation trust.
- (9) Subject to subsection (10), if a person ceases to be a unit-holder of a pooled superannuation trust:
- (a) after the end of a completed unit-holder reporting period (the ***completed period***); and
 - (b) before a unit-holder report is issued for that period;
- the information mentioned in subsection (8) may be given in respect of the period consisting of:
- (c) the completed period; and
 - (d) the period from the end of that period to the end of the day on which the person ceased to be a unit-holder of the pooled superannuation trust;
- instead of in respect of the period mentioned in subsection (8).
- (10) If the period mentioned in paragraph (9) (d) exceeds 6 months in a particular case, subsection (9) does not apply in respect of that case.

Part 17 Modifications relating to time for compliance

17.1 After subsection 1017D (7)

insert

- (8) An RSA provider must give information under this Section to a person as soon as practicable after the RSA provider becomes aware that that person or another person (*the former RSA holder*) has ceased to be the holder of an RSA, and in particular the RSA provider must make reasonable efforts to give the information within 1 month after becoming aware that the former RSA holder has ceased to be the holder of the RSA.
- (9) The RSA provider must make all reasonable efforts to give information that a continuation option for insurance cover is available, in good time before the option lapses.

Part 18 Modifications relating to exceptions to exit reporting period provisions

18.1 After subsection 1017D (7)

insert

- (8) Subject to subsection (9), if a person ceases to be the holder of an RSA:
 - (a) after the end of a completed reporting period (*completed period*); and
 - (b) before RSA information is given for the completed period;the information required by this section to be given to or in relation to the person may be given in respect of the period consisting of:

-
- (c) the completed period; and
 - (d) the period from the end of that period to the end of the day on which the person ceased to be the holder of the RSA;

instead of in respect of the person's exit reporting period within the meaning of the *Corporations Regulations 2001*.

- (9) If the period mentioned in paragraph (8) (d) exceeds 3 months in a particular case, subsection (8) does not apply in respect of that case.
- (10) An RSA provider need not give information under this section to the holder of an RSA who is transferring the amount of the RSA if:
 - (a) the RSA holder has received sufficient information under subregulation 7.9.33 (3) of the *Corporations Regulations 2001* to enable the RSA holder to understand the effect of the transfer; and
 - (b) the RSA provider reasonably believes that the RSA holder does not need the information because:
 - (i) the RSA holder has received or will receive, from the RSA institution to which the amount is being transferred, information under regulation 7.9.17 of the *Corporations Regulations 2001* in respect of the RSA holder's exit reporting period; or
 - (ii) the RSA holder has received or will receive, from the trustee of the superannuation entity to which the amount is being transferred, information under Subdivision 4.3 of Part 7.9 of the *Corporations Regulations 2001* in respect of the RSA holder's exit reporting period; or
 - (iii) the RSA holder has received or will receive, from the trustee of the EPSSS to which the amount is being transferred, information to the same general effect as that required under Subdivision 4.3 of Part 7.9 of the

Corporations Regulations 2001 in respect of the RSA holder's exit reporting period.

Part 19 Modifications relating to obligation to give information about financial products

19.1 After subsection 1017B (7)

insert

- (7A) Subject to subsections (7B) and (7C), this section does not apply if:
- (a) the responsible person has an address for a concerned person, and:
 - (i) the responsible person is satisfied on reasonable grounds that that address is incorrect; and
 - (ii) the responsible person has taken reasonable steps to locate the concerned person but has been unable to do so; or
 - (b) the responsible person has no address for the concerned person and:
 - (i) has been unable to obtain an address for the concerned person; and
 - (ii) has taken reasonable steps to locate the concerned person, but has been unable to do so; or
- (7B) If the responsible person has refrained, in reliance on subsection (7A), from giving information to a concerned person, the responsible person must give information to the concerned person if the responsible person later becomes aware of the concerned person's address or location.
- (7C) Subsection (7B) applies only in respect of information that the responsible person becomes liable to give to the concerned person after becoming aware of the concerned person's address or location.

19.2 After subsection 1017C (8)

insert

- (8A) Subject to subsections (8B) and (8C), this section does not apply if:
- (a) the responsible person has an address for a concerned person, and:
 - (i) the responsible person is satisfied on reasonable grounds that that address is incorrect; and
 - (ii) the responsible person has taken reasonable steps to locate the concerned person but has been unable to do so; or
 - (b) the responsible person has no address for the concerned person and:
 - (i) has been unable to obtain an address for the concerned person; and
 - (ii) has taken reasonable steps to locate the concerned person, but has been unable to do so; or
- (8B) If the responsible person has refrained, in reliance on subsection (8A), from giving information to a concerned person, the responsible person must give information to the concerned person if the responsible person later becomes aware of the concerned person's address or location.
- (8C) Subsection (8B) applies only in respect of information that the responsible person becomes liable to give to the concerned person after becoming aware of the concerned person's address or location.

19.3 After subsection 1017D (7)

insert

- (8) Subject to subsections (9) and (10), this section does not apply if:
- (a) the issuer has an address for a holder, and:

-
- (i) the issuer is satisfied on reasonable grounds that that address is incorrect; and
 - (ii) the issuer has taken reasonable steps to locate the holder but has been unable to do so; or
 - (b) the issuer has no address for the holder and:
 - (i) has been unable to obtain an address for the holder; and
 - (ii) has taken reasonable steps to locate the holder, but has been unable to do so; or
- (9) If the issuer has refrained, in reliance on subsection (8), from giving information to a holder, the issuer must give information to the holder if the issuer later becomes aware of the holder's address or location.
- (10) Subsection (9) applies only in respect of information that the issuer becomes liable to give to the holder after becoming aware of the holder's address or location.

19.4 After subsection 1017DA (3)

insert

- (3A) Subject to subsections (3B) and (3C), this section does not apply if:
- (a) the trustee has an address for a holder or former holder, and:
 - (i) the trustee is satisfied on reasonable grounds that that address is incorrect; and
 - (ii) the trustee has taken reasonable steps to locate the holder or former holder but has been unable to do so; or
 - (b) the trustee has no address for the holder or former holder and:
 - (i) has been unable to obtain an address for the holder or former holder; and
 - (ii) has taken reasonable steps to locate the holder or former holder, but has been unable to do so; or

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- (3B) If the trustee has refrained, in reliance on subsection (3A), from giving information to a holder or former holder, the trustee must give information to the holder or former holder if the trustee later becomes aware of the holder's or former holder's address or location.
- (3C) Subsection (3B) applies only in respect of information that the trustee becomes liable to give to the holder or former holder after becoming aware of the holder's or former holder's address or location.

Part 20 Modifications for confirmation of transactions

20.1 After subsection 1017F (5)

insert

- (5A) Despite subsection (5), if:
- (a) the cost of a transaction (including taxes and charges) is not known at a particular time; and
 - (b) all of the other information required under subsection (7) in relation to confirmation of the transaction is known at that time;
- the confirmation of the transaction is to be provided in accordance with subsection (5B).
- (5B) Confirmation is to be provided as follows:
- (a) all of the information required, except for the cost of the transaction, is to be provided as soon as practicable in accordance with subsection (5);
 - (b) the cost of the transaction may be provided in whichever of the following can be done earlier:
 - (i) in a secondary confirmation notice provided as soon as practicable after the cost is known;
 - (ii) in the first periodic report under section 1017D after the cost is known.

Schedule 10B Information in Product Disclosure Statement for certain funds

(regulation 7.9.12)

1 On front or cover page, or first page, of document

1.1 Name and contact details of the fund and the trustee of the fund.

Note See paragraph 1013D (1) (a) of the Act.

1.2 ABN of the trustee.

1.3 Publication date of the document.

Note See section 1013G of the Act.

1.4 A prominent statement that:

- (a) the document describes the main features of the fund; and
- (b) the document should be read before making a decision to join the fund; and
- (c) if an employer is not a financial services licensee, or is not an authorised representative, the employer must not give advice about the fund or recommend a superannuation product; and
- (d) a person who needs more information about the fund should contact the fund trustee; and
- (e) a person who wants advice about superannuation products should get advice from a financial adviser.

1.5 A prominent statement:

- (a) that further information about the fund is available to a person who asks for it; and
- (b) that the provision of the further information may be subject to a charge; and
- (c) about how to ask for further information.

1.6 A statement that when a person asks for further information, the trustee will provide all information that the trustee reasonably believes a member would reasonably need to make an informed assessment of:

- (a) the management and financial condition of the fund; and
- (b) the investment performance of the fund.

Note Particular information may be contained in another document issued, or authorised to be issued, by the trustee: see section 114E of the SIS Act.

1.7 A statement that a person who leaves the fund within a few years of joining may get back less than the amount of contributions paid because of the level of investment returns earned by the fund and the fund's charges.

1.8 If the fund provides an allocated pension, a statement that:

- (a) the amount that the person can take out each year is subject to minimum and maximum limits set by the Government; and
- (b) an allocated pension may not provide an income stream for the rest of the person's life; and
- (c) payments will only be made while there is enough money in the account for the allocated pension provided by the fund.

1.9 A statement that dispute resolution is available.

Note See paragraph 1013D (1) (g) of the Act.

1.10 A statement that a cooling-off period exists for the superannuation product.

Note See paragraph 1013D (1) (i) of the Act.

2 Contributions

2.1 Details of who can make contributions to the fund, how they can be made and any restrictions (for example, a minimum initial contribution) on making contributions.

3 Benefits

- 3.1 A statement of the method of calculation of benefits to which the person becomes, or may become, entitled on joining the fund.

4 Death and/or disability insurance

- 4.1 A statement:
- (a) whether the fund provides death insurance, disability insurance, or both; and
 - (b) whether those benefits are compulsory or voluntary; and
 - (c) whether a person must give information about the person's health before being eligible for insurance cover; and
 - (d) the time from which a person would be covered by the insurance and when the cover would cease.
- 4.2 If it is possible for a person to nominate a beneficiary in relation to death benefits — a statement explaining how and when to nominate a beneficiary.

5 Your investment options and their risk profiles (or, if no choice of investment strategy is offered, investment strategy of the fund and its risk profile)

- 5.1 If the fund offers members a choice of investment strategy, a statement:
- (a) identifying each investment strategy; and
 - (b) the objective of each of those investment strategies; and
 - (c) identifying the investment strategy that the trustee will use if the person does not choose one; and
 - (d) the relationship between risk and return associated with each investment strategy; and
 - (e) if the investment strategy is such that the fund is not a capital guaranteed fund — a statement that

the benefits in the strategy are not guaranteed and the value of the investment may rise or fall.

- 5.2 If no choice of investment strategy is offered, a statement:
- (a) of the objective of the investment strategy of the fund; and
 - (b) about the relationship between risk and return associated with that strategy; and
 - (c) if the fund is not a capital guaranteed fund — that the benefits in the strategy are not guaranteed and the value of the investment may rise or fall.

6 Investment returns in recent years

- 6.1 For each of the identified investment strategies, or if none, for the fund:
- (a) the annual effective earning rate for each of the most recent 5 years; and
 - (b) the compound average of the annual effective earning rate for 5 years ending with the most recent year of income; and
 - (c) a statement that the earning rate may not be the same as the rate credited to particular members because of the effect of charges made by the fund and, if relevant, the reserving policy of the fund; and
 - (d) a statement that past earning rates are not an indicator of future earning rates.
- 6.2 If the fund maintains reserves, the objective of the reserving policy and its effect on the amount credited to members' accounts.
- 6.3 The information mentioned in subitem 6.1 must not have been first published or issued by the fund more than 15 months before the date the information was given to the person.

6.4 Subitem 6.1 does not apply to a year of income if the fund or investment strategy was not operating for the whole year of income.

7 Charges of the fund

7.1 For any contribution charge, direct account charge, investment management charge, death and disability insurance charge, exit charge or switching charge of the fund, a description of:

- (a) the charge; and
- (b) the amount of the charge, expressed either as a fixed amount or as a percentage of:
 - (i) the contributions made in respect of a member; or
 - (ii) the member's benefits in the fund; or
 - (iii) the assets of the fund; and
- (c) against what, or to whom, the amount or percentage will be charged (for example, against contributions made in respect of the member to the fund or against the assets of the fund); and
- (d) if the amount or percentage varies for different classes of members, the minimum or maximum limit for each amount or percentage.

7.2 A statement outlining:

- (a) the circumstances in which and the times when any charge may be increased or decreased; and
- (b) any maximum limit, for a charge, mentioned in the governing rules of the fund.

7.3 The trustee does not have to state the amount of a charge that is paid or payable by a standard employer-sponsor of the fund.

7.4 If a charge referred to in subitem 7.1 cannot be expressed as an amount or a percentage, the trustee must explain how it will be determined.

7.5 If the fund offers a choice of investment strategies and the information mentioned in subitem 7.1 involves

different rates of charge, the information must be given for each investment strategy.

- 7.6 For a death and disability insurance charge that is determined by a premium rate table, the table must be attached to the information document and referred to in this section of the information document.

8 Ongoing management charges

- 8.1 The following statement:

‘The ongoing management charges charged by a fund over a year can be expressed as a percentage of the fund’s assets.

In the last [*insert ‘year’, ‘2 years’, ‘3 years’, ‘4 years’ or ‘5 years’ as appropriate*], the ongoing management charges of this fund, expressed as a percentage of the fund’s assets, were:’;

followed, for each of the identified investment strategies, or if none, for the fund, by a statement of:

- (a) the actual ongoing management charge percentage for:
- (i) the latest year of income of the fund (at the time the Product Disclosure Statement is published); and
 - (ii) the 4 previous years of income of the fund; and
- (b) the following statement:

‘The effect of these charges on your benefits can be shown by multiplying this percentage by the amount in your account. The following table shows the amount of ongoing management charges for an account balance of \$5,000. The effect of these charges will vary depending on the amount in your account.’;

followed, for each of the identified investment strategies, or if none, for the fund, by a statement of the converted amount for:

- (i) the latest year of income of the fund at the time the document is printed; and
- (ii) the 4 previous years of income; and
- (c) a statement that identifies the charges that are included in the ongoing management charge and disclosed under subitem 8; and
- (d) a statement that the person should read the charges section of the document; and
- (e) a statement that past charges should not be taken to be an indication of future charges; and
- (f) the following statement:

‘The ongoing management charge for a superannuation fund is required by law to be calculated and disclosed. Its purpose is to give a broad indication of the level of costs incurred by a particular fund as a percentage of the value of assets.

Cost include all fees, charges and expenses except for switching costs etc. The level of costs incurred by an individual member will depend on individual circumstances and as a percentage of value of the fund assets of the individual may be more or less than the ongoing management charge.

The ongoing management charge should not be taken to be representative of the actual fee and charges and expenses that will be borne by an individual.

Full details of fees, charges and expenses applicable to individual circumstances are set out in [section X] of this document.’

- 8.2 For paragraph 8.1 (b), the **converted amount** is \$5 000 multiplied by the ongoing management charge percentage.

8.3 The information mentioned in subitem 9.1 must not have been first published or issued by the fund more than 15 months before the date the information was given to the person.

8.4 Subitem 8.1 does not apply to a year of income if the fund or investment strategy was not operating for the whole year of income.

9 General superannuation information

Restrictions on when you can get access to your benefits

9.1 A statement:

- (a) that superannuation is a long-term investment; and
- (b) that the Commonwealth Government has placed restrictions on when a person can have access to benefits; and
- (c) that generally a person cannot access benefits until he or she reaches 65 or the preservation age within the meaning of subregulation 6.01 (2) of the SIS Regulations and has retired; and
- (d) of the preservation age within the meaning of subregulation 6.01 (2) of the SIS Regulations.

Member-protection standards

9.3 A brief statement of the effect of the member-protection standards prescribed by Division 5.5 of the SIS Regulations.

Further information

9.4 Any other information that the trustee wishes to provide.

Schedule 10C Capital guaranteed fund information and RSA information

(regulation 7.9.12)

1 On front or cover page, or first page, of document

1.1 Name and contact details of the fund or RSA and the trustee of the fund or RSA.

Note See paragraph 1013D (1) (a) of the Act.

1.2 ABN of the trustee.

1.3 Publication date of the document.

Note See section 1013G of the Act.

1.4 A prominent statement that:

- (a) the document describes the main features of the fund or RSA; and
- (b) the document should be read before making a decision to join the fund or RSA; and
- (c) if an employer is not a financial services licensee, or is not an authorised representative, the employer must not give advice about the fund or RSA or recommend a superannuation product; and
- (d) a person who needs more information about the fund or RSA should contact the fund trustee or RSA provider; and
- (e) the provision of the further information may be subject to a charge; and
- (f) a person who wants advice about superannuation products should get advice from a financial adviser.

1.5 A statement:

- (a) that outlines the effect of the lower-risk/lower-return nature of the product on possible benefits in the long term; and
- (b) that there are other superannuation arrangements that may provide a greater return over the long term; and

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- (c) that the person may wish to seek information about the rates of return of those superannuation arrangements.
- 1.6 If the fund or RSA provides an allocated pension, a statement that:
- (a) the amount that the person can take out each year is subject to minimum and maximum limits set by the Government; and
 - (b) an allocated pension may not provide an income stream for the rest of the person's life; and
 - (c) payments will only be made while there is enough money in the account for the allocated pension provided by the fund or RSA.
- 1.7 For an RSA:
- (a) a brief statement that, subject to any notice period, the amount of the RSA may be transferred at any time to:
 - (i) another RSA provided by an RSA institution; or
 - (ii) a superannuation entity or regulated exempt public sector superannuation scheme; or
 - (iii) a deferred annuity; and
 - (b) a statement of:
 - (i) the circumstances in which the RSA provider will pay the RSA holder's benefits to an eligible rollover fund; and
 - (ii) the effect of that payment; and
 - (iii) the contact details of the eligible rollover fund.
- 1.8 A statement that outlines the means by which the fund or RSA is to be maintained as a capital guaranteed fund or RSA and sets out the name of the institution providing the investments that back the fund or RSA.
- 1.9 A statement that dispute resolution is available.

Note See paragraph 1013D (1) (g) of the Act.

-
- 1.10 A statement that a cooling-off period exists for the superannuation product.

Note See paragraph 1013D (1) (i) of the Act.

2 Contributions

- 2.1 Details of who can make contributions to the fund or RSA, how they can be made and any restrictions (for example, a minimum initial contribution) on making contributions.

3 Benefits

- 3.1 A statement of the method of calculation of benefits to which the person becomes, or may become, entitled on joining the fund or RSA.

4 Death and/or disability insurance

- 4.1 A statement:
- (a) whether the fund or RSA provides death insurance, disability insurance, or both; and
 - (b) whether those benefits are compulsory or voluntary; and
 - (c) whether a person must give information about the person's health before being eligible for insurance cover; and
 - (d) the time from which a person would be covered by the insurance and when the cover would cease.
- 4.2 If it is possible for a person to nominate a beneficiary in relation to death benefits — a statement explaining how and when to nominate a beneficiary.

5 Investment returns earned by members in recent years

- 5.1 If a variable-rate option is, or variable-rate options are, offered by the fund or RSA in relation to the whole, or a part, of the benefits — a statement:

-
- (a) setting out the current rate of interest of each variable-rate option offered; and
 - (b) setting out:
 - (i) that the rate, or rates, of return may increase or decrease over time; and
 - (ii) the annual effective rate of return for the same class of, or similar, options offered by the fund or RSA for each year of the previous 5 years (including variable at-call deposits offered by the RSA provider, or by a capital guaranteed life policy, if the RSA provider did not offer similar variable-rate options for each year of the previous 5 years); and
 - (iii) the compound average of the annual effective rate of return for the same class of, or similar, options offered by the fund or RSA for each year of the previous 5 years.
- 5.2 The information mentioned in paragraphs 5.1 (b) and (c) must not have been first published or issued by the fund or RSA more than 15 months before the date the information was given to the person.
- 5.3 Paragraphs 5.1 (b) and (c) do not apply to a year of income if the fund or RSA was not operating for the whole year of income.

6 Fixed rate of returns

- 6.1 If a fixed-rate option is, or fixed-rate options are, offered by the fund or RSA in relation to the whole, or a part, of the benefits — a statement setting out the prescribed rate of return of each fixed-rate option and the term to which the rate applies.

7 Charges of the fund

- 7.1 For any contribution charge, direct account charge, death and disability insurance charge or exit charge of a capital guaranteed fund, a description of:

-
- (a) the charge; and
 - (b) the amount of the charge, expressed either as a fixed amount or as a percentage of:
 - (i) the contributions made in respect of a member; or
 - (ii) the member's benefits in the fund; or
 - (iii) the assets of the fund; and
 - (c) against what, or to whom, the amount or percentage will be charged (for example, against contributions made in respect of the member to the fund or against the assets of the fund); and
 - (d) if the amount or percentage varies for different classes of members, the minimum or maximum limit for each amount or percentage.

7.2 A statement outlining:

- (a) the circumstances in which and the times when the charge may be increased or decreased; and
- (b) any maximum limit, for the charge, mentioned in the governing rules of the fund.

7.3 The trustee does not have to state the amount of a charge that is paid or payable by a standard employer-sponsor of the fund .

7.4 If fees and charges are deducted before interest is credited to the fund — a statement to the effect that interest is paid net of expenses.

7.5 If a charge referred to in subitem 7.1 cannot be expressed as an amount or a percentage, the trustee must explain how it will be determined.

7.6 For a death and disability insurance charge that is determined by a premium rate table, the table must be attached to the information document and referred to in this section of the information document.

8 General superannuation information

Restrictions on when you can get access to your benefits

8.1 A statement:

- (a) that superannuation is a long-term investment; and
- (b) that the Commonwealth Government has placed restrictions on when a person can have access to benefits; and
- (c) that generally a person cannot access benefits until he or she reaches 65 or the preservation age within the meaning of subregulation 6.01 (2) of the SIS Regulations and has retired; and
- (d) of the preservation age within the meaning of subregulation 6.01 (2) of the SIS Regulations.

Member-protection standards

8.2 A brief statement of the effect of:

- (a) the capital guaranteed member-protection standards prescribed by Division 5.5 of the SIS Regulations; or
- (b) the RSA holder-protection standards prescribed by Part 3 of the RSA Regulations.

Further information

- 8.3 Any other information that the trustee wishes to provide.

Notes

- 1. These Regulations amend Statutory Rules ^{^year^} No. , as amended by ^{^year^} No. .
- 2. Notified in the *Commonwealth of Australia Gazette* on 2001.

COMMENTARY ON THE EXPOSURE DRAFT OF THE REGULATIONS UNDER PART 7.9 OF THE FINANCIAL SERVICES REFORM BILL

INTRODUCTION

This is the third tranche of the draft regulations under the proposed Financial Services Reform Act 2001, which detail disclosure requirements for superannuation products and retirement savings accounts (RSAs). They also deal with cooling-off requirements and a number of miscellaneous requirements. The release date of this tranche is 27 August 2001.

Other aspects of product disclosure regulations will be released in the near future.

SUBMISSIONS

The views of industry participants and the public, both through the Implementation Consultative Committee and through submissions in response to the exposure of these draft regulations, are sought to ensure that the regulations are appropriate and that the transition into the new regulatory regime is as smooth as possible.

Submissions should be provided within 14 days of the date of release of the relevant regulations.

Your submission should be sent by email to fsr@treasury.gov.au

or by mail to:

Ms Ruth Smith
Specialist Adviser
Financial Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600
Fax: (02) 6263 2882

Inquiries concerning the financial services licensing and disclosure draft regulations should be made in the first instance to the email address above or by mail or fax.

PART 7.6 LICENSING EXEMPTION FOR THE MEDIA

Draft regulation 7.6.01 puts conditions on the exemption from the licensing requirements in respect of general advice provided via the media.

It essentially requires that the person providing the advice must give an abbreviated general advice warning, along the lines of that required in section 949A of the Bill. The person providing the advice will also be required to provide information relating to remuneration received in respect of the advice, and information about relevant interests or associations, but only to the extent that these matters would reasonably be expected to influence, or be capable of influencing, the person in providing the advice. These requirements are based on requirements relating to Financial Services Guides and Statements of Advice provided by licensees and authorised representatives.

PART 7.9 FINANCIAL PRODUCT DISCLOSURE AND OTHER PROVISIONS RELATING TO THE ISSUE AND SALE OF FINANCIAL PRODUCTS

SUPERANNUATION AND RSA PRODUCTS

Product disclosure requirements associated with the Family Law Legislation Amendment Bill are not included in this release. Regulations for this issue are subject to a separate consultative process. Information on that process is available at the treasury website, www.treasury.gov.au. Once the requirements are determined they will be included in regulations under the Corporations Act 2001.

Division 1 - Preliminary

Division 1 (and associated Part 1 of Schedule 10A) incorporates the superannuation concept of sub-plans into the Financial Services Reform framework. Movement between sub-plans by either a member or employer sponsor is treated as an issue situation for product disclosure purposes.

‘Issue’ in relation to superannuation products is defined in section 761E of the Financial Services Reform Bill 2001 (FSR Bill) to mean where a person becomes a member of a superannuation fund. It does not include further contributions to a superannuation fund.

Subregulation 7.9.02(4) modifies the definition of issue for superannuation products under paragraph 761E(7)(a) to permit the concept of sub-plans to be carried over to the FSR regime for the purposes of Part 7.9.

Part 1 seeks to clarify the operation of various components of Part 7.9 of the FSR Bill in relation to sub-plans.

Comment is sought on modifications to the definition of issue in relation to superannuation products.

Changes made by superannuation product holders in relation to investment strategies, contribution levels and insurance coverage are not considered to be issue situations. These circumstances reflect an existing facility under the financial product, that is a person’s membership in the superannuation fund. However, regulations have been drafted to provide ongoing disclosure requirements to ensure that members are able to make informed decisions should they seek to exercise their rights under any of those facilities.

Division 2 – Obligation to provide PDS

This Division considers the application of Product Disclosure Statement (PDS) requirements for superannuation and Retirement Savings Account (RSA) products.

The obligation to provide a PDS for the issue of certain superannuation products has been removed in the circumstances specified in Regulation 7.9.04. Those circumstances reflect existing obligations for product disclosure under the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Similarly, Subdivision 2.4 provides exemptions for RSA providers in specified circumstances.

It is also intended that exempt public sector superannuation schemes be exempted from the application of the FSR reform by regulations under paragraph 765A(1)(q).

Subdivision 2.5 provides an additional obligation to provide a PDS by the trustee of an eligible rollover fund in certain circumstances.

Timing of provision of PDS

Regulation 7.9.06 provides for the delayed provision of a PDS after the issue of a product, in instances where the acquisition of an interest in a superannuation or RSA product is not dependent on the access to the information. This will principally effect members of non-public offer superannuation entities and members of standard employer-sponsored funds.

These arrangements are consistent with current disclosure requirements for members of non-public offer superannuation funds and standard employer sponsored members in public offer funds.

Division 3 – PDS Content requirements

Introduction

The regulations made under the operation of subsection 1013D(4) have sought to prescribe specific information that should be included in a PDS relating to a superannuation product or RSA. The regulations do not limit the application of the main content requirements specified in the FSR Bill for superannuation and RSA products.

Subdivision 3.2 details how these information requirements are to apply. The draft regulations have attempted to group certain superannuation and RSA products with similar attributes (and existing information requirements) such as capital guaranteed investments and RSA products to provide more concise regulations.

The specific content requirements (contained in Schedules 10B and C) expand on the requirements provided in the Bill and are consistent with current disclosure arrangements.

Existing requirements are specified under the SIS Act and Regulations (including ASIC determinations) and Retirement Savings Account Act and Regulations.

Non-public offer superannuation funds

As noted above, the timing requirements for the provision of a PDS will be altered for non-public offer funds. However, the content requirements as provided by Schedules 10B and 10C will be the same as those applying to public offer funds. In particular, this includes the provision of advice in relation to fee and charges, such as ongoing management charges, which such funds are currently not required to disclose.

Comment is sought on whether non-public offer funds should be required to disclose fees and charges in the PDS.

Returns

The concept of returns in Schedules 10B and 10C has been drafted to reflect the concept of the time value of money. It is understood that such figures are already used in practice.

Self managed superannuation funds and defined benefit funds

No specific content requirements are specified for self managed superannuation funds and defined benefit schemes (where the benefits are fully defined), however those entities will still be subject to the general requirements detailed in section 1013D. That section only requires the specified information to be included in the PDS to the extent that a person would reasonably require it for the purposes of deciding whether to acquire the product. In addition, by virtue of section 1013F information does not need to be included if it would not be reasonable for a person to expect to find it in the PDS. As a result, it is anticipated that the information requirements will be commensurate with current SIS Act and Regulations.

Will this lead to inappropriate level of disclosure for self managed funds and defined benefit schemes?

Single premium products

Single premium products have been excluded from the regulations as currently drafted (Regulation 7.9.10). It is intended that the application of the PDS content requirements to single premium superannuation products and to other similar investment products would be considered during the consultative process. This will include discussion of the disclosure requirements as currently specified in ISC Circular G.I.1.

ASIC Determination

The draft Schedules 10B and C include provisions for information requirements similar to the operation of aspects of the Australian Securities and Investments Commission

(ASIC) Determination under subsection 153(4) of the SIS Act. These include requirement for information in relation to:

- Death and/or disability insurance;
- Details of available investment options including historical returns; and
- Ongoing management charges.
 - The requirement to provide details of an ongoing management charges are intended to aid in the comparability of superannuation products. However, it is recognised that the determination of a standardised expense calculation applicable to all superannuation interests is problematic. Accordingly, a warning has been included to prompt prospective clients to consider their individual circumstances.

Format

The FSR Bill requires that the material is worded and presented in a clear, concise and effective manner.

The intention has generally been not to prescribe a format or specific presentation of material in a PDS. Though a number of matters have been required to be provided at the front of the document to highlight certain information in a summary format under regulations made under s.1020G(1)(c).

Similarly the use of illustrations and diagrams has not been specified.

Comment is sought in relation to:

- **the types of information specified in the summary component of the PDS;**
- **specification of format requirements for PDS;**
- **application of content requirements to single premium products;**
- **the definition, application and usefulness of a standardised expense measure; and**
- **any other information that should be specified in a PDS.**

Eligible applications

The operation of the modification declaration currently detailed by section 153A of the SIS Act has been replicated by regulations under subsection 1016A(4). Regulation 7.9.14 provides that trustees of standard employer sponsored funds will be able to issue a superannuation interest without an eligible application to standard employer sponsors members in limited circumstances.

The need for an application form, attached to a PDS, to be provided before a superannuation product can be issued (section 1016A) has been modified by regulations under section 1020G. The requirements will align with the regulations made under section 1012F to allow certain superannuation providers to provide a PDS up to 3 months after the issue of a product.

Certain information requirements for application forms have been detailed in draft regulation 7.9.13.

Consents

Consistent with the retention requirements for a PDS under subsection 1015D(3) a 7 year period retention period will apply to retain consents for statements made in a PDS by regulations under subsection 1013K(2).

Division 4 - Ongoing disclosure requirements for superannuation and RSA products

Periodic Reporting

The draft regulations under paragraph 1017D(5)(g) and 1017DA are intended to transfer existing disclosure requirements for superannuation and RSA products. In particular, they adopt the requirements of Division 2.4 and Subdivision 2.8.3 of the SIS Regulations and Division 2.3 of the RSA Regulations.

Section 1017D provides information specific to a product holder's entitlements, encompassing member information described in Subdivision 2.4.2 of the SIS Regulations. Regulations in relation to periodic reporting for members of superannuation entities and RSA holders that relates to 'fund information' have been drafted under the operation of section 1017DA.

The reporting period definitions have been modified to give ASIC the ability to allow reporting periods in excess of 12 months (Subdivision 4.2). Further, the reporting period definition has also had to be replicated under section 1017DA for fund information. However, modifications have been required to ensure that fund information would not be required to be provided in respect of the period when a person ceases to hold a superannuation or RSA product (see Regulation 7.9.08).

Exceptions

Existing exceptions relating to periodic reporting requirements for superannuation and RSA products have been transferred to the Corporation Regulations 2001. See draft regulations 7.9.25 and 7.9.29.

Further investment decisions

The disclosure requirements necessary to ensure that an informed decision is made in relation to changes in investment strategies, contribution levels and insurance are currently considered in ISC Circular No. 17. To give effect to the administration of disclosure requirements in this regard an additional information requirement has been included in Subdivision 4.6 of the draft regulations.

Superannuation providers will have to ensure that information on alternative investment, contribution and insurance options available to them under any existing facility provided by their membership of the fund is available through ongoing disclosure. Alternatively, superannuation providers may include a warning that a person should seek additional information prior to making any decision to modify current arrangements and advice on how they can request that information. The intention is to ensure that persons have access to necessary information before making a decision.

An alternative approach could have been to require a superannuation provider to supply advice on all available investment options in each periodic report. It was considered that this could be too onerous on the product provider (depending on the number of options) and may confuse product holders by providing too much information.

These investment decisions will not result in the further issue of a superannuation product accordingly no further applications will be required. The need for an eligible application under existing arrangements was already open to question as it was dependant on the provision of up to date information (refer to ISC Circular No.17).

<p>Comment is sought on the approach taken in relation to switching facilities for investment strategies, contribution levels and insurance.</p>

Material changes and significant events

The events and information requirements specified in Subdivision 4.8 of the regulations reflect existing arrangements under the SIS regulations. The notification of the following events has been specified to ensure consistency in the transfer from SIS Act and Regulations and to the *Corporations Act 2001*.

- Prior notification of decisions of trustees, winding-up or termination of a fund.
- Changes in governing rules of super.

- Fund transfers.
- Notices of non-compliance.

Information to existing holders

The prescribed documents specified in Subdivision 4.10 for the purposes of section 1017C are essentially replicating Division 2.6 of the SIS Regulations. Regulations made by operation of section 1020G will transfer the existing ability to charge for information on request.

Subject to periodic reporting requirements, regulations will allow a request for information in relation to switching facility to be satisfied by the provision of a PDS (or information as included in a PDS).

Information on complaints

The regulation making powers under section 1017DA have been used to transfer existing disclosure obligations following a decision in relation to a complaint currently provided under Division 2.6A of the SIS Regulations and RSA Regulation 2.30 in Subdivision 4.11.

Comment is sought on applying this approach to all financial products.

Information on leaving

Information on leaving a superannuation entity or RSA requirements have been provided as modifications to periodic reporting requirements under the operation of subsection 1017D(5). Paragraph 1017D(2)(d) of the FSR Bill incorporates the period when a person ceases to hold the product into the periodic reporting requirements.

The effect of current 'exit reporting' requirements for superannuation entities and RSAs will be maintained under Subdivisions 4.12 to 4.14. The current arrangements combine FSR periodic reporting and confirmation of transaction requirements. Accordingly, modifications have been made to FSR requirements in relation to the time for compliance and to remove superannuation entities and RSAs from confirmation of transaction obligations where they have satisfied the requirements under section 1017D (see Regulation 7.9.52).

Division 6 – Cooling-off periods

Superannuation products

The limited availability of rights of return in relation to a defective PDS (Regulation 7.9.15) and under cooling off provisions (Regulation 7.9.72) is similar to current access to rights of return under the SIS Act. In addition, it reflects the ability of certain superannuation providers to issue an interest in a superannuation fund without a PDS and the inability of certain members of superannuation funds to choose whether or not to hold the interest in the superannuation fund (for example, members of standard employer sponsored superannuation funds).

However, pooled superannuation trusts are subject to cooling-off obligations where they were not previously under the SIS Act.

Restrictions have been placed on the repayment of monies that are subject to preservation requirements under Regulation 7.9.73. The draft regulations provide for the return of monies to an individual member in relation to voluntary contributions.

In order to exercise a right of return a member or standard employer sponsor will have to notify the trustee of the superannuation entity or RSA provider of an appropriate superannuation entity or RSA into which preserved benefits can be transferred. This will ensure that contributions subject to preservation restrictions are not accessed prematurely. Regulations have been prepared to give effect to this under subsection 1019B(2).

The decision to impose an obligation on the member or employer sponsor to provide such advice was considered preferable to the catering for situation where a product holder chose to exercise their right of return failed to specify an appropriate superannuation entity. In that event contributions might need be transferred into an eligible rollover fund by the product provider.

Consistent with other financial products the amount of monies repaid when a person exercises a right of return under cooling-off provisions will be subject to the effects of market pricing, taxation and administration fees where appropriate. The FSR requirements clearly distinguish between the ability to charge administrative fees and the effect of market pricing.

RSA providers will not be able to charge fees, consistent with the current operation of subsection 62(4) of the RSA Act.

Comment is sought on the operation of cooling-off provisions for superannuation products under the FSR regime. In particular, the:

- **Application of cooling off provisions to pooled superannuation trusts;**
- **The calculation of monies to be repaid.**

Other

Transfer of lost members

Existing disclosure requirements for superannuation and RSA providers on the transfer of lost members (Division 2.7A SIS Regulations and Division 2.8 RSA Regulations) will be retained in their respective regulations and will not be transferred to Corporations Regulations.

The operation of the above mentioned disclosure requirements is inconsistent with the application of the FSR Bill and regulations. The SIS and RSA disclosure requirements relate to a decision by the superannuation or RSA product provider and not that of the member. The information will be supplied to a new product provider and not to the member.

ALL FINANCIAL PRODUCTS

Division 4 - Ongoing disclosure obligations - exemption

The draft regulation 7.9.69 exempts financial product providers from ongoing disclosure requirements (for example, significant event or periodic reporting) during any time that the address of the product holder is unknown or known to be incorrect.

Division 4 - Periodic reporting – content requirement

Ongoing holding costs for all financial products will be required to be disclosed as part of periodic reporting obligations by a regulation made under the operation of paragraph 1015(5)(g).

Division 5 - Confirmation of transactions

Costs not yet determined

Draft regulation 7.9.71 deals with situations where the precise costs of a transaction are not known at the time of confirmation. Those situations include where amounts are payable by the holder, or where taxes and stamp duties are payable.

The draft regulation will permit a product provider to provide confirmation of a transaction without full disclosure of such costs. However, the product provider will either have to provide that advice in a secondary confirmation notice (as soon as the costs have been determined) or as part of the periodic reporting requirements.

Division 6 – Cooling-off provisions

Exclusions

A number of exclusions from cooling-off provisions Division 5 of Part 7.9 have been detailed in draft regulation 7.9.72 to align with exemptions from PDS requirements provided in section 1012D of the FSR Bill. These exclusions remove the operation of cooling-off provisions in the following circumstances:

- acquisitions made under distribution reinvestment plans and switching facilities;
- additional contributions made by a product holder under an existing agreement or contract;

- acquisitions as part of a takeover bid; and
- interim contracts of insurance.

In addition, the draft regulations provide that the cooling-off provision will not apply in relation to acquisitions of non-liquid managed investment products (as defined under section 601KA of the Corporations Act). The existing provisions under Part 5C.6 of the Corporations Act will continue to provide a facility for non-liquid managed investment schemes to permit a right of withdrawal.

- If cooling-off provisions were to apply to non-liquid schemes there is the potential for an adverse impact on the remaining members of a scheme, if a person chose to exercise a right of return.
- Difficulties were also anticipated with the legal relationship between product holder and provider should a person exercise their right of return but the monies are not available to be repaid. The difficulty arises because the FSR cooling off provisions terminate any existing contract or legal relationship if a right of return is exercised.

Comment is sought in relation to:

- **The extent of exclusions from cooling-off provisions;**
- **Any options that would permit holders of non-liquid managed investment products to access cooling-off provisions.**

Short term insurance

Cooling-off provisions have been modified in response to industry concerns on the operation of rights or return for short term insurance products, in particular travel insurance. To ensure that cooling-off provisions cannot be utilised to give a refund following the effective use of a short term risk insurance product cooling-off periods will only operate for the lesser of the operation of the 14 day cooling-off period or the commencement of the event (see subregulation 7.9.73(2)).

For example, a person receives confirmation on 1 October of a 14-day travel insurance policy intended to have effect for a 7-day vacation to Vienna, Austria and that person then boards a plane to Austria on 3 October. In this situation, the cooling off period expired once the person commenced their holiday on 3 October.

Comment is sought on the operation of regulations in relation to short-term risk insurance such as travel insurance, including the definition of event.

Refunds of monies

As previously indicated in the explanatory memorandum to the FSR Bill (paragraphs 14.175 to 14.180) regulations have been drafted to account for circumstances where the value of a product is market linked and where tax is paid by the issuer in respect of the product and that tax is not recoverable or that tax has not been paid but does not cease to be payable.

Under regulation 7.9.74 a product provider will also be able to recoup reasonable administrative costs associated with the issue of the product and subsequent exercise of the right of return. These costs would otherwise be borne by the product provider or other holders of the product.

As the cooling-off provisions terminate, rather than void, a contract or legal relationship for a financial product a contingent liability may exist for insurers in relation to the period from date of issue to exercising of the right of return. To allow insurers to provide for that contingent risk the monies repaid are to be reduced in proportion to the time that the contract was operational under subregulation 7.9.74(7). For example, where a premium has been paid for a one-year contract of insurance and the contract is terminated on the 10th day following the issue of the product the refund of monies paid can be reduced by $10/365 \times$ premium paid.

<p>Comment is sought on the operation of the draft regulations for short-term risk insurance products, such as travel insurance.</p>
