

New superannuation industry supervision (SIS) measures

Changes which impact on certain accumulation funds and defined benefit funds have been made to the *Superannuation Industry (Supervision) Regulations 2004* (SIS regulations).



The transitional period has been extended to 31 December 2005

When do the regulations apply?

The following changes to the SIS regulations commenced from 12 May 2004.

Accumulation funds

What are the changes?

Contributions to accumulation funds must be allocated to a particular member of the superannuation fund.

Contributions must not be forfeited to the trustee or another member and must remain with the original member.

How does it work?

On 12 May 2004 and onwards:

- self managed superannuation funds can no longer forfeit benefits from one member to another member – the benefits will have to remain with the original member with limited exceptions, and
- contributions made to an accumulation fund must be allocated to a member within 28 days after the end of the month in which the contribution was received, or in certain circumstances within a period in which it is reasonable.

Why require benefits in accumulation funds to be vested in the members?

Having certain minimum benefits fully vested in a given member in an accumulation fund prevents the use of forfeiture arrangements for tax avoidance purposes. These arrangements may involve the forfeiture of a member's excess superannuation benefits to the trustee of a fund who then pays the benefits to another member of the fund.

When must contributions be allocated to a member?

All accumulation funds must have efficient and timely administration procedures in place for dealing with contribution money. The regulations require the trustee of an accumulation fund to allocate the contribution to a member of the fund within 28 days after the end of the month in which the contribution was made.

Are there any exceptions to this rule?

The only exception is in the case of a reasonable delay, whereby contributions must still be allocated as soon as possible. A delay would not generally be reasonable in the case of a fund where contributions are received for only a handful of members.

Defined benefit funds

What are the changes?

Defined benefit funds to have at least 50 defined benefit members.

Funds providing new defined benefit pensions to have at least 50 members.

A transitional period is in place for new defined benefit pensions that applies from 12 May 2004 – 31 December 2005.

How does it work?

There are now minimum membership requirements for new defined benefit funds or defined benefit funds accepting new defined benefit members or paying defined benefit pensions.

- A new defined benefit fund must have at least 50 defined benefit members.
- An existing defined benefit fund can only admit a new defined benefit member, or convert an existing member to a defined benefit member, if it will then have at least 50 defined benefit members.
- A regulated superannuation fund that has less than 50 members can not provide a new defined benefit pension without meeting specified rules.

Why require defined benefit funds to have at least 50 defined benefit members?

This is being done to ensure that all new defined benefit funds, or defined benefit funds that admit new defined benefit members, are of a sufficient size to pool member benefits to satisfactorily manage mortality and investment risks.

This will also prevent small defined benefit funds from being established, or from accepting new members, for tax avoidance or minimisation purposes.

Why require funds paying defined benefit pensions to have at least 50 members?

This will prevent small funds paying non-arms-length defined benefit pensions in order to avoid reasonable benefit limits and social security means tests and to access taxation concessions for estate planning rather than retirement purposes.

When can a self managed superannuation fund pay a defined benefit pension?

A self managed superannuation fund can pay a defined benefit pension if the fund was established before 12 May 2004 and a person retires on or after age 55 or attains age 65 and becomes entitled to a defined benefit pension before 1 January 2006.

These are sometimes referred to as 'grandfathered' pensions or the transitional rules.

What is the purpose of the transitional rules?

The transitional rules ensure that retiring members of superannuation funds established before 12 May 2004 are able to continue with their plans to commence a defined benefit pension through their superannuation fund between 11 May 2004 and 1 January 2006 (the transitional period), regardless of whether the governing rules stipulated the terms and conditions of payment of a defined benefit pension prior to 12 May 2004.

Where the governing rules of an existing superannuation fund did not contain the terms and conditions of a defined benefit pension, they may be amended to enable payment to a member of a new defined benefit pension provided:

- the person was a member of the fund on 11 May 2004
- the person turns 65, or retires on or after turning 55, before 1 January 2006
- the person becomes entitled to the pension after 11 May 2004 and before 1 January 2006, and
- the first pension payment is made within 12 months of the day the person became entitled to the pension.

The transitional period will also provide impending retirees with sufficient time to make an informed decision on their retirement income arrangements following the announcement of the new market-linked income streams, available from 20 September 2004. Since this date, all regulated superannuation funds have been able to provide market-linked income streams. These income streams are complying pensions and, therefore, are eligible for tax and social security concessions.

More details on the rules around the transitional period and 'grandfathered' pensions are available in a [Superannuation Determination \(SD2004/1\)](#) on our [Legal Database](#).

What about existing arrangements?

The new rules will not force existing funds to close down and will not prevent a defined benefit pension from being paid by an existing superannuation fund where the governing rules of that fund set out the terms and conditions of the pension prior to 12 May 2004, even if the first payment is not made until on or after 12 May 2004.

Can a superannuation fund pay a defined benefit pension, where the governing rules generally provide for a defined benefit pension to be paid, but do not set out the terms and conditions of the pension?

If the superannuation fund has not set out the terms and conditions of the defined benefit pension proposed to be paid, a resolution made on or after 12 May 2004 establishing the terms and conditions of the pension would be regarded as an amendment to the governing rules to provide for the payment of the defined benefit pension. As the governing rules would have been amended on or after 12 May 2004 the superannuation fund would no longer be able to provide a defined benefit pension.

The exception would be if the transitional rules apply.

More details on the rules around the transitional period and 'grandfathered' pensions are available in a [Superannuation Determination \(SD2004/1\)](#) on our [Legal Database](#).

If you have any queries about any related issues please phone our information line on **13 10 20**.

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