

**AUSTRALIAN PRUDENTIAL REGULATION  
AUTHORITY**

**SUPERANNUATION CIRCULAR NO I.C.4**

**‘EQUIVALENT RIGHTS’ FOR MEMBERS IN  
SUCCESSOR FUND TRANSFERS**

**February 2001**

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# Objective

1. The aim of this Circular is to set out APRA's views as to the requirements of the *Superannuation Industry Supervision Act 1993* (the SIS Act) for the transfer of member benefits from regulated superannuation funds, particularly where reliance is not placed on the consent of members.
2. This Circular expands on the information outlined in Superannuation Circular I.C.2, "Payment Standards for Regulated Superannuation Funds" which was updated in September 2000.

# Introduction

3. The payment standards operate in conjunction with the sole purpose test (see Superannuation Circular III.A.4 "The Sole Purpose Test") to regulate the timing and manner of the payment of benefits provided by regulated superannuation funds. The payment standards prescribe the circumstances and manner in which a member benefit can (or must) be cashed, and when a member benefit may be either rolled over or transferred.
4. It must be remembered that any interpretation of benefits and the right of a member to those benefits must be considered in the context of the governing rules of the fund as well as legislative requirements.
5. Member benefits may either be rolled over or transferred within the "superannuation system" on the occurrence of certain events, which may be at the initiation of the member or the trustee (see Regulation 1.03, 5.01, 6.28 and 6.29 of the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations)). The superannuation system comprises:
  - regulated superannuation funds;
  - approved deposit funds (ADFs);
  - retirement savings accounts (RSAs);
  - EPSSS (exempt public sector superannuation schemes eg. some schemes established under Commonwealth, State or Territory Government legislation); and
  - annuities (including deferred annuities).
6. Although the terms "roll over" and "transfer" are often used interchangeably, a member benefit is rolled over if it is paid as an eligible termination payment, and it is transferred if it is paid to a regulated superannuation fund, an ADF or an RSA (other than upon satisfaction of a condition of release). The distinctions are discussed more fully at paragraphs 48 to 53 of Superannuation Circular I.C.2. "Payment Standards for Regulated Superannuation Funds".
7. A member must give consent to a rollover (other than to an Eligible Rollover Fund ("ERF")). If the benefit is being transferred, the member must give consent to

either the trustee of the original fund or the new fund **unless the transfer is to a successor fund** (refer to paragraphs 54 to 56 of Superannuation Circular I.C.2, “Payment Standards for Regulated Superannuation Funds”).

## Successor Fund

8. Regulation 1.03(1) of the SIS Regulations defines a successor fund in relation to a transfer of benefits of a member from a fund (called “the original fund”) as a fund which satisfies the following conditions:

- (a) the fund confers on the member equivalent rights to the rights that the member had under the original fund in respect of the benefits;
- (b) before the transfer, the trustee of the fund has agreed with the trustee of the original fund that the fund will confer on the member equivalent rights to the rights that the member had under the original fund in respect of the benefits.

Prior to the transfer, the trustee of the new fund **must** have agreed with the original fund’s trustee that it will confer equivalent rights on the member. In addition to the agreement, the new fund must actually confer those equivalent rights.

9. To satisfy the requirement for equivalent rights, the member’s position and rights in the new fund must be effectively the same as those in the original fund so as not to disadvantage the member. That is, the member’s rights (in respect of benefits) in the new fund should be equivalent in value, measure, force and effect to their rights (in respect of benefits) in the original fund. Although special consideration should be given to significant rights, any judgement of whether rights are equivalent should not be assessed solely on an individual change to a specific right but on the equivalency of the bundle of rights (which includes rights to contingent benefits).

10. There are two sets of circumstances where trustees are likely to consider the transfer of members using successor fund provisions. These are:

- Where the trustees are seeking to rationalise a number of funds (this would be initiated by the trustees of the original funds and generally all benefits under the original funds would be transferred to the new fund).
- Where an external event causes the trustees to transfer the members (this last situation is explained in more detail in paragraphs 16 to 21 below).

## Trustee Considerations

11. If trustees were considering a bulk transfer of members without individual consent to a new fund, the trustees would need to compare member rights in the original fund with member rights under the new fund.

12. The trustees of the original fund must be satisfied that the accrued benefits of members are protected (see paragraph 14) and that the transfer is in the best interests of transferring members (see paragraph 22). Trustees of both funds must satisfy themselves that equivalent rights will be conferred.

13. Such consideration must be based on the individual circumstances of a transfer, scrutiny of the fund's governing rules, due diligence examinations and any legal advice. The trustee considerations should cover, at a minimum:

- the amount of a member's withdrawal benefit in the original fund. Withdrawal benefit refers to the total amount of benefits that would be payable if the member voluntarily ceased to be a member (ie. payable either to the member or to the trustee of another entity) and must be at least the same as the amount credited to the member just prior to transfer;
- the circumstances in which the member may become entitled to benefits and the method of calculating those benefits;
- the preservation status of the benefits (refer to paragraphs 96 to 137 of Superannuation Circular I.C.2);
- the extent to which a member bears investment risk or is subject to investment choice (consideration must be given not only to the nature of the investments but also to whether the funds are defined benefit funds or accumulation funds);
- the provision and conditions of insurance, and the method of calculating insurance benefits;
- the right to be credited with reserves that might arise from time to time;
- the basis upon which investment earnings are credited or debited to members;
- the basis of valuation of assets; and
- the conditions of release permitted under the governing rules of the fund.

## **Protection of accrued benefits under a successor fund arrangement**

14. For the new fund to be considered a successor fund under the SIS Act, the fund must provide equivalency in relation to all benefits, particularly (but not only) accrued benefits. In the context of successor fund transfers, trustees need to be aware that Regulation 13.16 of the SIS Regulations protects member rights to accrued benefits and limits the way in which benefits may be reduced. Accordingly, any transfer, but in particular, the bulk transfer of members from defined benefit funds to an accumulation fund would generally not be possible unless:

- each individual member's consent is obtained in accordance with regulation 6.29 (provided the alteration does not relate to the minimum benefits); or
- the member rights to accrued benefits are protected under the successor fund provisions.

15. Where a defined benefit fund is being transferred into an accumulation fund, trustees must exercise particular care that equivalency of rights in respect of the benefits are preserved in the new fund. Such rights may include a right to contingent benefits; this is a right to benefits which accrue only in the event of a contingent event happening. Since the accrual of rights depends on or is contingent on that event

happening, that event is called the contingent event and the rights are described as contingent rights. For example, such contingent events could be death or the suffering of permanent disability.

16. The question of the ambit of accrued benefits and equivalent rights must be determined by the original trustee having regard to the terms of the governing rules, and taking into account:

- the benefits promised to members;
- the circumstances of the fund and, in particular, the extent to which member benefits have crystallised in the original fund, for example as a result of an “external event” or of a trustee making a decision in the best interests of members (and within the parameters of the legislation and governing rules); and
- the duty of the trustees of both funds to act in the best interests of members (see paragraph 22).

17. Examples of external events that may impact on member rights (under the governing rules) include:

- an employer-sponsor giving notice to the trustee of a defined benefit fund that they are terminating contributions to the fund; and
- an employer’s participation in the fund terminating in other circumstances (for example, an associated employer leaving a corporate superannuation fund or a participating employer leaving a Master Trust arrangement).

18. In such situations, the trust deed frequently states that certain benefits would cease (such as insured benefits) at the time that contributions/participation cease. In some circumstances the trust deed may require that the fund be wound up. In deciding if rights in the new fund are equivalent to rights in the original fund, the trustees of both funds would need only to consider the rights of members **once contributions/participation have ceased** (rather than the benefits provided prior to the employer-sponsor removing support from the fund).

19. Depending on the terms of the relevant governing rules, trustees should consider how benefits accrued to members up to the time of transfer should be protected in the new fund. For example, adverse investment performance may reduce member benefits below the value that a defined benefit member would have received at the time of transfer. Trustees must also consider how any such benefit protection would be funded (from unallocated reserves, employer guarantees etc).

20. If a member’s benefits have crystallised (through an external event or otherwise) then the new fund need only provide equivalency in relation to rights in respect of crystallised benefits. If member benefits have not crystallised and include contingent rights, then the new fund would also have to provide equivalency in relation to those rights.

21. By way of illustration of the principle of an external event referred to in paragraph 17 above, the following example is noted:

- An employer sponsor currently makes contributions on behalf of their employees into an employer sponsored fund (original fund). The employer wishes to cease contributions into the original fund and commence contributions into a Master Trust (new fund). The employer also wishes that the existing balances be transferred from the original fund to the new fund.
- Under the governing rules of the original fund, on cessation of contributions by an employer sponsor, those employees are no longer eligible to be members of the fund. As such their benefits must be transferred out of the fund to another fund or to an ERF.
- As members cease to be eligible to remain in the fund, their entitlement under the rules to any insurance benefit in the fund ceases on the employer terminating contributions. In addition any contingent benefits (such as a retirement benefit) will not arise. As such these benefits need not be considered when reviewing equivalency. Rather, it is only rights (in respect of benefits) that the member has currently in the fund (such as the right to have fees deducted at a certain rate, to have a set earning rate credited, investment options, the preservation requirements in the fund, etc) that need to be considered.

## **Other considerations**

22. In deciding if members should be transferred to a new fund, the trustees of both funds must also decide if the transfer is in the best interests of members. This is an obligation imposed on the trustee by the governing rules (in light of section 52(2)(c) of SIS) as well as the general law.

23. While the equivalence of the benefits of the transferring members must be established before the transfer can be made under successor fund provisions, the 'new' trustee should also carefully consider the position of the members in the transferee fund to ensure that their interests are not adversely affected (having regard to its trust deed).

24. Although the original trustee may be considering the bulk transfer of members to another fund under the successor fund provisions, APRA would suggest that the trustee take this opportunity to keep all affected members informed. Of course, there is an overriding obligation to comply with the SIS Act and Regulations, where these impose relevant obligations.

25. APRA is also of the view that if an employer-sponsor advises the trustee of a defined benefit fund that they are withdrawing support from the fund, consideration be given to the significant event provisions of Part 2 of the SIS Regulations (in relation to the impact on member benefits).