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Objective

1. The aim of this Circular is to provide guidance on the provisions of the
   Superannuation Industry (Supervision) Act 1993 (‘‘SIS’’) which protect small
   superannuation accounts and the benefits of lost members from erosion by
   administration costs.

2. This Circular updates Superannuation Circular I.B.1 entitled “Protection of
   Member Benefits” issued by APRA in December 1998. The 1998 issue replaced the
   Circular of the same name released by the former Insurance and Superannuation

Introduction

3. The object of the benefit protection standards is to recognise the danger of
   erosion of small superannuation accounts (ie. accounts with balances of less than
   $1,000) and the benefits of lost members by the application of fees and charges.

4. The protection standards allow small amounts in the superannuation system and
   the benefits of lost members to be maintained at, or to grow to, a self-sustaining level.
   They address the significant community and public policy concerns of small amounts
   of tax advantaged retirement savings being eroded by administrative charges.
   Generally member protection applies from 1 July 1995.

Entities covered by member protection standards

Sections 31, 32, Regulations 1.03, 1.03A, 5.09, 5.13, 5.14, 10.01 and 10.06

5. The member protection standards generally apply to regulated superannuation
   funds, other than self managed superannuation funds and small APRA funds (those
   with fewer than 5 members), and approved deposit funds (ADFs), other than
   excluded ADFs. Non-excluded ADFs must protect the accounts of lost members but
   do not have to protect small accounts.

6. Eligible rollover funds (ERFs) must protect all members. An ERF is a regulated
   superannuation fund or an approved deposit fund where either:
   - the trustee has notified the Australian Prudential Regulation Authority (APRA) in
     writing that the fund wishes to be an ERF and the fund has not ceased to be an ERF; or
the fund was an ERF immediately before 1 July 1995 and has not ceased to be an ERF.

7. The standards do not apply to self managed superannuation funds and small APRA funds (funds with fewer than five members) and excluded ADFs. These are ADFs which have only one beneficiary and were either established:
   • before 1 July 1994; or
   • on or after 1 July 1994 and, on establishment, the eligible termination payments of the beneficiary of the fund were at least $400,000.

8. Member protection standards do not apply to unitised funds where:
   • a single price applies to both the buying and selling of units in the fund and all the administration costs of the fund are reflected in that price; or
   • separate prices apply to the buying and selling of units in the fund and the price difference is solely attributable to brokerage costs (which are applied proportionately in relation to all units in the fund) and specified fees and charges. These fees and charges are insurance costs, taxation costs and some exit fees. All other administration costs of the fund must be reflected in both the buying and the selling price of the units; or
   • the administration costs of the fund are not wholly reflected in the unit price but the benefits of members are protected in a way that is consistent with the member protection standards.

9. For the purpose of the member protection standards unitised funds are funds where the investment return is reflected in the price of fund units rather than directly credited or debited to a member's account balance.

10. Member protection standards do not apply to non-unitised funds where all administration costs are charged to each member in direct proportion to investment returns or to the member’s benefits.

Members who must be protected

11. Not all members are protected. Generally, the protection standards are aimed at those members who are lost or who have small account balances. Trustees must
either apply the member protection standards to “protected members” or transfer those members to another fund which will member protect, such as an ERF.

12. Note that throughout the remainder of this Circular “fund” will refer to a fund that is subject to member protection standards, unless otherwise stated. “Member” will refer to a member in respect of whom the member protection standards apply, unless otherwise stated.

**Members with small accounts**  
*Regulations 1.03, 2.19 and 5.17*

13. A decision as to whether to protect a member of a fund is made by the trustee at the end of a member reporting period (generally a period not exceeding 12 months). Members must be protected if, at this time, they have withdrawal benefits or benefits that are payable on leaving the fund (otherwise than on voluntary withdrawal) which after any applicable exit fee has been deducted:

- are less than $1,000; and
- contain or have contained, mandated employer-financed benefits (eg. Superannuation Guarantee or award contributions plus earnings less costs).

14. Withdrawal benefits are the total amount of benefits that would be payable to the member, to the trustee of another superannuation entity and to a Retirement Savings Account (RSA) in respect of the member, if the person voluntarily ceases to be a member. This amount is net of any exit fees.

15. When determining whether a member needs protection, the trustee must take into account all adjustments which have been, or which will be, made to a member’s benefit in respect of the member reporting period. It makes no difference whether the benefit has ever exceeded $1,000, as long as the final benefit position is less than $1,000. This applies even where the small balance is the result of release of benefits on severe financial hardship, compassionate grounds or any other condition of release.

16. The member protection standards for small amounts do not apply to defined benefit members of defined benefit funds.
17. A defined benefit member is a member entitled on retirement or on termination of employment to be paid a benefit which is defined wholly or partly by reference to either or both of:

- the amount of:
  - the member’s salary (either at the time of termination of employment, at retirement or at an earlier date); or
  - the member’s salary averaged over a period before either termination of employment or retirement; or
- a specified amount.

(Note: amendments are proposed to the SIS regulations to also include a person who is being paid a defined benefit pension as a defined benefit member of a defined benefit fund.)

Lost members
Section 16(5), Regulations 1.03A, 5.17 and 11.08

18. Regardless of the amount involved, the accounts of lost members must be protected. A member is considered to be “lost” if, at a particular time, the member is either uncontactable, inactive or has been rolled over or transferred into the fund as a lost member.

19. A member is “uncontactable” if:

- the fund has never had an address for the member (eg. an itinerant worker who did not give the employer an address); or
- the fund has attempted to contact the member at the member’s last known address on two occasions in writing and the communications have been returned unclaimed; or
- at the discretion of the trustee, one written communication has been returned unclaimed (eg. where the trustee considers it is clear from the information available that a second communication will not be successful).

20. A member is “inactive” if he or she has been a member for two or more years and the fund has not received a contribution or rollover for the member in the last two years. This inactivity test only applies to members who joined a superannuation fund as a standard employer-sponsored member. In broad terms, a standard employer-
sponsored member has an employer which contributes to the fund (or has ceased only temporarily to contribute) wholly or partly pursuant to an arrangement between the employer and the trustee of the fund.

21. A member may be transferred to a fund as a lost member (eg. from an employer-sponsored fund to a fund that is an ERF). A member does not cease to be a lost member simply because they are transferred to another fund.

22. Despite the application of the lost member criteria to a particular member, a member of a fund may be “permanently excluded” from being a lost member if the member:
   • is a member of an excluded superannuation fund or an excluded ADF;
   • is an inactive member and has indicated through a positive act (for example, by indicating a desire to defer the benefit) a wish to remain a member of the fund; or
   • has contacted the fund at any time after joining the fund and indicated a desire to continue to be a member of the fund.

23. The last two categories of permanently excluded members allow trustees to exclude from the member protection provisions and certain reporting requirements those members who have indicated a wish to continue being a member of the fund.

24. Trustees do not have the discretion to consider other types of members as permanently excluded members. However, trustees may decide that a member, or class of members, may not be permanently excluded. Accordingly, a trustee may decide to treat members, or classes of members, as lost even though the members may have previously been considered to be permanently excluded members.

25. A member is not considered to be lost where the trustee has verified the member’s address within the last two years of their membership and has no reason to believe that the address is now incorrect. Verification includes an acknowledgment from the member, such as by post or telephone that the address held by the fund is correct.

26. A member ceases to be a lost member where:
   • a trustee becomes aware of the member’s whereabouts;
   • the member is “contactable”; or
   • the member becomes “active”.

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27. Where a member ceases to be lost, the trustee has the discretion to continue to treat the member as lost (and therefore continue to protect the member) until the end of the member reporting period. Where the trustee no longer treats the member as lost, member protection ceases, unless it is a small account.

28. The member protection standards for the accounts of lost members will generally apply to all lost members of regulated superannuation funds and approved deposit funds regardless of:

- whether the member's withdrawal benefits contain or have contained mandated employer-financed benefits;
- whether the member is a defined benefit member of a defined benefit fund; or
- the amount involved.

29. The trustee must report lost members to the Lost Member Register within four months from the end of each June and December. Further details may be obtained by contacting the Australian Taxation Office (ATO) on 13 10 20 or via the ATO Homepage at [www.ato.gov.au](http://www.ato.gov.au). The Homepage also provides for electronic lodgment of lost member information.

**Benefits which must be protected**

*Regulations 1.03(3), 5.01(1), 5.04, 5.06, 5.06A, 5.07 and 5.17(10)*

**Minimum benefits**

30. The SIS member protection measures apply only to a member’s minimum benefits. Superannuation Circular I.C.1, entitled “Minimum Benefit Standards” explains the composition of minimum benefits.

31. A member’s minimum benefit in most regulated superannuation funds arises from member contributions, mandated employer contributions and amounts rolled over or transferred into the fund as minimum benefits together with consequential earnings less costs on those amounts.

32. In general, the whole of the benefit in an ADF or ERF is a minimum benefit.
Separate small accounts
Regulations 1.03, 5.17

33. Some funds have separate accounts for different types of contributions received on behalf of a member eg. employer contributions and member contributions. Funds have the option of combining all these individual accounts for the purposes of member protection or of protecting them individually.

34. Where a fund protects the accounts individually the member protection rules apply to all the accounts even if only one account contains, or has contained, mandated employer-financed benefits.

35. For example, where a fund has, for a particular member, a $400 account receiving only member contributions and a $400 account receiving only mandated employer-financed benefits it must protect both accounts provided the total amount does not exceed $1000.

Sub-funds
Regulation 5.16

36. A sub-fund may be treated as a separate fund for the purposes of member protection if:
   • the sub-fund has separately identifiable assets and beneficiaries;
   • each beneficiary of the sub-fund has an interest only in the assets of the sub-fund and not in the other assets of the fund;
   • 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; and
   • the insurance and administration costs of the sub-fund are attributable only to the sub-fund.

37. While sub-funds may be established for the purpose of accepting small accounts, they must not be used for the purpose of circumventing member protection. An example of such circumvention is where all members of a fund with small accounts are placed in the same sub-fund without a capital guarantee. If this were to occur, it is likely that all members in the sub-fund would suffer erosion of their benefits.
38. Where a fund offers different investment strategies (eg. balanced, cash, international shares) the trustee may choose for each strategy to be structured as a separate sub-fund. If this is done member protection would be confined within each sub-fund, provided the rules mentioned in paragraph 37 are satisfied.

**Benefits to which member protection does not apply**

*Sections, 16(5), 70(a), Regulations 2.26B, 5.02, 5.02A, 5.15, 5.15C, 5.15D, 5.19, 5.21 and 5.22*

39. The member protection standards do not apply to:
   - any part of a member’s benefits which is being paid as a pension; or
   - a part of a member’s benefits that is wholly determined by a life insurance policy if:
     - the policy includes an investment component; and
     - the premium is not dissected; and
     - the sum insured, together with bonuses (if any), is payable only upon the death of the life insured or the life insured reaching the age specified in the policy.

40. As member protection provisions apply only to minimum benefits they do not protect benefits funded by voluntary employer contributions (ie. contributions over and above the compulsory level) from being eroded by normal administration costs applying to such benefits. However, such benefits must not be subject to additional administration fees and charges designed to compensate for any reduced fees and charges applied as a result of member protection.

41. Member protection standards do not apply where a trustee has a reasonable expectation that the member will have a withdrawal benefit of at least $1,500 within 12 months from the end of the member reporting period.

42. If the trustee’s reasonable expectation does not eventuate, the trustee must treat the member as if the member had been subject to member protection. This may mean that the member will have a larger withdrawal benefit than was the case whilst member protection was assumed not to apply. This is likely to occur as a result of the compounding effect on earlier protected balances.
43. For example, a trustee believed that a member would have a withdrawal benefit of $1,500 within 12 months from the end of the member reporting period and thus did not protect the member. However, at the end of the 12 months the member had $1,300 rather than the $1,400 that would have been expected if the member had been protected in the previous period. In this instance, the trustee must deem the member to have been subject to member protection, and thus the member’s withdrawal benefit would be increased to $1,400.

44. A trustee cannot act on a reasonable expectation that a member will have a withdrawal benefit of $1,500 within the 12 month period if termination of the member’s employment with a current employer (who is not an associate of the member) would result in the member’s withdrawal benefit being below $1,500 at the end of that period. In practice, a trustee is likely to have a reasonable expectation only if the member is making their own voluntary contributions.

45. Member protection, other than for lost members, does not apply to the benefits of an “existing personal superannuation member” who

- joined the fund before 1 July 1995;
- on the date of joining did not have an employer-sponsor that had an arrangement for making contributions with the trustee of the fund; and
- waived their right to member protection.

**Restrictions on administration costs**

*Regulations 2.01 5.0 and 5.17*

46. Generally, the restrictions on administration costs aim to protect members’ minimum benefits from erosion. This is achieved by ensuring that administration costs do not exceed investment returns in respect of a member in any given member reporting period. Different restrictions apply in times of poor investment returns.

47. Administration costs include all direct and indirect fees and charges levied against a member’s benefits. Administration costs include group costs charged against a member’s benefit, such as asset fees or costs of employing specialists to assist in managing the fund, even though these may not be deducted from contributions.
48. However, administration costs do not include:

- the costs (if any) of providing a member with an insured death or disability benefit; or
- taxation costs (including state taxes, contribution tax, and the superannuation contributions surcharge); or
- exit fees applicable to a member’s benefits as at 30 June 1995. However, any increase in exit fees after 30 June 1995 is regarded as an administration cost.

**Poor investment earnings**

*Regulation 5.17*

49. Where the total investment earnings to be distributed to members are insufficient to cover the total administration costs to be debited to members’ benefits, administration costs must be apportioned between all members of the fund in a fair and equitable manner.

50. A distribution of costs will be fair and equitable for this purpose only if:

- each member of the fund is charged no more than either:
  - the amount that a member would be charged if all administration costs were distributed in direct proportion to the members’ benefits or their investment returns; or
  - the amount of the investment return credited to the member’s benefits plus $10.00; or
- each protected member of the fund is charged no more than an amount equal to their investment return plus $10.00.

51. Distribution of costs in one of these ways can occur irrespective of whether the investment return is positive or negative.

52. This apportionment does not apply to members of capital-guaranteed funds, as these members’ benefits cannot be reduced by negative investment returns or by any reduction in the value of its assets.
Deferring administration costs prohibited
*Regulation 5.18*

53. The member protection standards prohibit a trustee from deferring to a future member reporting period administration costs that the trustee would have charged in a current member reporting period if the member protection standards had not applied.

Funds may provide greater protection
*Regulation 5.01B*

54. Trustees of all regulated superannuation funds and ADFs may go beyond the mandatory requirements of member protection.

55. Trustees may provide a greater degree of protection or provide protection at an earlier date, where such protection is consistent with the mandatory requirements. For example, a fund could provide member protection to all withdrawal benefits less than $1500.

Where a fund does not member protect

56. Where a fund does not member protect, it must roll over or transfer all members with small accounts and lost members to an entity that provides member protection, such as an ERF.

57. Where a member is rolled over or transferred to another fund under such circumstances an exit fee should not be charged.

Superannuation Holding Account Reserve

58. The Superannuation Holding Accounts Reserve (SHAR) was established by the *Small Superannuation Accounts Act 1995* and is administered by the Australian Taxation Office. SHAR accepts and provides protection for small superannuation contributions from employers, where employers are unable to find a superannuation fund that member protects.

59. When amounts are paid into a superannuation fund from SHAR, these benefits are treated as mandated employer contributions.
60. This means that a member’s benefits in the superannuation fund must be protected if:

• the withdrawal benefits are less than $1000 and include an amount from SHAR; and

• the member is not a member of an excluded fund or a defined benefit member of a defined benefit fund.

61. A person with amounts in SHAR may request that those benefits be paid into a superannuation fund or an RSA at any time.

62. Further enquiries regarding SHAR should be directed to the ATO on 13 10 20 or at www.ato.gov.au.

**Penalties**

63. A trustee of a superannuation entity must ensure that the member protection standards are complied with.

64. Significant penalties may apply to trustees who contravene these standards.