



# **Retirement Savings Accounts Regulations 1997**

**Statutory Rules No. 116, 1997**

made under the

*Retirement Savings Accounts Act 1997*

## **Compilation No. 75**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Retirement Savings Accounts Regulations 1997* that shows the text of the law as amended and in force on 28 September 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1.01 Name of Regulations

These Regulations are the *Retirement Savings Accounts Regulations 1997*.

### 1.03 Interpretation

(1) In these Regulations, unless the contrary intention appears:

**1997 Tax Act** means the *Income Tax Assessment Act 1997*.

**account based pension** means a pension provided under terms and conditions of an RSA that meet the standards of subregulation 1.07(3D).

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

**adjusted base amount**, in relation to a non-member spouse at a particular date, means the adjusted base amount applicable to the non-member spouse at that date worked out under Division 6.1A of the *Family Law (Superannuation) Regulations 2001*.

**advance instalment of surcharge** means the advance instalment payable under section 11 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

**AFCA** (short for the Australian Financial Complaints Authority) has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

**AFCA scheme** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

**allocated pension** means a pension provided under the terms and conditions of an RSA that meet the standards of subregulation 1.07(2).

**allot**, for Division 4.5, means to credit an amount from an RSA holder's account to another account in the regulated superannuation fund held by, or created for, the receiving spouse otherwise than by transfer or roll-over.

**base amount payment split**, in relation to an RSA interest, means a payment split under which a base amount is allocated to the non-member spouse in relation to the interest under Part VIIIB or VIIC of the *Family Law Act 1975*.

**capital gains tax exempt component** has the same meaning as **CGT exempt component** in subsection 27A(1) of the Tax Act as in force immediately before 1 July 2007.

**commencement day**, in relation to a pension, means the first day of the period to which the first payment of the pension relates.

**contributions**, in relation to an RSA, includes:

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- (a) payments of shortfall components to the RSA; and
- (b) payments to the RSA from the Superannuation Holding Accounts Special Account;

but does not include benefits that have been rolled over or transferred to the RSA.

**costs**, in relation to the benefits of the holder of an RSA in the RSA as at any time, means the total costs charged to those benefits down to that time and includes:

- (a) the direct costs of establishing, operating and terminating the RSA; and
- (b) any administrative, insurance and taxation costs relating to the establishment, operation and termination of the RSA; and
- (c) any amounts of Government co-contribution required to be repaid under section 24 of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

Note: Examples of 'taxation costs' contributions tax, superannuation contributions surcharge.

**eligible application**, in relation to an RSA, means:

- (a) if, under section 1440 of the *Corporations Act 2001*, section 51 of the Act (as in force immediately before the FSR commencement) continues to apply to the RSA—an eligible application within the meaning of section 51 of the Act; and
- (b) in any other case—an eligible application within the meaning of subsection 1016A(1) of the *Corporations Act 2001*.

**eligible rollover fund** has the same meaning as in Part 24 of the SIS Act.

**eligible spouse contribution** means a contribution made by an individual to a superannuation fund:

- (a) to provide superannuation benefits for the individual's spouse, whether or not the benefits would be payable to the dependants of the individual's spouse if the spouse dies before or after becoming entitled to receive the benefits; and
- (b) in circumstances in which the individual:
  - (i) could not have deducted the contribution under section 82AAC of the Tax Act in the 2006—07 income year or a previous year; and
  - (ii) cannot deduct the contribution under Subdivision 290-B of the 1997 Tax Act in the 2007—08 income year or a later year.

**employer contribution**, in relation to an RSA, means a contribution by, or on behalf of, an employer of an RSA holder.

**EPSSS** means an exempt public sector superannuation scheme.

**exempt public sector superannuation scheme** has the same meaning as in the SIS Act.

**flag lifting agreement** means a flag lifting agreement within the meaning of Part VIII B or VIII C of the *Family Law Act 1975*.

**FSR commencement** has the same meaning as in section 1410 of the *Corporations Act 2001*.

**full-time**, in relation to being gainfully employed, means gainfully employed for at least 30 hours each week.

**gainfully employed** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

**growth phase**, for an RSA interest, has the meaning given by regulation 1.05A.

**industrial authority** means:

- (a) a court, or a tribunal or other body or person, constituted under a law of the Commonwealth, a State or a Territory with power of conciliation or arbitration in relation to industrial disputes; or
- (b) a special board constituted under the law of a State relating to factories.

**investment earnings**, in relation to the benefits (or to benefits of a particular kind) of an RSA holder as at any time, means the total of the amounts credited to the RSA:

- (a) if the RSA is an account—by way of positive interest; or
- (b) if the RSA is a policy—by way of positive investment returns or increases in the value of assets in which the policy is invested;

down to that time in respect of those benefits.

**life expectancy** has the same meaning as **life expectation factor** in section 27H of the Tax Act.

**lost RSA holder** has the meaning given by regulation 1.06.

**mandated employer contributions**, in relation to an RSA holder, means contributions by, or on behalf of, an employer that are equal to the sum of:

- (a) the contributions made by, or on behalf of, the employer to an RSA in relation to the RSA holder, that:
  - (i) reduce the employer's potential liability for the superannuation guarantee charge imposed by section 5 of the *Superannuation Guarantee Charge Act 1992*; or
  - (ii) are payments of shortfall components; and
- (b) the contributions (other than contributions of the kind specified in paragraph (a)) made by, or on behalf of, the employer to the RSA in relation to the RSA holder in or towards satisfaction of the employer's obligation to make contributions for the RSA holder, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority.

**mandated employer-financed benefits**, in relation to an RSA holder as at a particular time, means benefits equal to the sum of:

- (a) the amount of the mandated employer contributions (if any) made to the RSA down to that time; and

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(b) the amount of the mandated employer-financed benefits (if any) paid into the RSA down to that time; and

(c) the amount of the investment earnings on those contributions and benefits down to that time;

less the costs applicable to the amounts down to that time.

**market linked pension** means a pension provided under terms and conditions of an RSA that meet the standards of subregulation 1.07(3A).

**member** has the same meaning as in the SIS Regulations.

**member spouse**, in relation to an RSA interest that is subject to a payment split, means the person who is the member spouse within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975* in relation to the interest.

**non-member spouse**, in relation to an RSA interest that is subject to a payment split, means the person who is the non-member spouse within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975* in relation to the interest.

**old Regulations** means these Regulations as in force immediately before the FSR commencement.

**operative time**, for a payment split, means the operative time for the purposes of Part VIIIIB or VIIC (as the case may be) of the *Family Law Act 1975* for the payment split.

**part-time**, in relation to being gainfully employed, means gainfully employed for at least 10 hours, and less than 30 hours, each week.

**payment split** means a payment split within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**payment split notice** means a notice given by an RSA provider under regulation 4A.03.

**percentage payment split**, in relation to an RSA interest, means a payment split under a superannuation agreement, flag lifting agreement or splitting order that specifies a percentage that is to apply to all splittable payments in respect of the interest.

**protected RSA holder** means an RSA holder who has withdrawal benefits, or benefits of any other type that are payable on closing the RSA otherwise than voluntarily, net of any applicable exit fee, that:

(a) are less than \$1,000; and

(b) contain, or have contained, benefits that are mandated employer-financed benefits.

**receiving spouse** has the meaning given by regulation 4.43.

**reporting period** means a reporting period determined in accordance with the matters mentioned in subsection 1017D(2) of the *Corporations Act 2001*.

**retirement phase** has the same meaning as in the 1997 Tax Act.

**reviewable decision** means a decision of APRA to determine a form of consent under paragraph (b) of the definition of **consent** under regulation 4.30 or subregulation 4A.27(8).

**RSA holder contributions**, in relation to an RSA holder, means contributions by, or on behalf of, the RSA holder to the RSA, but does not include employer contributions made in respect of the RSA holder.

**RSA holder-financed benefits**, in relation to an RSA holder as at a particular time, means benefits equal to the sum of:

- (a) the amount of the RSA holder contributions (if any) made to the RSA down to that time; and
- (b) the amount of the RSA holder-financed benefits (if any) paid into the RSA down to that time; and
- (c) the amount of the investment earnings on those contributions and benefits down to that time;

less the costs applicable to those amounts down to that time.

**RSA holder-protection standards** means the standards set out in subregulation 3.12(2) and regulation 3.13.

**RSA interest** means an interest that a person has as the holder of an RSA, but does not include a reversionary interest.

**SGA Act** means the *Superannuation Guarantee (Administration) Act 1992*.

**shortfall component** has the same meaning as in the SGA Act.

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

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

**splittable payment** means a splittable payment within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**splitting order** means a splitting order within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**superannuation agreement** means a superannuation agreement within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*.

**superannuation contributions surcharge** means the superannuation contributions surcharge imposed by the *Superannuation Contributions Tax Imposition Act 1997*.

**Superannuation Holding Accounts Special Account** means the Special Account established by section 8 of the *Small Superannuation Accounts Act 1995*.

**superannuation income stream** has the same meaning as in the 1997 Tax Act.

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**superannuation lump sum** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

**Tax Act** means the *Income Tax Assessment Act 1936*.

**transferable benefits**, in relation to an RSA interest that is subject to a payment split and in relation to the non-member spouse in relation to that interest, means benefits that are equal to:

- (a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse when the benefits are transferred—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or
- (b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse when the benefits are transferred—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
- (c) if the payment split is a percentage payment split:
  - (i) for an entitlement in respect of an interest in the growth phase—the amount in relation to the interest at the time when the benefits are transferred, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001* multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  - (ii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time when the benefits are transferred, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split.

**withdrawal benefit**, in relation to an RSA holder, means the total amount of the benefits that would be payable:

- (a) to the RSA holder; and
- (b) in respect of the RSA holder, to:
  - (i) another RSA; or
  - (ii) the trustee of a superannuation entity or an EPSSS; and
- (c) to another person or entity because of a payment split in respect of the RSA holder's interest in the RSA;

if the RSA holder voluntarily ceased to be an RSA holder.



- (2) For the purposes of the definition of *protected RSA holder* in subregulation (1), a benefit in an RSA is taken to contain or to have contained mandated employer-financed benefits unless the RSA provider knows otherwise.

#### **1.04 Eligible person—section 13 of the Act**

For the purposes of section 13 of the Act, the criterion that the person must be an individual is prescribed.

#### **1.05 Approved auditor**

For the purposes of the definition of *approved auditor* in section 16 of the Act, individuals each of whom is:

- (a) under Division 2 of Part 9.2 of the Corporations Law, registered, or taken to be registered, as an auditor; and
- (b) a Member of CPA Australia Limited or the Institute of Chartered Accountants in Australia;

constitute a specified class.

#### **1.05A Meaning of *growth phase***

- (1) An RSA interest is taken to be in the growth phase at a particular date, if the RSA holder satisfies 1 of the following requirements at that date:
- (a) the RSA holder has not satisfied a relevant condition of release;
  - (b) the RSA holder has satisfied a relevant condition of release but no benefit has been paid in respect of the RSA interest, and no action has been taken by or for the RSA holder under the terms and conditions of the RSA to cash any benefit that the RSA holder is entitled to be paid as a result of satisfying the condition of release;
  - (c) the RSA holder has satisfied a relevant condition of release and a benefit (other than a benefit that is paid as a pension) has been paid to, or for the benefit of, the RSA holder or, if the RSA holder has died, to his or her legal personal representative, but no action has been taken by or for the RSA holder, or his or her legal personal representative, under the terms and conditions of the RSA to receive any other benefit that the RSA holder, or his or her estate, is entitled to be paid as a result of satisfying the condition of release.

- (2) In this regulation:

*relevant condition of release* means a condition of release mentioned in item 101, 102, 103, 106 or 107 of Schedule 2.

#### **1.06 Lost RSA holder**

- (1) An RSA holder is taken to be a lost RSA holder at a particular time if:
- (a) the RSA holder is uncontactable, that is, if and only if:
    - (i) either:

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- (A) the RSA provider has never had an address (whether non-electronic or electronic) for the RSA holder; or
  - (B) the RSA provider has made one or more attempts to send written communications to the RSA holder at the holder's last known address (or addresses), and believes, on reasonable grounds, that the holder can no longer be contacted at that address (or those addresses); and
    - (ia) the RSA holder has not contacted the RSA provider (whether by written communication or otherwise) within the last 12 months of the RSA holder's being an RSA holder; and
    - (ib) the RSA holder has not accessed details about the RSA holder's account from any electronic facility provided by the RSA provider within the last 12 months of the RSA holder's being an RSA holder; and
      - (ii) the RSA provider has not received a contribution or rollover in respect of the RSA holder within the last 12 months of the RSA holder's being an RSA holder; or
  - (b) the RSA holder is an inactive RSA holder, that is, if and only if:
    - (i) he or she has been an RSA holder for longer than 2 years; and
    - (ii) the RSA has not received a contribution or rollover in respect of him or her within the last 5 years of his or her being an RSA holder;
- unless:
- (c) within the last 2 years of the RSA holder's being an RSA holder, the RSA provider has verified that the RSA holder's address is correct and has no reason to believe that that address is now incorrect; or
  - (d) the RSA holder is permanently excluded from being a lost RSA holder.
- (1A) To avoid doubt, for the purposes of this regulation, a written communication includes a written communication by non-electronic means or by electronic means.
- (2) For the purposes of subregulation (1), and subject to subregulation (3), an RSA holder is permanently excluded from being a lost RSA holder if:
- (a) the RSA holder is an inactive RSA holder who has indicated by a positive act (for example, deferring a benefit in the RSA) that he or she wishes to continue to be an RSA holder; or
  - (b) the RSA holder has contacted the RSA provider at any time after the time at which he or she became an RSA holder and indicated that he or she wishes to continue being an RSA holder.
- (3) The RSA provider may decide that:
- (a) an RSA holder, a class of RSA holders, or all RSA holders cannot be permanently excluded from becoming lost RSA holders; or
  - (b) an RSA holder who is, a class of RSA holders who are, or all RSA holders who are permanently excluded from being lost is or are not to continue being permanently excluded from being lost.

- (4) Subregulations (1), (2) and (3) also apply to a person who is a non-member spouse in relation to an RSA interest that is subject to a payment split as if the person were an RSA holder.

Note: If a lost RSA holder is transferred to a superannuation entity or an EPSSS, the RSA provider must supply certain information about the RSA holder to the trustee of the superannuation entity or the EPSSS (see regulation 7.9.82 of the *Corporations Regulations 2001*).

Becoming a lost RSA holder may also have consequences regarding the information to be supplied to the RSA holder (see regulation 7.9.60A of, and Part 14 of Schedule 10A to, the *Corporations Regulations 2001*).

### **1.07 Meaning of pension—section 16 of the Act**

- (1) A benefit is taken to be a pension for the purposes of the Act if it is provided under terms and conditions of an RSA that:
- (a) meet the standards of subregulation (3D); and
  - (b) do not permit the capital supporting the pension to be added to by way of contribution or rollover after the pension has commenced; and
  - (c) meet the standards of regulation 1.08A.
- (1A) A benefit that commenced to be paid before 20 September 2007 is taken to be a pension for the purposes of the Act if it is provided under terms and conditions of an RSA that meet the standards of subregulation (2) or (3A).
- (1B) A benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if:
- (a) the benefit arises under terms and conditions of an RSA that meet the standards of:
    - (i) subregulation (3A); and
    - (ii) subregulation (3D); and
  - (b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:
    - (i) an annuity provided under a contract that meets the standards of subregulation 1.05(2), (9) or (10) of the SIS Regulations; or
    - (ii) a pension provided under rules that meet the standards of subregulation 1.06(2), (7) or (8) of the SIS Regulations; or
    - (iii) a pension provided under terms and conditions of an RSA that meet the standards of subregulation (3A).
- (2) Terms and conditions of an RSA meet the standards of this subregulation if they at least ensure that:
- (a) the pension is not able to be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary; and
  - (b) the capital value of the pension, and the income from it, cannot be used as security for a borrowing; and
  - (c) payments are made at least once in each financial year; and

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- (d) for a pension that has a commencement day before 1 January 2006—the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with Schedule 1; and
  - (da) for a pension that has a commencement day on or after 1 January 2006—the payments in a year (excluding payments by way of commutation but including payments made under a payment split) are not larger or smaller in total than the following:
    - (i) for payments made during the period starting on 1 January 2006 and ending on 30 June 2006—the respective maximum and minimum limits for the year calculated in accordance with 1 of the following Schedules:
      - (A) Schedule 1;
      - (B) Schedule 1A;
    - (ii) for payments made on or after 1 July 2006—the respective maximum and minimum limits for the year calculated in accordance with Schedule 1A; and
  - (e) for a pension that has a commencement day before 1 January 2006—before full commutation or transfer of the pension, a payment at least equal to the minimum limits calculated in accordance with Schedule 1 must be made; and
  - (ea) for a pension that has a commencement day on or after 1 January 2006—before full commutation or transfer of the pension, a payment is made that is:
    - (i) for a payment made during the period starting on 1 January 2006 and ending on 30 June 2006—at least equal to the minimum limit for the year calculated in accordance with which 1 of the following Schedules was chosen for the pension under paragraph 1.07(2)(da):
      - (A) Schedule 1;
      - (B) Schedule 1A;
    - (ii) for a payment made on or after 1 July 2006—at least equal to the minimum limit for the year calculated in accordance with Schedule 1A.
- (3) For the purpose of determining whether the terms and conditions meet the standards in paragraphs (2)(c) and (d), it is immaterial:
- (a) that:
    - (i) the commencement day occurs on or after 1 April in a financial year; and
    - (ii) the terms and conditions do not provide for the payment of an amount in that financial year that meets the standard for the minimum limit in paragraph (2)(d); or
  - (b) that the terms and conditions do not ensure that the payments in the year in which the pension is to end meet the standard for the minimum limit in paragraph 2(d).

- (3A) Terms and conditions of an RSA that provides a benefit (*the market linked pension*) meet the standards of this subregulation if they at least ensure that:
- (a) the market linked pension:
    - (i) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the pension, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or
    - (ii) is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in subparagraph (i) calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or
    - (iia) if the pension has a commencement day on or after 1 January 2006—the pension is paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under subparagraph 1.07(3A)(a)(i), and not more than the greater of the following periods:
      - (A) the maximum period available to the primary beneficiary under subparagraph 1.07(3A)(a)(ii);
      - (B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or
    - (iii) if:
      - (A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary; and
      - (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and
      - (C) the primary beneficiary has not chosen to make an arrangement mentioned in subparagraph (i), (ii) or (iia) for the pension;
 the pension is paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:
      - (D) the life expectancy of the spouse on the commencement day; or
      - (E) the life expectancy of the spouse calculated, at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or
      - (F) if the pension has a commencement day on or after 1 January 2006—a period that is not less than the period available under sub-subparagraph 1.07(3A)(a)(iii)(D), and not more than the greater of the following periods:
        - (I) the maximum period available under sub-subparagraph 1.07(3A)(a)(iii)(E);

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- (II) the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100;  
at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse, or the period, does not consist of a whole number of years; and
- (b) the total amount of the payments to be made in a year (excluding payments by way of commutation but including payments made under a payment split) is determined in accordance with Schedule 4; and
- (c) the market linked pension does not have a residual capital value; and
- (d) the terms and conditions of the market linked pension meet the standards of regulation 1.08; and
- (e) the market linked pension cannot be commuted except:
  - (i) if the pension is not funded from the commutation of:
    - (A) another pension that is provided under terms and conditions that meet the standards of this subregulation; or
    - (B) an annuity that is provided under a contract that meets the standards of subregulation 1.05(2), (3), (9) or (10) of the SIS Regulations; or
    - (C) a pension that is provided under rules that meet the standards of subregulation 1.06(2), (3), (7) or (8) of the SIS Regulations;and the commutation is made within 6 months after the commencement day of the pension; or
  - (ii) subject to subparagraph (iii), on the death of the primary beneficiary or reversionary beneficiary, by payment of:
    - (A) a lump sum or a new pension to one or more dependants of either the primary beneficiary or reversionary beneficiary; or
    - (B) a lump sum to the legal personal representative of either the primary beneficiary or reversionary beneficiary; or
    - (C) if, after making reasonable enquiries, the provider of the pension is unable to find a person mentioned in sub-subparagraph (A) or (B)—a lump sum to another individual; or
  - (iii) for subparagraph (ii), if the primary beneficiary has opted, under subparagraph (a)(iii), for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse—the market linked pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
  - (iv) if the superannuation lump sum resulting from the commutation is transferred directly to the purchase of:
    - (A) another pension that is provided under terms and conditions that meet the standards of this subregulation; or

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- (B) an annuity that is provided under a contract that meets the standards of subregulation 1.05(2), (3), (9) or (10) of the SIS Regulations; or
  - (C) a pension that is provided under rules that meet the standards of subregulation 1.06(2), (3), (7) or (8) of the SIS Regulations; or
    - (v) to pay a superannuation contributions surcharge; or
    - (vi) to give effect to an entitlement of a non-member spouse under a payment split; or
    - (vii) for the purpose of paying an amount under Division 131 or 135 in Schedule 1 to the *Taxation Administration Act 1953*, or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*, to give effect to a release authority in respect of the primary beneficiary; or
    - (viii) the market linked pension was commenced in contravention of Part 4 and the commutation would result in an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
    - (ix) in order to comply with section 136-80 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (f) if the market linked pension reverts, it does not have a reversionary component greater than 100% of the account balance immediately before the reversion; and
  - (g) if the market linked pension is commuted, the commutation amount cannot exceed the account balance immediately before the commutation; and
  - (h) the market linked pension can be transferred only:
    - (i) on the death of the primary beneficiary:
      - (A) to 1 of the dependants of the primary beneficiary; or
      - (B) to the legal personal representative of the primary beneficiary; or
    - (ii) on the death of the reversionary beneficiary:
      - (A) to 1 of the dependants of the reversionary beneficiary; or
      - (B) to the legal personal representative of the reversionary beneficiary; and
  - (i) the capital value of the market linked pension, and the income from it, cannot be used as security for a borrowing.
- (3B) Terms and conditions mentioned in subregulation (3A) are not prevented from meeting the standards of that subregulation by reason only that the terms or conditions provide that, if the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
- (3C) Despite section 7 of the *Income Tax Assessment (1936 Act) Regulation 2015*, for a pension that has a commencement day on or after 20 September 2004 and on or before 31 December 2004, one of the following life tables are to be used in ascertaining the life expectancy of a person under this regulation:
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- (a) the most recently published Australian Life Tables;
  - (b) the *1995-97 Australian Life Tables*.
- (3D) Terms and conditions for the provision of a benefit (the *pension*) meet the standards of this subregulation if the terms and conditions ensure that payment of the pension is made at least annually, and also ensure that:
- (a) the total of payments in any year (excluding payments by way of commutation but including payments under a payment split) is at least the amount calculated under clause 1 of Schedule 5; and
  - (b) the pension is transferable only on the death of the beneficiary (primary or reversionary, as the case may be); and
  - (c) the capital value of the pension and the income from it cannot be used as a security for a borrowing.
- (3E) Terms and conditions of an RSA do not meet the standards of any of subregulations (2), (3A) or (3D) if, in relation to the death of the beneficiary on or after 1 July 2007, the pension is transferred or paid to a person who would not be eligible to be paid a benefit in the form of a pension under subregulation 4.24(3A) or (3B).
- (4) A benefit that is a pension provided under an RSA does not cease to be a pension for the purposes of the Act if the terms and conditions of the RSA do not meet the standards of subregulation (2) merely because of a payment split in respect of the RSA and any reasonable fees associated with the payment split.
- (5) In this regulation:
- rolled over* means paid as a superannuation lump sum within the superannuation system.

### 1.08 Commutation of market linked pension

- (1) This regulation applies in relation to the terms and conditions of an RSA mentioned in paragraph 1.07(3A)(d) for a market linked pension.
- (2) The terms and conditions meet the standards of this regulation if they ensure that the pension cannot be commuted, in whole or in part, unless:
  - (a) the commutation results from the death of a pensioner or a reversionary pensioner; or
  - (b) the sole purpose of the commutation is:
    - (i) to pay a superannuation contributions surcharge; or
    - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
    - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
    - (iv) to comply with section 136-80 in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (ba) for a commutation in part—the account balance of the pension, immediately after the commutation in part, would be equal to or would



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exceed the total payment amount calculated in accordance with Schedule 4, as reduced by the amount of payments (excluding amounts paid by way of commutation) to the RSA holder already made in the financial year in which the commutation in part would occur; or

- (c) the pension has paid, in the financial year in which the commutation is to take place, at least the minimum amount under subregulation (3); or
- (d) for the purpose of paying an amount under Division 131 or 135 in Schedule 1 to the *Taxation Administration Act 1953*, or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*, to give effect to a release authority in respect of the primary beneficiary.

- (3) For paragraph (2)(c), the minimum amount is calculated using the formula:

$$\text{annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

**annual amount** for the financial year means the amount worked out in accordance with Schedule 4 for the pension, rounded to the nearest 10 whole dollars.

**days in payment period** means the number of days in the period that:

- (a) starts on:
  - (i) if the pension commenced in the financial year in which the commutation is to take place—the commencement day; or
  - (ii) in any other case—1 July in that financial year; and
- (b) ends at the end of the day on which the commutation is to take place.

**days in financial year** means the number of days in the financial year in which the commutation is to take place.

- (4) In this regulation:

**rolled over** means paid as a superannuation lump sum within the superannuation system.

### 1.08A Commutation of an account-based pension

- (1) For paragraph 1.07(1)(c), a benefit meets the standards of this regulation if, under the applicable terms or conditions of the RSA, the pension cannot be commuted, in whole or in part, except in the following circumstances:
- (a) the commutation results from the death of the pensioner or a reversionary pensioner;
  - (b) the sole purpose of the commutation is:
    - (i) to pay a superannuation contributions surcharge; or
    - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
    - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*;

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- (c) for a commutation in part—the account balance of the pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated in accordance with Schedule 5, as reduced by the amount of payments (excluding amounts paid by way of commutation) to the pensioner already made in the financial year in which the commutation occurs;
  - (d) the pension has paid, in the financial year in which the commutation takes place, at least the minimum amount prescribed by subregulation (2).
- (2) For paragraph (1)(d), the minimum amount is the amount calculated using the formula:

$$\text{Minimum annual amount} \times \frac{\text{Days in payment period}}{\text{Days in financial year}}$$

where:

***minimum annual amount*** means the minimum amount payable under the pension, in the financial year, calculated in accordance with Schedule 5.

***days in payment period*** means the number of days in the period that:

- (a) begins on:
  - (i) if the pension commenced in the financial year in which the commutation is to take place—the commencement day; or
  - (ii) otherwise—1 July in that financial year; and
- (b) ends on the day on which the commutation is to take place.

***days in financial year*** means the number of days in the financial year (365 or 366) in which the commutation takes place.

### 1.09 Interdependency relationships (Act s 20A)

- (1) For paragraph 20A(3)(a) of the Act, the following matters are to be taken into account in determining whether 2 persons have an interdependency relationship, or had an interdependency relationship immediately before the death of 1 of the persons:
- (a) all of the circumstances of the relationship between the persons, including (where relevant):
    - (i) the duration of the relationship; and
    - (ii) whether or not a sexual relationship exists; and
    - (iii) the ownership, use and acquisition of property; and
    - (iv) the degree of mutual commitment to a shared life; and
    - (v) the care and support of children; and
    - (vi) the reputation and public aspects of the relationship; and
    - (vii) the degree of emotional support; and
    - (viii) the extent to which the relationship is one of mere convenience; and
    - (ix) any evidence suggesting that the parties intend the relationship to be permanent;

(b) the existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was, in an interdependency relationship with the other person.

- (2) For paragraph 20A(3)(b) of the Act, 2 persons have an interdependency relationship if:
- (a) they satisfy the requirements of paragraphs 20A(1)(a) to (c) of the Act; and
  - (b) one or each of them provides the other with support and care of a type and quality normally provided in a close personal relationship, rather than by a mere friend or flatmate.

Examples of care normally provided in a close personal relationship rather than by a friend or flatmate

1. Significant care provided for the other person when he or she is unwell.
2. Significant care provided for the other person when he or she is suffering emotionally.

- (3) For paragraph 20A(3)(b) of the Act, 2 persons have an interdependency relationship if:
- (a) they have a close personal relationship; and
  - (b) they do not satisfy the other requirements set out in subsection 20A(1) of the Act; and
  - (c) the reason they do not satisfy the other requirements is that they are temporarily living apart.

Example for paragraph (3)(c)

One of the persons is temporarily working overseas or is in gaol.

- (4) For paragraph 20A(3)(b) of the Act, 2 persons have an interdependency relationship if:
- (a) they have a close personal relationship; and
  - (b) they do not satisfy the other requirements set out in subsection 20A(1) of the Act; and
  - (c) the reason they do not satisfy the other requirements is that either or both of them suffer from a disability.
- (5) For paragraph 20A(3)(b) of the Act, 2 persons do not have an interdependency relationship if 1 of them provides domestic support and personal care to the other:
- (a) under an employment contract or a contract for services; or
  - (b) on behalf of another person or organisation such as a government agency, a body corporate or a benevolent or charitable organisation.

## Part 2—Information for RSA holders and others

### Division 2.3A—Information about RSA interest subject to payment split

#### 2.18A Application of Division 2.3A

This Division applies to and in relation to an RSA only if, under section 1440 of the *Corporations Act 2001*, Divisions 4 and 5 of Part 5 of the Act (as in force immediately before the FSR commencement) continue to apply to and in relation to the RSA.

Note: Regulation 7.9.89 of the *Corporations Regulations 2001* requires an RSA provider that is a product issuer to provide information to a non-member spouse in relation to an RSA product issued under a payment split.

#### 2.18B Operating standards

For subsection 38(1) of the Act, a requirement of this Division is a standard applicable to the operation of RSAs.

#### 2.18C Information to be provided by RSA provider—growth phase

- (1) This regulation applies if:
  - (a) an RSA interest is subject to a base amount payment split; and
  - (b) the interest is in the growth phase; and
  - (c) none of the following has occurred as a result of a payment split:
    - (i) a new RSA was opened for the non-member spouse;
    - (ii) the transferable benefits of the non-member spouse were transferred or rolled out of the RSA;
    - (iii) the amount to which the non-member spouse is entitled under the payment split was paid, as a lump sum, to the non-member spouse.
- (2) The RSA provider must give to the member spouse and the non-member spouse the following information for each reporting period:
  - (a) the value of the adjusted base amount applicable to the non-member spouse at the end of the reporting period;
  - (b) the amount of the adjustment in the reporting period;
  - (c) the rate of return over the reporting period.
- (3) The information required under subregulation (2):
  - (a) must be given as soon as practicable after the end of the relevant reporting period; and
  - (b) in the case of information that is to be given to the member spouse, must be given with the information required to be given to the member spouse under Division 2.3 of the old Regulations.

Note: A non-member spouse may also be entitled to information under section 1017C of the *Corporations Act 2001*.

**2.18D Other information to be given by RSA provider—adverse effect on benefits**

- (1) This regulation applies if:
  - (a) an RSA interest is subject to a base amount payment split or a percentage payment split; and
  - (b) the interest is in the growth phase; and
  - (c) none of the following has occurred as a result of a payment split:
    - (i) a new RSA was opened for the non-member spouse;
    - (ii) the transferable benefits of the non-member spouse were transferred or rolled out of the RSA;
    - (iii) the amount to which the non-member spouse is entitled under the payment split was paid, as a lump sum, to the non-member spouse.
- (2) The RSA provider must give to the non-member spouse information about an event if the RSA provider reasonably believes that:
  - (a) the event is likely to have a material effect on the RSA interest; and
  - (b) the event may be adverse (whether the adverse effect would occur at the time of the event or a later time).
- (3) The information required under subregulation (2) must be given before, or as soon as practicable after, the occurrence of the event.

## Part 3—Benefit protection standards

### Division 3.1—Introductory

#### 3.01 Interpretation

(1) In this Part, unless the contrary intention appears:

**administration costs** includes all fees and charges charged against benefits of the holder of an RSA in the RSA (whether or not charged against the contributions by or in respect of the RSA holder), other than:

- (a) the cost (if any) of providing to the RSA holder:
  - (i) an insured death benefit; or
  - (ii) an insured permanent or temporary incapacity benefit; and
- (b) taxation costs.

Note: Examples of 'taxation costs': contributions tax, superannuation contributions surcharge.

**deferred annuity** has the same meaning as in Part 5 of the SIS Regulations.

**rolled over** means paid as a superannuation lump sum (other than by way of being transferred) within the superannuation system.

**superannuation provider** means:

- (a) an RSA provider; or
- (b) the trustee of a regulated superannuation fund; or
- (c) the trustee of an approved deposit fund.

**superannuation system** means the system comprising:

- (a) RSAs; and
- (b) regulated superannuation funds; and
- (c) approved deposit funds; and
- (d) the Commissioner of Taxation in the Commissioner of Taxation's role as the maker of payments to a superannuation provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
- (f) annuities; and
- (g) deferred annuities; and
- (h) EPSSSs.

**transferred**, in relation to the benefits of the holder of an RSA paid out of, or received by, the RSA, means paid to, or received from:

- (a) another RSA provided by an RSA institution; or
- (b) a superannuation entity; or
- (c) an EPSSS;

otherwise than upon the satisfaction by the RSA holder of a condition of release (within the meaning of Part 4) for all those benefits.

### **3.02 RSA provider may provide greater protection**

An RSA provider has the power, despite anything in the terms and conditions of an RSA, to protect the benefits of an RSA holder to a greater degree than is required by this Part, if the RSA provider does so in a way that is consistent with this Part.

Note: For example, an RSA provider might choose to protect the benefits of all RSA holders with withdrawal benefits less than \$1,500, rather than all protected RSA holders (ie, broadly, RSA holders with withdrawal benefits less than \$1,000) as this Part requires. 'Protected RSA holder' is defined in regulation 1.03.

## Division 3.2—Treatment of benefits

### 3.03 Operating standards

For the purposes of subsection 38(1) of the Act, a requirement of this Division is a standard applicable to the operation of RSAs.

### 3.04 Minimum benefits

All of the benefits of the holder of an RSA in the RSA are minimum benefits.

### 3.05 How benefits are to be treated

- (1) An RSA provider must ensure that the benefits of an RSA holder are maintained until the benefits are:
  - (a) cashed (in accordance with Division 4.3) as benefits of the RSA holder, other than for the purpose of the RSA holder's temporary incapacity; or
  - (b) cashed under Part 4A; or
  - (c) rolled over or transferred, as benefits of the RSA holder, or under Part 4A; or
  - (d) transferred, rolled over or allotted under Division 4.5.
- (2) Subregulation (1) does not apply if, under a law of the Commonwealth, a State or a Territory mentioned in the table, a court makes a forfeiture order (however called) forfeiting part or all of the benefits of the RSA holder to the Commonwealth, a State or a Territory

Item	Law	Provision(s)
<b>Commonwealth</b>		
1.1	<i>Proceeds of Crime Act 2002</i>	Section 47 Section 48 Section 49 Section 92
<b>New South Wales</b>		
2.1	<i>Confiscation of Proceeds of Crime Act 1989</i>	Subsection 18(1)
2.2	<i>Criminal Assets Recovery Act 1990</i>	Section 22
<b>Victoria</b>		
3.1	<b>Confiscation Act 1997</b>	Division 1 of Part 3 Section 35 Part 4 Subsection 157(6)
<b>Queensland</b>		
4.1	<i>Criminal Proceeds Confiscation Act 2002</i>	Section 58 Section 58A Section 151 Part 5 of Chapter 3



## Regulation 3.06

<b>Item</b>	<b>Law</b>	<b>Provision(s)</b>
<b><i>Western Australia</i></b>		
5.1	<i>Criminal Property Confiscation Act 2000</i>	Section 30, to the extent that it applies to confiscation under section 6 in satisfaction of a person's liability under section 20 Section 30, to the extent that it applies to confiscation under section 7
<b><i>South Australia</i></b>		
6.1	<i>Criminal Assets Confiscation Act 2005</i>	Section 47
<b><i>Tasmania</i></b>		
7.1	<i>Crime (Confiscation of Profits) Act 1993</i>	Section 16
<b><i>Australian Capital Territory</i></b>		
8.1	<i>Confiscation of Criminal Assets Act 2003</i>	Section 54 Section 58 Section 62 Section 67
<b><i>Northern Territory</i></b>		
9.1	<i>Criminal Property Forfeiture Act 2002</i>	Section 75 Section 76 Section 80 Section 96 Section 97 Section 99

**3.06 Mandated employer contributions**

- (1) Subject to this regulation, contributions to an RSA are taken to be mandated employer contributions.
- (2) If:
  - (a) at least 1 year has elapsed since the RSA provider received the contributions in respect of the RSA; and
  - (b) the RSA provider:
    - (i) is satisfied that the contributions are not in fact mandated employer contributions; and
    - (ii) decides not to continue to treat the contributions as mandated employer contributions;
 subregulation (1) ceases to apply to the contributions.
- (3) If:
  - (a) less than 1 year has elapsed since the RSA provider received the contributions in respect of the RSA; and
  - (b) the RSA provider is satisfied that the contributions are not in fact mandated employer contributions;
 subregulation (1) ceases to apply to the contributions.

### Regulation 3.06A

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- (4) The RSA provider has power to make a decision of the kind mentioned in subparagraph 2(b)(ii) despite anything in the terms and conditions of the RSA.

Example of the application of this regulation

An RSA provider may receive a non-mandated employer contribution from an employer that the RSA provider does not know is a non-mandated employer contribution (ie, a contribution not made in satisfaction of the employer's superannuation guarantee or award obligation).

On acceptance, the contribution will be taken to be a mandated employer contribution.

From this point, one of three circumstances may apply:

- (a) the RSA provider may become aware in the first year after the contribution was received that the contribution is a non-mandated employer contribution, and, if this is the case, the RSA provider must treat the contribution as a non-mandated employer contribution; or
- (b) the RSA provider may become aware more than a year after the contribution was received that the contribution is a non-mandated employer contribution, and, if this is the case, the RSA provider may continue to treat the contribution as a mandated employer contribution instead of making corrections to reflect the change; or
- (c) the RSA provider may never become aware that the contribution is a non-mandated employer contribution, and, if this is the case, the contribution will always be taken to be a mandated employer contribution.

#### **3.06A Priority in deducting surcharge or instalment**

- (1) This regulation applies if an RSA provider has decided to reduce an RSA holder's benefits in an RSA in connection with payment of a superannuation contributions surcharge or an advance instalment of surcharge.
- (2) In reducing the RSA holder's benefits, the RSA provider must:
  - (a) if possible—deduct an amount equal to the whole of the amount of the reduction from the preserved benefits; and
  - (b) if the required deduction cannot be met under paragraph (a)—deduct the balance from the restricted non-preserved benefits; and
  - (c) if the required deduction cannot be met under paragraphs (a) and (b)—deduct the balance from the unrestricted non-preserved benefits.

#### **3.06B Refund of costs**

The RSA provider may refund to an RSA costs charged against the RSA holder's benefits in the RSA.

## **Division 3.3—RSA holder-protection standards**

### **3.07 Interpretation**

In this Division:

*exit fee* means a fee charged by an RSA provider in relation to a payment of benefits, being a fee that the RSA provider would not have charged if the payment had not been made.

*RSA holder reporting period* means a reporting period determined in accordance with the matters mentioned in subsection 1017D(2) of the *Corporations Act 2001*.

### **3.08 Operating standards**

For the purposes of subsection 38(1) of the Act, a requirement of this Division is a standard applicable to the operation of RSAs.

### **3.09 RSA holder-protection standards not to apply to certain protected RSA holders**

If:

- (a) an RSA holder is a protected RSA holder at the end of an RSA holder reporting period; and
- (b) the RSA provider has a reasonable expectation (in accordance with subsections 1017D(13) to (16) of the *Corporations Act 2001* (as inserted by item 8.1 of Schedule 10A to the *Corporations Regulations 2001*) and regulation 7.9.27 of the *Corporations Regulations 2001*) that the RSA holder will have a withdrawal benefit of at least \$1,500 within 12 months after the end of that RSA holder reporting period; and
- (c) the RSA holder's withdrawal benefits reach \$1,500 within 12 months after the end of that RSA holder reporting period;

the RSA holder is taken not to have been subject to the RSA holder-protection standards from the beginning of that RSA holder reporting period until the end of that period of 12 months.

Note: See regulation 2.18 in relation to protected RSA holders whose benefits are reasonably expected to reach \$1,500 within the period of 12 months after the end of an RSA holder reporting period.

### **3.10 RSA holder-protection standards not to apply to pensions or annuities**

The RSA holder-protection standards do not apply to any part of the benefits of an RSA holder that has commenced to be taken in the form of a pension or annuity.

## Regulation 3.11

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### 3.11 RSA holder-protection standards not to apply to traditional life insurance policies

The RSA holder-protection standards do not apply to a part of the benefits of an RSA holder that is wholly determined by a life insurance policy within the meaning of the *Life Insurance Act 1995* if:

- (a) the policy includes an investment component; and
- (b) the premium is not dissected (whether by reference to the investment component or otherwise); and
- (c) the sum insured, together with bonuses (if any), is payable only upon:
  - (i) the death of the life insured; or
  - (ii) the occurrence of the earlier of the following events:
    - (A) the death of the life insured; or
    - (B) the attainment by the life insured of the age specified in the policy.

### 3.12 RSA holder-protection standards

- (1) This regulation applies in relation to an RSA holder if the RSA holder is a protected RSA holder.
- (2) The amount charged as administration costs in respect of a relevant RSA holder reporting period against the benefits of the holder of an RSA to whom this regulation applies must not exceed the amount of the investment earnings credited to the RSA for that period.
- (3) For subregulation (2), an RSA holder reporting period for a protected RSA holder is a relevant RSA holder reporting period if, at the end of the period, and subject to any adjustment affecting the RSA holder's benefits (net of any exit fee) made by the RSA provider in respect of the period, the RSA holder is a protected RSA holder.
- (5) For the purposes of this regulation, the benefits of an RSA holder are taken to be composed wholly of mandated employer-financed benefits except for the portion (if any) of the benefits that the RSA provider knows are not mandated employer-financed benefits.

### 3.13 Costs not to be deferred

If an RSA provider would charge costs against the benefits of an RSA holder in respect of an RSA holder reporting period but for regulation 3.12, the RSA provider must not charge those costs against the benefits of the RSA holder in a future RSA holder reporting period, whether in combination with other costs or not.

## **Part 3A—Data and payment matters relating to RSAs**

### **3A.01 Definitions**

In this Part:

**Commissioner** means the Commissioner of Taxation.

**prescribed RSA**—see regulation 3A.02.

**unique RSA identifier**, for an RSA provider, means:

- (a) the ABN of the RSA provider followed by 3 numerals; or
- (b) if the RSA provider is also an RSA institution—the ABN of the RSA institution, followed by 3 numerals; or
- (c) another kind of unique identifier approved in writing by the Commissioner.

### **3A.02 Prescribed RSA**

For paragraph 45R(1)(a) of the Act, each RSA is a prescribed RSA.

### **3A.03 Information to be given for register**

- (1) For subsection 45R(1) of the Act, the RSA provider of a prescribed RSA must:
  - (a) give the Commissioner at least one unique RSA identifier for the RSA provider; and
  - (b) for each unique RSA identifier, give the Commissioner:
    - (i) one set of bank details that is sufficient to enable an electronic payment to be made; and
    - (ii) either:
      - (A) one internet protocol address; or
      - (B) one other kind of digital address approved by the Commissioner for the receipt of electronic communications.
- (2) The RSA provider may give:
  - (a) the same bank details for more than one unique RSA identifier; and
  - (b) the same internet protocol address, or other approved digital address, for more than one unique RSA identifier.
- (3) The RSA provider must tell the Commissioner the date on which the information is to be operative.
- (4) The information must become operative before the later of:
  - (a) 1 July 2013; and
  - (b) the day the RSA provider first receives:
    - (i) a contribution; or
    - (ii) a rollover of an RSA holder's withdrawal benefits; or

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(iii) a transfer of an RSA holder's withdrawal benefits.

(5) If:

- (a) the RSA provider is receiving contributions, rollovers or transfers referred to in paragraph (4)(b) from an employer, a superannuation entity or another RSA provider when this Part commences; and
- (b) the RSA provider expects that the RSA will continue to receive those contributions, rollovers or transfers on or after 1 July 2013;

the RSA provider must give the information referred to in subregulation (1) to the Commissioner no later than 30 days after the commencement day.

(6) If subregulation (5) does not apply, the RSA provider must give the information referred to in subregulation (1) to the Commissioner on or before the later of:

- (a) 30 days after the commencement day; and
- (b) 10 business days before the day the RSA provider first receives:
  - (i) a contribution; or
  - (ii) a rollover of an RSA holder's withdrawal benefits; or
  - (iii) a transfer of RSA holder's withdrawal benefits.

(7) If the RSA provider of a prescribed RSA proposes to change any information given for the RSA under this regulation, the RSA provider must give the changed information to the Commissioner no later than 10 business days before the new information is to be operative for the RSA.

(8) In this regulation:

**commencement day** means the day on which Schedule 1 to the *Retirement Savings Accounts and Related Legislation Amendment Regulation 2013 (No. 1)* commences.

## Part 4—Payment standards

### Division 4.1—Introductory

#### Subdivision 4.1.1—General interpretation

##### 4.01 Interpretation

- (1) Subject to subregulation (2), expressions used in this Part that are defined for the purposes of Part 3 have the same meanings respectively as in that Part.
- (2) In this Part and in Schedule 2, unless the contrary intention appears:

***cashing restriction***, in relation to a condition of release, means a cashing restriction specified in column 3 of the item in Schedule 2 that mentions the condition of release.

***Commonwealth income support payment*** means:

- (a) an income support supplement, service pension or social security pension as defined in subsection 23(1) of the *Social Security Act 1991*; or
- (b) a social security benefit as defined in that subsection, other than:
  - (i) an austudy payment; or
  - (ii) a youth allowance paid to a person who is undertaking full-time study; or
- (c) a drought relief payment under the *Farm Household Support Act 1992* as in force immediately before the commencement of the *Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997*; or
- (d) an exceptional circumstances relief payment under the *Farm Household Support Act 1992*; or
- (e) a payment of salary or wages made under the employment scheme of the Commonwealth that is known as the Community Development Employment Projects Scheme; or
- (f) a payment of income support for the purposes of the Farm Family Support Scheme.

***compassionate ground***, in relation to the release of an RSA holder's preserved benefits or restricted non-preserved benefits in an RSA, means:

- (a) a ground listed in subregulation 4.22A(1); or
- (b) the ground referred to in subregulation 4.22B(1).

***condition of release*** means a condition of release specified in column 2 of Schedule 2, and, subject to regulation 4.01B, an RSA holder is taken to have satisfied a condition of release if the event specified in that condition has occurred in relation to the RSA holder.

***lump sum***, in this Part but not in Schedule 2, includes an asset.

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**non-commutable allocated pension** has the meaning given by regulation 4.01AA.

**non-commutable income stream** means a benefit that:

- (a) cannot be commuted; and
- (b) is paid at least monthly; and
- (c) does not have a residual capital value; and
- (d) is such that the total amount paid each month is fixed or varies only:
  - (i) for the purpose of complying with the Act and these Regulations; and
  - (ii) during any period of 12 months by a rate not exceeding either:
    - (A) 5% per annum; or
    - (B) the rate of increase in the last Consumer Price Index (All Capital Cities) for a quarter to be published by the Australian Statistician before the end of that period of 12 months compared with the Consumer Price Index (All Capital Cities) published for the same quarter in the preceding year.

**non-commutable pension** means a pension provided under terms and conditions of an RSA that:

- (a) meet the standards of subregulation 1.07(3A); and
- (b) ensure that, if the pension is commuted under subparagraph 1.07(3A)(e)(i), the resulting eligible termination payment cannot be cashed unless:
  - (i) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
  - (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'.

**OSS Laws** means:

- (a) the *Occupational Superannuation Standards Act 1987* as in force immediately before the commencement of section 5 of the *Occupational Superannuation Standards Amendment Act 1993*; and
- (b) the Occupational Superannuation Standards Regulations.

**permanent incapacity**, in relation to an RSA holder, means ill-health (whether physical or mental), where the trustee is reasonably satisfied that the RSA holder is unlikely, because of the ill-health, to engage in gainful employment for which the RSA holder is reasonably qualified by education, training or experience.

**permanent resident** means a holder of a permanent visa under the *Migration Act 1958* that has not ceased to be in effect.

**preservation age** means:

- (a) for a person born before 1 July 1960—55 years; or
- (b) for a person born during the year 1 July 1960 to 30 June 1961—56 years;  
or
- (c) for a person born during the year 1 July 1961 to 30 June 1962—57 years;  
or



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- (d) for a person born during the year 1 July 1962 to 30 June 1963—58 years;  
or
- (e) for a person born during the year 1 July 1963 to 30 June 1964—59 years;  
or
- (f) for a person born after 30 June 1964—60 years.

**retirement** has the meaning given by subregulation (4).

**severe financial hardship** has the meaning given by subregulation (5).

**SIS changeover day**, in relation to a member of a regulated superannuation fund (within the meaning of the SIS Regulations) has the same meaning as the term ‘changeover day’ has in Part 6 of those Regulations.

**student visa** has the same meaning as in the *Migration Act 1958*.

**temporary incapacity**, in relation to an RSA holder who has ceased to be gainfully employed (including an RSA holder who has ceased temporarily to receive any gain or reward under a continuing arrangement for the RSA holder to be gainfully employed), means ill-health (whether physical or mental) that caused the RSA holder to cease to be gainfully employed but does not constitute permanent incapacity.

**temporary resident** means a holder of a temporary visa under the *Migration Act 1958*.

**terminal medical condition** has the meaning given by regulation 4.01A.

**transitional period**, in relation to a superannuation fund (within the meaning of the SIS Act), means the period beginning at the beginning of the fund’s 1994—95 year of income and ending:

- (a) in the case of a public sector superannuation scheme (within the meaning of the SIS Act)—at the end of the day when the scheme became an exempt public sector superannuation scheme; or
- (b) in any other case—at the end of the day when the trustee of the fund lodges an election under section 19 of that Act.

**transition to retirement pension** means a pension provided from an RSA, the terms and conditions of which:

- (a) meet the standards of subregulation 1.07(3D); and
- (b) allow total payments (excluding payments by way of commutation, but including payments under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:
  - (i) on 1 July in the financial year in which the payment is made; or
  - (ii) if that year is the year in which the pension commences—on the commencement day;

unless the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is ‘Nil’; and

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- (c) comply with paragraph (b) of the definition of *non-commutable allocated pension* as if it were such a pension in subregulation 4.01AA(1).
- (3) Amounts to the credit of an RSA holder (except eligible spouse contributions) in a fund are undeducted contributions if:
  - (a) the amounts are undeducted contributions within the meaning that was given, before 1 July 2007, by subsection 27A(1) of the Tax Act; or
  - (b) for any other amounts—the amounts comprise contributions:
    - (i) made after 30 June 1983 in order to obtain superannuation benefits (within the meaning of the Tax Act); and
    - (ii) in respect of which no deduction is allowable or has been allowed to the RSA holder under the former section 82AAT of the Tax Act.
- (4) For the purposes of Schedule 2, the retirement of a person is taken to occur:
  - (a) in the case of a person who has reached a preservation age that is less than 60—if:
    - (i) an arrangement under which RSA holder was gainfully employed has come to an end; and
    - (ii) the RSA provider is reasonably satisfied that the RSA holder intends never to again become gainfully employed, either on a full-time or a part-time basis; or
  - (b) in the case of a person who has attained the age of 60—an arrangement under which the person was gainfully employed has come to an end, and either of the following circumstances apply:
    - (i) the person attained that age on or before the ending of the employment;
    - (ii) the RSA provider is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis.
- (5) For the purposes of Schedule 2, a person is taken to be in severe financial hardship if:
  - (a) the RSA provider is satisfied:
    - (i) based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that:
      - (A) the person has received Commonwealth income support payments for a continuous period of 26 weeks; and
      - (B) the person was in receipt of payments of that kind on the date of the written evidence; and
    - (ii) that the person is unable to meet reasonable and immediate family living expenses; or
  - (b) the person has reached the age that is the person's preservation age plus 39 weeks and the RSA provider is satisfied:
    - (i) based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments—that the person received

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- Commonwealth income support payments for a cumulative period of 39 weeks after the person reached the person's preservation age; and
- (ii) that the person was not gainfully employed on a full-time, or part-time, basis on the date of the application for cashing of his or her preserved benefits, or restricted non-preserved benefits, in the RSA.
- (5A) The written evidence provided for by paragraph (5)(a) is of no effect if it is dated more than 21 days before the date of the person's application to the RSA provider for cashing of his or her preserved benefits or restricted non-preserved benefits.
- (5B) For the purposes of Schedule 2, an RSA holder is taken to have satisfied a condition of release if the event specified in that condition has occurred in relation to the RSA holder.
- (6) A reference in this Part to 'preserved benefits', 'restricted non-preserved benefits', 'restricted non-preserved contributions', 'unrestricted non-preserved benefits' and 'post-65 employer-financed benefits' includes benefits, rolled over, or transferred, from a superannuation entity or an EPSSS.

#### **4.01AA Meaning of *non-commutable allocated pension***

- (1) In this Part and Schedule 2, ***non-commutable allocated pension*** means a pension provided under the terms and conditions of an RSA that:
- (a) meet the standards of subregulation 1.07(2); and
- (b) ensure that, if the pension is commuted, the resulting superannuation lump sum cannot be cashed unless:
- (i) the purpose of the commutation is mentioned in subregulation (2); or
- (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is "Nil"; or
- (iii) the purpose of the commutation is to satisfy an obligation to pay an amount to the Commissioner of Taxation under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (2) For subparagraph (1)(b)(i), the purpose is any of the following:
- (a) to cash an unrestricted non-preserved benefit;
- (b) to pay a superannuation contributions surcharge;
- (c) to give effect to an entitlement of a non-member spouse under a payment split;
- (d) to ensure that a payment may be made under Division 131 or 135 in Schedule 1 to the *Taxation Administration Act 1953*, or section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*, for the purpose of giving effect to a release authority.

#### **4.01A Meaning of *terminal medical condition***

For Schedule 2, a ***terminal medical condition*** exists in relation to a person at a particular time if the following circumstances exist:

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- (a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the ***certification period***) that ends not more than 24 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
- (c) either:
  - (i) if there is one certification period—the certification period has not ended; or
  - (ii) otherwise—neither of the certification periods has ended.

#### 4.01B Conditions of release for temporary residents

- (1) This regulation applies to an RSA holder who is or was a temporary resident.
- (2) This regulation does not apply to an RSA holder who:
  - (a) is an Australian citizen, a New Zealand citizen or a permanent resident; or
  - (b) is, at any time, the holder of a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa described in Schedule 2 to the *Migration Regulations 1994*.
- (3) The only conditions of release that can be satisfied in respect of an RSA holder to whom this regulation applies are:
  - (a) a condition of release that was satisfied by the RSA holder before 1 April 2009; and
  - (b) the conditions of release in items 102, 102A, 103, 104, 104A, 108, 109AA, 111A and 111B of Schedule 2.

#### 4.03 RSA changeover day

A decision by an RSA provider under these Regulations as in force before 30 June 1998 to fix a day in the 1998 calendar year as an RSA changeover day is taken never to have been made.

#### Subdivision 4.1.2—Preserved benefits

#### 4.04 Preserved benefits—before 1 July 1999

Subject to regulations 4.08 and 4.14 and to Subdivision 4.1.5, the amount of the preserved benefits of the holder of an RSA in the RSA at any time before 1 July 1999 is the sum of:

- (a) the amount of any benefits arising directly or indirectly from amounts contributed to the RSA by an employer on behalf of the RSA holder; and
- (b) the amount of the RSA holder-financed benefits arising from contributions (other than undeducted contributions) made to the RSA in relation to the RSA holder; and

- (c) the amount of benefits arising from payments from the Superannuation Holding Accounts Special Account; and
- (d) the amount of benefits arising from eligible spouse contributions; and
- (e) the amount of benefits arising from a capital gains tax exempt component rolled over to the RSA because of subsection 160ZZPZF(1), 160ZZPZH(7) or 160ZZPZI(5) of the Tax Act.

#### **4.05 Preserved benefits—on and after 1 July 1999**

Subject to regulation 4.14 and to Subdivision 4.1.5, the amount of the preserved benefits of the holder of an RSA in the RSA at any time on or after 1 July 1999 is the amount of the RSA holder's benefits less the sum of:

- (a) the amount of the RSA holder's restricted non-preserved benefits as defined by regulation 4.10; and
- (b) the amount of the RSA holder's unrestricted non-preserved benefits as defined by regulation 4.13.

#### **4.08 Effect of rollover or transfer on preserved benefits**

Subject to regulation 4.14 and to Subdivision 4.1.5, the benefits of the holder of an RSA in the RSA that were preserved benefits in the source from which they were received continue to be preserved benefits in that RSA.

#### **Subdivision 4.1.3—Restricted non-preserved benefits**

#### **4.09 Restricted non-preserved benefits—before 1 July 1999**

Subject to regulations 4.12 and 4.14 and to Subdivision 4.1.5, the amount of the restricted non-preserved benefits of the holder of an RSA in the RSA at any time before 1 July 1999 is the amount of the RSA holder's benefits, less the sum of:

- (a) the amount of the RSA holder's preserved benefits as defined by regulation 4.04; and
- (b) the amount of the RSA holder's unrestricted non-preserved benefits as defined by regulation 4.13.

#### **4.10 Restricted non-preserved benefits—on and after 1 July 1999**

- (1) Subject to regulations 4.12 and 4.14 and to Subdivision 4.1.5, the amount of the restricted non-preserved benefits of the holder of an RSA in the RSA at any time on or after 1 July 1999 is the sum of the following amounts:
  - (a) the RSA holder's restricted non-preserved benefits on 30 June 1999 worked out under regulation 4.09;
  - (b) any restricted non-preserved benefits received by the RSA for the RSA holder from another RSA, a regulated superannuation fund or an EPSSS on and after 1 July 1999.
- (2) However, if:

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- (a) on or after 1 July 1999, a deduction is allowed for the RSA holder under the former section 82AAT of the *Income Tax Assessment Act 1936* for an RSA holder contribution made before 1 July 1999; and
  - (b) the benefits arising from the contribution were previously allocated to restricted non-preserved benefits;
- the benefits are taken to be preserved benefits.

### 4.12 Effect of rollover or transfer on restricted non-preserved benefits

Subject to regulation 4.14 and to Subdivision 4.1.5, the benefits of the holder of an RSA in the RSA that were restricted non-preserved benefits in the source from which they were received continue to be restricted non-preserved benefits in that RSA.

### Subdivision 4.1.4—Unrestricted non-preserved benefits

#### 4.13 Unrestricted non-preserved benefits

- (1) Subject to Subdivision 4.1.5, the amount of the unrestricted non-preserved benefits of the holder of an RSA in the RSA is the sum of:
  - (a) the amount of benefits of the RSA holder that have become unrestricted non-preserved benefits in accordance with regulation 4.14; and
  - (b) the amounts specified in subregulation (2) that the RSA institution receives, before 1 July 2004, in respect of the RSA holder; and
  - (c) the amount of unrestricted non-preserved benefits received by the RSA institution in respect of the RSA holder; and
  - (d) the amount of any investment earnings for the period before 1 July 1999 on the amounts mentioned in paragraphs (a), (b) and (c).
- (2) The amounts mentioned in paragraph (1)(b) are amounts (other than an amount that is a capital gains tax exempt component) that:
  - (a) will be taken by section 27D of the Tax Act, as in force before 1 July 2007, to have been expended out of eligible termination payments within the meaning of that section; and
  - (b) have been received from sources other than:
    - (i) RSAs; or
    - (ii) superannuation funds within the meaning of the SIS Act; or
    - (iii) approved deposit funds within the meaning of:
      - (A) the SIS Act; or
      - (B) the *Occupational Superannuation Standards Act 1987* as in force immediately before the commencement of section 5 of the *Occupational Superannuation Standards Amendment Act 1993*; or
    - (iv) deferred annuities within the meaning of:
      - (A) this Part; or
      - (B) the Occupational Superannuation Standards Regulations.

- (3) However, if:
- (a) on or after 1 July 1999, a deduction is allowed for the RSA holder under the former section 82AAT of the *Income Tax Assessment Act 1936* for an RSA holder contribution made before 1 July 1999; and
  - (b) the benefits arising from the contribution were previously allocated to restricted non-preserved benefits that became unrestricted non-preserved benefits under subregulation 4.14(2);
- the benefits are taken to be preserved benefits.

#### **4.14 Movement of benefits between categories by satisfaction of conditions of release**

- (1) If:
- (a) an RSA holder satisfies a condition of release; and
  - (b) the relevant cashing restriction in respect of preserved benefits is ‘Nil’;
- the RSA holder’s preserved benefits in the RSA at that time cease to be preserved benefits and become unrestricted non-preserved benefits.
- (2) If:
- (a) an RSA holder satisfies a condition of release; and
  - (b) the relevant cashing restriction in respect of restricted non-preserved benefits is ‘Nil’;
- the RSA holder’s restricted non-preserved benefits in the RSA at that time cease to be restricted non-preserved benefits and become unrestricted non-preserved benefits.
- (3) This regulation has effect subject to Subdivision 4.1.5.

#### **4.15 Effect of rollover or transfer on unrestricted non-preserved benefits**

Subject to Subdivision 4.1.5, the benefits of the holder of an RSA in the RSA that were unrestricted non-preserved benefits in the source from which they were received continue to be unrestricted non-preserved benefits in that RSA.

#### **Subdivision 4.1.5—Miscellaneous**

#### **4.17 Contributions and benefits taken to be preserved benefits**

- (1) Contributions made, or benefits rolled over or transferred, to an RSA are taken to be preserved benefits for the purposes of this Division unless and until the RSA provider is satisfied that they are not preserved benefits.
- (2) Benefits rolled over, transferred or allotted under Division 4.5 to an RSA held by, or created for, a receiving spouse are taken to be preserved benefits for the purposes of this Division.

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**4.17A When benefits rolled over or transferred are unrestricted non-preserved benefits**

Benefits rolled over or transferred to an RSA are unrestricted non-preserved benefits if:

- (a) the benefits were rolled over or transferred from:
  - (i) a superannuation fund (*Fund A*) during its transitional period; or
  - (ii) a regulated superannuation fund or an approved deposit fund to which the benefits were rolled over or transferred from a superannuation fund (*Fund B*) during its transitional period; and
- (b) the RSA provider is reasonably satisfied that:
  - (i) during the transitional period of Fund A or Fund B, there arose in relation to the benefits a circumstance that would have resulted in the satisfaction of a condition of release and a 'Nil' cashing restriction if the SIS Regulations applied; or
  - (ii) before the benefits were rolled over or transferred to Fund A or Fund B from a regulated superannuation fund or an approved deposit fund, the relevant cashing restriction set out in Schedule 1 of the SIS Regulations in respect of the benefits was 'Nil'.

**4.17B Investment earnings taken to be unrestricted non-preserved benefits**

- (1) An investment earning in relation to a benefit of any kind is an unrestricted non-preserved benefit on a day if:
  - (a) the benefit was cashed, before that day, in the form of a non-commutable life pension; and
  - (b) for a benefit that was commenced under the condition of release mentioned in item 108B of Schedule 2, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and
  - (c) the pension commenced to be paid before that day.
- (2) An investment earning in relation to a benefit of any kind is an unrestricted non-preserved benefit on a day if:
  - (a) the benefit was cashed, before that day, in the form of a non-commutable life annuity; and
  - (b) for a benefit that was commenced under the condition of release mentioned in item 108B of Schedule 2, the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'; and
  - (c) the annuity commenced to be paid before that day.
- (3) An investment earning in relation to a benefit is an unrestricted non-preserved benefit on a day if:
  - (a) the benefit is an unrestricted non-preserved benefit; and
  - (b) the benefit was cashed, before that day, in the form of a pension; and



- (c) for a benefit that was commenced under the condition of release mentioned in item 108B of Schedule 2, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is ‘Nil’; and
  - (d) the pension commenced to be paid before that day.
- (4) An investment earning in relation to a benefit is an unrestricted non-preserved benefit on a day if:
- (a) the benefit is an unrestricted non-preserved benefit; and
  - (b) the benefit was cashed, before that day, in the form of an annuity; and
  - (c) for a benefit that was commenced under the condition of release mentioned in item 108B of Schedule 2, the annuitant has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is ‘Nil’; and
  - (d) the annuity commenced to be paid before that day.

#### **4.18 Redistribution of benefits by operation of terms and conditions or action of RSA provider**

- (1) For the purpose of subregulation (2), the following are categories of benefits of an RSA holder:
- (a) preserved benefits, as defined by Subdivision 4.1.2;
  - (b) restricted non-preserved benefits, as defined by Subdivision 4.1.3;
  - (c) unrestricted non-preserved benefits, as defined by Subdivision 4.1.4.
- (2) For the purposes of this Part, the terms and conditions of an RSA, or the RSA provider, may alter the category of any benefits but, subject to subregulation (3), not so as to:
- (a) decrease the amount of the RSA holder’s preserved benefits in the RSA; or
  - (b) increase the amount of the RSA holder’s unrestricted non-preserved benefits in the RSA.
- (3) The RSA provider may alter the category of benefits from preserved benefits or restricted non-preserved benefits to unrestricted non-preserved benefits if, before the commencement of regulation 4.17A:
- (a) the benefits were rolled over or transferred from:
    - (i) a superannuation fund (**Fund A**) during its transitional period; or
    - (ii) a regulated superannuation fund or an approved deposit fund to which the benefits were rolled over or transferred from a superannuation fund (**Fund B**) during its transitional period; and
  - (b) the RSA provider is reasonably satisfied that:
    - (i) during the transitional period of Fund A or Fund B, there arose in relation to the benefits a circumstance that would have resulted in the satisfaction of a condition of release and a ‘Nil’ cashing restriction if the SIS Regulations applied; or
    - (ii) before the benefits were rolled over or transferred to Fund A or Fund B from a regulated superannuation fund or an approved deposit fund,

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the relevant cashing restriction set out in Schedule 1 of the SIS Regulations in respect of the benefits was ‘Nil’.

## Division 4.2—Payment of benefits

### 4.19 Operating standards

For the purposes of subsection 38(1) of the Act, the standards set out in regulations 4.20 and 4.20B are applicable to the operation of RSAs.

### 4.20 Restriction on payment

- (1) The benefits of an RSA holder:
- (a) may be paid only by:
    - (i) being cashed under Division 4.3 or Part 4A; or
    - (ii) being rolled over or transferred under Division 4.4, 4.4A or 4.5 or Part 4A; or
    - (iii) being allotted under Division 4.5; and
  - (b) must not be paid except when, and to the extent that, the RSA provider is required or permitted under this Part or Part 4A to pay them; and
  - (c) must be paid when, and to the extent that, the RSA provider is required under this Part or Part 4A to pay them.

(1A) Subregulation (1) does not apply if, under a law of the Commonwealth, a State or a Territory mentioned in the table, a court makes a forfeiture order (however called) forfeiting part or all of the benefits of the RSA holder to the Commonwealth, a State or a Territory.

Item	Law	Provision(s)
<b>Commonwealth</b>		
1.1	<i>Proceeds of Crime Act 2002</i>	Section 47 Section 48 Section 49 Section 92
<b>New South Wales</b>		
2.1	<i>Confiscation of Proceeds of Crime Act 1989</i>	Subsection 18(1)
2.2	<i>Criminal Assets Recovery Act 1990</i>	Section 22
<b>Victoria</b>		
3.1	<b>Confiscation Act 1997</b>	Division 1 of Part 3 Section 35 Part 4 Subsection 157(6)
<b>Queensland</b>		
4.1	<i>Criminal Proceeds Confiscation Act 2002</i>	Section 58 Section 58A Section 151 Part 5 of Chapter 3

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<b>Item</b>	<b>Law</b>	<b>Provision(s)</b>
<b><i>Western Australia</i></b>		
5.1	<i>Criminal Property Confiscation Act 2000</i>	Section 30, to the extent that it applies to confiscation under section 6 in satisfaction of a person's liability under section 20 Section 30, to the extent that it applies to confiscation under section 7
<b><i>South Australia</i></b>		
6.1	<i>Criminal Assets Confiscation Act 2005</i>	Section 47
<b><i>Tasmania</i></b>		
7.1	<i>Crime (Confiscation of Profits) Act 1993</i>	Section 16
<b><i>Australian Capital Territory</i></b>		
8.1	<i>Confiscation of Criminal Assets Act 2003</i>	Section 54 Section 58 Section 62 Section 67
<b><i>Northern Territory</i></b>		
9.1	<i>Criminal Property Forfeiture Act 2002</i>	Section 75 Section 76 Section 80 Section 96 Section 97 Section 99

- (2) If an RSA provider does not make a payment in accordance with the standard set out in subregulation (1) because the RSA provider is prevented from doing so:
- (a) under subsection 90XL(4) or 90YP(4) of the *Family Law Act 1975*; or
  - (b) by an order made under subsection 90XU(1) or 90YZ(1) of the *Family Law Act 1975*;

the RSA provider is not in breach of the standard.

Note 1: Subsections 90XL(4) and 90YP(4) of the *Family Law Act 1975* provide that while a payment flag is operating on a superannuation interest, the RSA provider must not make any splittable payment to any person in respect of the interest.

Note 2: Subsections 90XU(1) and 90YZ(1) of the *Family Law Act 1975* provide that a court may make an order in relation to a superannuation interest directing the RSA provider not to make a splittable payment without the leave of the court.

**4.20A Payment and commutation of pension in breach of standards**

If an RSA provider provides a pension under rules which meet the standards of subregulation 1.07(3A), the RSA provider must not:

- (a) pay the pension in a way that does not meet the standards of that subregulation; or

- (b) allow the pension to be commuted except in accordance with that subregulation.

**4.20B Benefits to be paid as soon as practicable where member satisfies compassionate ground relating to coronavirus**

- (1) This regulation applies if:
  - (a) the Regulator has determined under subregulation 4.22B(3) (about coronavirus) that a specified amount of benefits in an RSA may be released on a compassionate ground; and
  - (b) the RSA provider receives from the Regulator a copy of the determination as referred to in subregulation 4.22B(6).

Note: See item 109AA of Schedule 2.

- (2) The RSA provider must pay the benefits to the RSA holder as soon as practicable after the RSA provider receives the copy of the determination, without requiring any additional application from the RSA holder.

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## Division 4.3—Cashing of benefits

### 4.21 Voluntary cashing of preserved benefits

- (1) The preserved benefits of an RSA holder may be cashed on or after the satisfaction by the RSA holder of a condition of release.  
Note: For conditions of release for temporary residents, see regulation 4.01B.
- (2) The amount of preserved benefits that may be cashed in accordance with subregulation (1) must not exceed the sum of:
  - (a) the amount of preserved benefits of the RSA holder that had accrued at the time when the RSA holder satisfied the condition of release; and
  - (b) before 1 July 1999—the amount of any investment earnings accruing on those benefits from the time when the RSA holder satisfied the condition of release.
- (3) Subject to subregulation (4), the form in which preserved benefits may be cashed under this regulation is, unless the satisfied condition of release is the death of the RSA holder:
  - (a) a form (if any) specified in Schedule 2 as a cashing restriction relating to the condition of release; or
  - (b) if the specified cashing restriction is ‘Nil’—any 1 or more of the following forms:
    - (i) 1 or more lump sums;
    - (ii) 1 or more pensions;
    - (iii) the purchase of 1 or more annuities under the SIS Regulations.  
Note: For the cashing requirement applying on the death of the RSA holder, see regulation 4.24.
- (4) A lump sum mentioned in subparagraph (3)(b)(i) must be payable not later than the time for the payment of a lump sum mentioned in paragraph 4.24(3)(a).

### 4.22 Voluntary cashing of restricted non-preserved benefits

- (1) The restricted non-preserved benefits of an RSA holder may be cashed on or after the satisfaction by the RSA holder of a condition of release.  
Note: For conditions of release for temporary residents, see regulation 4.01B.
- (2) The amount of restricted non-preserved benefits that may be cashed in accordance with subregulation (1) must not exceed the amount of:
  - (a) the restricted non-preserved benefits of the RSA holder that had accrued at the time when the RSA holder satisfied the condition of release; and
  - (b) before 1 July 1999—any investment earnings accruing on those benefits from the time when the RSA holder satisfied the condition of release.

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- (3) Subject to subregulation (4), the form in which restricted non-preserved benefits may be cashed under this regulation is, unless the satisfied condition of release is the death of the RSA holder:
- (a) a form (if any) specified in Schedule 2 as a cashing restriction relating to the condition of release; or
  - (b) if the specified cashing restriction is 'Nil'—any 1 or more of the following forms:
    - (i) 1 or more lump sums;
    - (ii) 1 or more pensions;
    - (iii) the purchase of 1 or more annuities under the SIS Regulations.
- Note: For the cashing requirement applying on the death of the RSA holder, see regulation 4.24.
- (4) A lump sum mentioned in subparagraph (3)(b)(i) must be payable not later than the time for the payment of a lump sum mentioned in paragraph 4.24(3)(a).

**4.22A Release of benefits on compassionate grounds**

- (1) A person may apply to the Regulator for a determination that an amount of the person's preserved benefits, or restricted non-preserved benefits, in a specified RSA may be released on the ground that it is required:
- (a) to pay for medical treatment or medical transport for the person or a dependant; or
  - (b) to enable the person to make a payment on a loan, to prevent:
    - (i) foreclosure of a mortgage on the person's principal place of residence; or
    - (ii) exercise by the mortgagee of an express, or statutory, power of sale over the person's principal place of residence; or
  - (c) to modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a dependant, arising from severe disability; or
  - (d) to pay for expenses associated with the person's palliative care, in the case of impending death; or
  - (e) to pay for expenses associated with a dependant's:
    - (i) palliative care, in the case of impending death; or
    - (ii) death; or
    - (iii) funeral; or
    - (iv) burial; or
  - (f) to meet expenses in other cases where the release is consistent with a ground mentioned in paragraphs (a) to (e), as the Regulator determines.
- (2) The Regulator must determine in writing that, for subregulation 4.21(1) or 4.22(1), the person satisfies a condition of release on a compassionate ground if the Regulator considers that:
- (a) the release is required on a ground mentioned in subregulation (1); and

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- (b) the person does not have the financial capacity to meet an expense arising from that ground.
- (3) The Regulator cannot be satisfied that the money is required for medical treatment unless 2 registered medical practitioners (at least one of whom must be a specialist) certify that:
  - (a) the medical treatment is necessary to:
    - (i) treat a life threatening illness or injury; or
    - (ii) alleviate acute, or chronic, pain; or
    - (iii) alleviate an acute, or chronic, mental disturbance; and
  - (b) the treatment is not readily available to the person, or the dependant, through the public health system.
- (4) The Regulator cannot be satisfied that the money is required for medical transport unless the medical treatment for which the medical transport is required has been certified, under subregulation (3), as necessary for a reason mentioned in paragraph (3)(a).
- (5) The Regulator cannot be satisfied that the money is required on the ground mentioned in paragraph (1)(b) unless the person gives to the Regulator a written statement from the mortgagee that:
  - (a) payment of an amount is overdue; and
  - (b) if the person fails to pay the amount, the mortgagee will:
    - (i) foreclose the mortgage on the person's principal place of residence; or
    - (ii) exercise its express, or statutory, power of sale over the person's principal place of residence.
- (6) A statement under subregulation (5) must include the following information:
  - (a) the amount that is equal to 3 months' repayments under the mortgage; and
  - (b) the amount that is 12 months' interest on the outstanding balance of the loan at the time the statement is made.
- (6A) A determination under this regulation must specify the RSA provider and the amount of the preserved benefits, or restricted non-preserved benefits, that may be released.
- (6B) If the Regulator makes a determination under this regulation, the Regulator must give a copy of the determination to the person and the specified RSA provider.
- (7) In this regulation:

***medical transport*** means transport, for medical attention, by land, water or air.

**4.22B Release of benefits on compassionate ground—coronavirus**

- (1) A person may apply to the Regulator for a determination that an amount of the person's preserved benefits, or restricted non-preserved benefits, in a specified RSA or RSAs may be released on the ground that it is required to assist the person to deal with the adverse economic effects of the coronavirus known as COVID-19 if:



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- (a) unless paragraph (b) applies—subregulation (1A) applies in respect of the person; or
  - (b) in a case where regulation 4.01B (temporary residents) applies to the person:
    - (i) the person is covered by subregulation (1B); and
    - (ii) subregulation (1C) applies in respect of the person.
- (1AA) For the purposes of subregulation (1), treat a permanent resident of New Zealand as being a permanent resident.
- (1A) For the purposes of paragraph (1)(a), this subregulation applies in respect of the person if:
- (a) the person is unemployed; or
  - (b) the person is eligible to receive any of the following under the *Social Security Act 1991*:
    - (i) jobseeker payment;
    - (ii) parenting payment;
    - (iii) special benefit; or
  - (c) the person is eligible to receive youth allowance under the *Social Security Act 1991* (other than on the basis that the person is undertaking full-time study or is a new apprentice); or
  - (d) the person is eligible to receive farm household allowance under the *Farm Household Support Act 2014*; or
  - (e) on or after 1 January 2020 the person was made redundant, or their working hours were reduced by 20% or more (including to zero); or
  - (f) for a person who is a sole trader—on or after 1 January 2020 the person's business was suspended or suffered a reduction in turnover of 20% or more.
- (1B) For the purposes of subparagraph (1)(b)(i), this subregulation covers the person if:
- (a) the person is the holder of a student visa; or
  - (b) the person is the holder of any of the following visas, as mentioned in the *Migration Regulations 1994*:
    - (i) a Subclass 457 (Temporary Work (Skilled)) visa;
    - (ii) a Subclass 482 (Temporary Skill Shortage) visa; or
  - (c) the person is a temporary resident, and is not the holder of a visa mentioned in paragraph (a) or (b).
- (1C) For the purposes of subparagraph (1)(b)(ii), this subregulation applies in respect of the person if:
- (a) in a case where paragraph (1B)(a) applies:
    - (i) the person has held a student visa for 12 months or more; and
    - (ii) the person is unable to meet his or her immediate living expenses; or
  - (b) in a case where paragraph (1B)(b) applies:
    - (i) the person is employed; and

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- (ii) the person is unable to meet his or her immediate living expenses; or
- (c) in a case where paragraph (1B)(c) applies—the person is unable to meet his or her immediate living expenses.

- (2) A person may make one or more applications under subregulation (1) as follows:
  - (a) one in the financial year ending 30 June 2020; and
  - (b) in a case where paragraph (1)(a) applies—one in the financial year ending 30 June 2021.

However, no application may be made after 31 December 2020.

- (3) The Regulator must determine, in writing, that the person has satisfied, for the purposes of subregulation 4.21(1) or 4.22(1), the condition of release on a compassionate ground if the Regulator has not already made a determination under this regulation or regulation 6.19B of the *Superannuation Industry (Supervision) Regulations 1994* in relation to the person in respect of an application made by the person in the financial year.
- (4) For the purposes of subregulation (3), treat a revoked determination as not having been made.
- (5) A determination under this regulation must specify the RSA or RSAs and the amount of the preserved benefits, or restricted non-preserved benefits, that may be released from each specified RSA. The sum of the amounts specified in a determination must not exceed \$10,000.
- (6) If the Regulator makes a determination under this regulation, the Regulator must give a copy of the determination to the person and the RSA provider of each specified RSA.

#### **4.23 Voluntary cashing of unrestricted non-preserved benefits**

- (1) The unrestricted non-preserved benefits of an RSA holder may be cashed at any time.
- (2) The amount of unrestricted non-preserved benefits that may be cashed in accordance with subregulation (1) is the whole or part of the RSA holder's unrestricted non-preserved benefits.
- (3) Subject to subregulation (4), the form in which unrestricted non-preserved benefits may be cashed under this regulation is, unless the cashing occurs in consequence of the death of the RSA holder, any 1 or more of the following forms:
  - (a) 1 or more lump sums;
  - (b) 1 or more pensions;
  - (c) the purchase of 1 or more annuities under the SIS Regulations.

Note: For the cashing requirement applying on the death of the RSA holder, see regulation 4.24.

- (4) A lump sum mentioned in paragraph (3)(a) must be payable not later than the time for the payment of a lump sum mentioned in paragraph 4.24(3)(a).

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#### 4.23A Compulsory cashing of benefits—temporary residents

- (1) This regulation applies to the benefits of an RSA holder if:
    - (a) the RSA holder:
      - (i) was a temporary resident; and
      - (ii) is not an Australian citizen, New Zealand citizen or permanent resident; and
      - (iii) has left Australia; and
    - (b) the RSA holder's visa has ceased to be in effect.
  - (1A) The RSA holder's benefits must be cashed if:
    - (a) the RSA provider receives a request from the RSA holder that the benefits be cashed; and
    - (b) subregulation (2) or (3) is complied with.
  - (2) If the RSA holder's withdrawal benefit in the RSA is less than \$5 000, the RSA provider must receive:
    - (a) a copy, or other evidence, of a visa showing that the RSA holder was a temporary resident but the RSA holder's temporary visa has ceased to be in effect; and
    - (b) a copy of the RSA holder's passport showing that the RSA holder has left Australia.
- Note: For the ways of giving evidence of a visa, see regulation 2.17 of the *Migration Regulations 1994*.
- (3) The RSA provider must be satisfied, based on a written statement from the Department administered by the Minister administering the *Migration Act 1958*, that:
    - (a) the RSA holder was a temporary resident but the RSA holder's temporary visa has ceased to be in effect; and
    - (b) the RSA holder has left Australia.
  - (3A) For subregulation (3), the statement may be in electronic form.
  - (4) The benefits must be cashed in the period mentioned in subregulation (5):
    - (a) as a single lump sum that is at least the amount of the RSA holder's withdrawal benefit in the RSA; or
    - (b) if the RSA provider receives any combination of contributions, transfers and rollovers after cashing the benefits:
      - (i) in a way that ensures that an amount that is at least the amount of the RSA holder's withdrawal benefit in the RSA is cashed; and
      - (ii) without requiring an additional application from the member.
  - (5) For subregulation (4), the period is:
    - (a) if the RSA provider receives a request from the RSA holder not later than 31 October 2002—3 months after the request is lodged; and
    - (b) in any other case—28 days after the request is lodged.

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Note: A payment made under this regulation is a *departing Australia superannuation payment* within the meaning of section 301-170 of the 1997 Tax Act.

### 4.23B Cashing of benefits in an RSA—payment to Commissioner of Taxation

If an RSA provider is required to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or chooses to pay an amount to the Commissioner of Taxation under Part 3D of that Act, for a person's interest in an RSA, the amount must be cashed in favour of the Commissioner of Taxation as a lump sum.

Note: An amount required to be paid under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* must be paid by the time required under that Act.

### 4.24 Compulsory cashing of benefits

- (1) Subject to subregulation (4), an RSA holder's benefits in an RSA must be cashed as soon as practicable after the RSA holder dies.
- (3) The form in which benefits may be cashed under this regulation is:
  - (a) a single lump sum in respect of each person to whom benefits are cashed;  
or
  - (b) subject to subregulations (3A) and (3B):
    - (i) 1 or more pensions, each of which is a superannuation income stream that is in the retirement phase; or
    - (ii) the purchase of 1 or more annuities under the SIS Regulations, each of which is a superannuation income stream that is in the retirement phase.

Note: For the cashing requirement applying on the death of the RSA holder, see regulation 4.24.

- (3A) If an RSA holder dies on or after 1 July 2007, subparagraphs (3)(b)(i) and (ii) apply to an entitled recipient only if, at the time of the RSA holder's death, the entitled recipient:
  - (a) is a dependant of the RSA holder; and
  - (b) in the case of a child of the RSA holder:
    - (i) is less than 18 years of age; or
    - (ii) being 18 or more years of age:
      - (A) is financially dependant on the RSA holder and less than 25 years of age; or
      - (B) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*.
- (3B) If benefits in relation to a deceased RSA holder are being paid to a child of the deceased RSA holder in the form of a pension in accordance with subregulation (3A), the benefits must be cashed as a lump sum on the earlier of:
  - (a) the day on which the pension is commuted, or the term of the pension expires (unless the benefit is rolled over to commence a new annuity or pension); and

(b) the day on which the child attains age 25;  
unless the child has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under paragraph (a) or (b).

- (4) For the purposes of subregulation (1), it is sufficient if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing.

#### 4.25 Effect of rollover or transfer on post-65 employer-financed benefits

Benefits of an RSA holder that were post-65 employer-financed benefits in the source from which they were received continue to be post-65 employer-financed benefits in that RSA.

#### 4.26 Limitation on cashing of benefits in favour of persons other than RSA holders or their legal personal representatives

- (1) Subject to subregulation (1A) and regulations 4.27, 4A.24 and 4A.28, an RSA holder's interest in an RSA must not be cashed in favour of a person other than the RSA holder or the RSA holder's legal personal representative:

(a) unless:

- (i) the RSA holder has died; and  
(ii) the conditions of subregulation (2) or (3) are satisfied; or

(b) unless the conditions of subregulation (4) or (5) are satisfied.

- (1A) Subregulation (1) does not apply if, under a law of the Commonwealth, a State or a Territory mentioned in the table, a court makes a forfeiture order (however called) forfeiting part or all of the benefits of the RSA holder to the Commonwealth, a State or a Territory.

Item	Law	Provision(s)
<b>Commonwealth</b>		
1.1	<i>Proceeds of Crime Act 2002</i>	Section 47 Section 48 Section 49 Section 92
<b>New South Wales</b>		
2.1	<i>Confiscation of Proceeds of Crime Act 1989</i>	Subsection 18(1)
2.2	<i>Criminal Assets Recovery Act 1990</i>	Section 22
<b>Victoria</b>		
3.1	<b>Confiscation Act 1997</b>	Division 1 of Part 3 Section 35 Part 4 Subsection 157(6)
<b>Queensland</b>		
4.1	<i>Criminal Proceeds Confiscation Act 2002</i>	Section 58 Section 58A

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<b>Item</b>	<b>Law</b>	<b>Provision(s)</b>
		Section 151 Part 5 of Chapter 3
<b><i>Western Australia</i></b>		
5.1	<i>Criminal Property Confiscation Act 2000</i>	Section 30, to the extent that it applies to confiscation under section 6 in satisfaction of a person's liability under section 20 Section 30, to the extent that it applies to confiscation under section 7
<b><i>South Australia</i></b>		
6.1	<i>Criminal Assets Confiscation Act 2005</i>	Section 47
<b><i>Tasmania</i></b>		
7.1	<i>Crime (Confiscation of Profits) Act 1993</i>	Section 16
<b><i>Australian Capital Territory</i></b>		
8.1	<i>Confiscation of Criminal Assets Act 2003</i>	Section 54 Section 58 Section 62 Section 67
<b><i>Northern Territory</i></b>		
9.1	<i>Criminal Property Forfeiture Act 2002</i>	Section 75 Section 76 Section 80 Section 96 Section 97 Section 99

- (2) The conditions of this subregulation are satisfied if the benefits are cashed in favour of either or both of the following:
- (a) the RSA holder's legal personal representative;
  - (b) one or more of the RSA holder's dependants.
- (3) The conditions of this subregulation are satisfied if:
- (a) the RSA provider has not, after making reasonable inquiries, found either a legal personal representative, or a dependant, of the RSA holder; and
  - (b) the person in whose favour the benefits are cashed is an individual.
- (4) The conditions of this subregulation are satisfied if:
- (a) the RSA provider has received a release authority in respect of the RSA holder under section 131-15 or 135-40 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.
- (5) The conditions of this subregulation are satisfied if the RSA holder's benefits are cashed in favour of the Commissioner of Taxation to pay an amount to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

#### **4.27 When benefits may be cashed in favour of persons other than RSA holders**

The benefits of an RSA holder may be cashed in favour of a person other than the RSA holder if:

- (a) the cashing is approved in writing by APRA for the purposes of paragraph 15(4)(d) of the Act; and
- (b) the benefits are cashed only to the extent of that approval.

#### **4.28 Effect of payment of benefits**

- (1) If the cashing of the benefits of an RSA holder complies with regulation 4.26, 4.27, 4A.24 or 4A.28, the RSA provider is discharged from all further liability in respect of the benefits cashed.
- (2) Benefits of an RSA holder cashed in accordance with regulation 4.26, 4.27, 4A.24 or 4A.28 in favour of a person other than a legal personal representative of the RSA holder do not form part of the estate of the RSA holder.

#### **4.29 Priority in cashing benefits in certain cases**

- (1) This regulation applies to an RSA provider if:
  - (a) an RSA holder has satisfied a condition of release; and
  - (b) there is a cashing restriction (other than a 'Nil' restriction) in respect of that condition.
- (2) In cashing benefits in accordance with the restriction, the RSA provider must give priority to benefits in the following order:
  - (a) first—to unrestricted non-preserved benefits;
  - (b) second—to restricted non-preserved benefits;
  - (c) third—to preserved benefits.

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## Division 4.4—Rollover and transfer of benefits

Note: See also Parts 8 and 9 of the Act.

### 4.30 Definition

In this Division:

**consent** means:

- (a) written consent; or
- (b) any other form of consent determined by APRA as sufficient in the circumstances.

### 4.31 Operating standards

Subject to regulation 4.34, for the purposes of subsection 38(1) of the Act, it is a standard applicable to the operation of RSAs that the RSA institution (**the receiving RSA institution**) must not accept the rollover or transfer of a benefit from another RSA or from a superannuation entity or an EPSSS if:

- (a) the receiving RSA institution has reasonable grounds to believe that the benefit being rolled over or transferred is being rolled over or transferred on the basis of a belief held by the RSA provider or trustee of the transferring entity (as the case may be) that the receiving RSA institution has received the RSA holder's or member's consent to the rollover or transfer; and
- (b) the receiving RSA institution has not received that consent.

### 4.32 Rollover

Except as otherwise provided by the Act, the *Corporations Act 2001*, the *Corporations Regulations 2001* or these Regulations, the benefits of an RSA holder in an RSA must not be rolled over from that RSA unless:

- (a) the RSA holder has given to the RSA provider the RSA holder's consent to the rollover; or
- (b) the RSA provider believes, on reasonable grounds, that:
  - (i) the RSA institution providing the RSA; or
  - (ii) the trustee of the superannuation entity or EPSSS; into which the benefits are to be rolled over has received, from the RSA holder, consent to the rollover.

### 4.33 Transfer

Except as otherwise provided by the Act, the *Corporations Act 2001*, the *Corporations Regulations 2001* or these Regulations, the benefits of an RSA holder in an RSA must not be transferred from that RSA unless:

- (a) the RSA holder has given to the RSA provider the RSA holder's consent to the transfer; or



- (b) the RSA provider believes, on reasonable grounds, that:
  - (i) the RSA institution providing the RSA; or
  - (ii) the trustee of the superannuation entity or EPSSS;into which the benefits are to be transferred, has received, from the RSA holder, consent to the transfer.

#### **4.34 When RSA holder's consent need not be given**

The benefits of an RSA holder in an RSA may be transferred from the RSA to another RSA provided by an RSA institution without the consent required under regulation 4.33 if the transfer is the direct result of:

- (a) the takeover of the RSA provider with which the person previously held an RSA, by:
  - (i) the RSA institution; or
  - (ii) a corporation that is a related corporation of the RSA institution within the meaning of the Corporations Law; or
- (b) 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
- (c) 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:
  - (i) 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
  - (ii) under a voluntary transfer of engagements; or
  - (iii) on request of a regulatory agency prescribed under regulation 6.12.

## Division 4.4A—Compulsory rollover and transfer of benefits in RSAs

### 4.35 Application of Division 4.4A

This Division applies to all RSAs.

#### 4.35A Data and payment matters relating to RSAs

For subsection 45B(1) of the Act, regulations 4.35B to 4.35P prescribe matters to be complied with.

#### 4.35B Request forms

For this Division:

- (a) the forms set out in Schedules 2A and 2B to the SIS Regulations are adopted with as many of the following modifications as are required for the purposes of the Act and these Regulations:
  - (i) references to a superannuation fund are taken to be references to an RSA provider;
  - (ii) references to a trustee are taken to be references to an RSA provider;
  - (iii) references to a member are taken to be references to an RSA holder;
  - (iv) references to the SIS Act are taken to be references to the Act;
  - (v) references to a superannuation benefit are taken to be references to an RSA benefit;
  - (vi) references to a unique superannuation identifier are taken to be references to a unique RSA identifier; and
- (b) the form set out in Schedule 2A of the SIS Regulations, as adopted, is the ***Schedule 2A request form***; and
- (c) the form set out in Schedule 2B of the SIS Regulations, as adopted, is the ***Schedule 2B request form***.

Note 1: The transaction may involve both the RSA legislation and the SIS legislation, or just the RSA legislation. The request forms are modified to the extent required to suit the particular case.

Note 2: The request forms deal with information about tax file numbers that is required in accordance with Part 11 of the Act, and approvals under the Act.

#### 4.35C Request for rollover or transfer of RSA holder's withdrawal benefit

- (1) An RSA holder may request, in writing, that the whole or a part of the RSA holder's withdrawal benefit in an RSA provided by an RSA provider (the ***transferring entity***) be rolled over or transferred to any of the following (the ***receiving entity***):
  - (a) a superannuation entity;
  - (b) an RSA provided by another RSA provider.

Note: An RSA holder may also request that his or her withdrawal benefit be rolled over or transferred to an EPSSS.

- (2) If the receiving entity is not a self managed superannuation fund, the RSA holder:
- (a) may make the request to the transferring entity or the receiving entity; and
  - (b) if the request is to roll over or transfer an amount that is the whole of the RSA holder's withdrawal benefit—may use the Schedule 2A request form to make the request.

Note: The Schedule 2A request form deals with information about tax file numbers that is required in accordance with Part 11 of the Act and approvals under that Part.

- (3) If the receiving entity is a self managed superannuation fund, the RSA holder:
- (a) must make the request to the transferring entity; and
  - (b) if the request is to roll over or transfer an amount that is the whole of the RSA holder's withdrawal benefit—may use the Schedule 2B request form to make the request.

Note: The Schedule 2B request form deals with information about tax file numbers that is required in accordance with Part 11 of the Act and approvals under that Part.

#### **4.35D Action by receiving entity on receipt of request**

- (1) This regulation applies to an RSA provider (the *receiving entity*) if the receiving entity receives a written request from an RSA holder to roll over or transfer, to an RSA provided by the RSA provider, the whole or part of the RSA holder's:
- (a) withdrawal benefit from a regulated superannuation fund or approved deposit fund; or
  - (b) withdrawal benefit in an RSA provided by another RSA provider.
- (2) The receiving entity must tell the regulated superannuation fund, approved deposit fund or other RSA provider (the *transferring entity*) about the request and give the following details to the transferring entity:
- (a) the RSA holder's full name;
  - (b) the RSA holder's date of birth;
  - (c) the RSA holder's sex;
  - (d) the RSA holder's residential address;
  - (e) the RSA holder's membership number, policy number or account number, with the transferring entity;
  - (f) the receiving entity's name and ABN;
  - (g) the unique RSA identifier for the receiving entity;
  - (h) the transferring entity's name and ABN;
  - (i) the transferring entity's unique superannuation identifier or unique RSA identifier for the rollover or transfer.
- (3) However, subsection (2) does not apply if the receiving entity does not have all of the details mentioned in subsection (2).
- (4) The receiving entity must also tell the transferring entity:
- (a) whether the request is to roll over or transfer the whole or a part of the RSA holder's withdrawal benefit; and

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(b) if the request is to roll over or transfer a part of the RSA holder's withdrawal benefit—the amount to be rolled over or transferred.

(5) The receiving entity must also give the RSA holder's tax file number to the transferring entity, unless, before the rollover or transfer, the RSA holder gives the receiving entity a written statement requesting the receiving entity not to inform another RSA provider or any superannuation fund trustee of the RSA holder's tax file number.

Note: Standards made under subsection 45B(3) of the Act may set out how the information in subregulations (2) and (4) is to be given to the transferring entity (for example, electronically), and may set out additional information that must be given.

(6) Before the receiving entity gives the information to the transferring entity, the receiving entity must reasonably believe that the RSA holder:

(a) is aware that the RSA holder may ask the transferring entity for information that the RSA holder reasonably requires for the purpose of understanding any benefit entitlements that the RSA holder may have, including:

- (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
- (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the RSA holder may have; and

(b) either:

- (i) has obtained any information the RSA holder reasonably requires; or
- (ii) does not require such information.

Note: Under section 1017C of the *Corporations Act 2001*, an RSA provider must, on request by an RSA holder, give the RSA holder the information and documents mentioned in subsection 1017C(2) or (2A) and subsection 1017C(5) of the *Corporations Act 2001*. See also regulations 7.9.46 and 7.9.47 of the *Corporations Regulations 2001*.

#### 4.35E Transferring entity must electronically receive request

(1) This regulation applies to an RSA provider (the **transferring entity**) if the RSA holder of an RSA provided by the transferring entity makes a request for the whole or part of the RSA holder's withdrawal benefit in the RSA to be rolled over or transferred to any of the following (the **receiving entity**):

- (a) a superannuation entity;
- (b) an RSA provided by another RSA provider.

(2) The transferring entity must be able to electronically receive information in relation to the rollover or transfer sent to the transferring entity:

- (a) by the receiving entity, in accordance with regulation 4.35D and any applicable Standards made under subsection 45B(3) of the Act; or
- (b) by the receiving entity in accordance with regulation 6.33A of the SIS Regulations and any applicable Standards made under subsection 34K(3) of the SIS Act; or

- (c) by the RSA holder, in accordance with any Standards made under subsection 45B(3) of the Act, or subsection 34K(3) of the SIS Act, that apply in relation to requests for rollovers or transfers of benefits; or
- (d) by the Commissioner of Taxation under regulation 4AA.03.

#### **4.35F Transferring entity may request information if not provided**

- (1) Subregulation (2) applies if:
  - (a) an RSA provider of an RSA receives:
    - (i) a request to roll over or transfer an RSA holder's withdrawal benefit in the RSA to a regulated superannuation fund, an EPSSS, an approved deposit fund or an RSA provided by another RSA provider; or
    - (ii) the information mentioned in subregulation 4.35D(2) from a receiving entity; and
  - (b) the request is to roll over or transfer the whole of the RSA holder's withdrawal benefit; and
  - (c) the RSA provider requires further information in order to process the request; and
  - (d) one of the following applies:
    - (i) for a request to roll over or transfer to a self managed superannuation fund—the further information is mandatory information in the Schedule 2B request form;
    - (ii) in any other case—the further information is mandatory information in the Schedule 2A request form.

Note 1: The Schedule 2A or 2B request form referred to in paragraph (d) may be the request form set out in Schedule 2A or 2B to the SIS Regulations, rather than the modified version of the form established by regulation 4.35B.

Note 2: If a request does not include all of the mandatory information set out in the Schedule 2A or 2B request form (whether or not the request is made using the form), the RSA provider may still roll over or transfer the amount without asking for the rest of the mandatory information.

- (2) The RSA provider must ask the RSA holder for the mandatory information no later than 5 business days after receiving the request.
- (3) If:
  - (a) an RSA provider of an RSA receives:
    - (i) a request to roll over or transfer an RSA holder's withdrawal benefit in the RSA to a regulated superannuation fund, an EPSSS, an approved deposit fund or an RSA provided by another RSA provider; or
    - (ii) the information mentioned in subregulation 4.35D(2) from a receiving entity; and
  - (b) the request is to roll over or transfer part of the RSA holder's withdrawal benefit; and
  - (c) the RSA provider requires further information that is necessary to process the request;

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the RSA provider must ask the RSA holder for the information no later than 5 business days after receiving the request.

- (4) If the RSA provider does not receive the information requested in subregulation (2) or (3) no later than 10 business days after making the request, the RSA provider must make reasonable further inquiries of the RSA holder to obtain the information.

**4.35G Validation of RSA holder's details by transferring entity**

- (1) Subregulation (2) applies to the RSA provider (the *transferring entity*) if:
- (a) the transferring entity receives:
    - (i) a request under regulation 4.35C to roll over or transfer the whole or a part of an RSA holder's withdrawal benefit in an RSA provided by the transferring entity to a regulated superannuation fund (other than a self managed superannuation fund) or approved deposit fund, or an RSA provided by another RSA provider; or
    - (ii) a request to roll over or transfer the whole or a part of an RSA holder's withdrawal benefit in an RSA provided by the transferring entity to an EPSSS; and
  - (b) the request was not given to the transferring entity by the Commissioner of Taxation (the *Commissioner*); and
  - (c) the transferring entity has the RSA holder's tax file number.
- (2) The transferring entity must ask the Commissioner, using an electronic interface provided by the Commissioner, for a notice under subsection 143D(2) of the Act in relation to the member.
- (3) However, subregulation (2) does not apply if the Commissioner has previously given the transferring entity a notice under subsection 143D(2) of the Act stating that the Commissioner was able to validate the RSA holder's information given by the transferring entity.
- (4) The transferring entity may ask the RSA holder for any proof of identity information on the Schedule 2B request form that the transferring entity reasonably requires to process the request if:
- (a) the Commissioner gives the transferring entity a notice under subsection 143D(2) of the Act stating that the Commissioner is not able to validate the information mentioned in subsection (2); or
  - (b) the transferring entity does not have the RSA holder's tax file number.
- (5) A transferring entity to which paragraph (4)(a) applies must ask for the proof of identity information no later than 5 business days after receiving the Commissioner's notice.
- (6) A transferring entity to which paragraph (4)(b) applies must ask for the proof of identity information no later than 5 business days after receiving the request to roll over or transfer the whole or a part of the RSA holder's withdrawal benefit.

- (7) If the transferring entity does not receive the information requested under subregulation (4) within 10 business days after making the request, the transferring entity must make reasonable further inquiries of the RSA holder to obtain the information.

#### **4.35H Verification of self managed superannuation fund and RSA holder's details**

- (1) This regulation applies to an RSA provider (the *transferring entity*) if the transferring entity receives a request under regulation 4.35C to roll over or transfer the whole or a part of a RSA holder's withdrawal benefit in an RSA provided by the transferring entity to a self managed superannuation fund (the *receiving fund*).
- (2) The transferring entity must:
- (a) use an electronic service provided by the Australian government to verify:
    - (i) the ABN and name of the receiving fund; and
    - (ii) that the receiving fund is a regulated superannuation fund; and
  - (b) use an electronic service provided by the Commissioner of Taxation to validate that the RSA holder is a member of the receiving fund.
- (3) If the transferring entity is unable to verify the information mentioned in paragraph (2)(a), or is unable to validate the information mentioned in paragraph (2)(b), using the electronic service, the transferring entity must ask the RSA holder for written evidence to verify:
- (a) the name of the receiving fund; and
  - (b) that the receiving fund is a regulated superannuation fund; and
  - (c) that the RSA holder is a member of the receiving fund.
- (4) The transferring entity must ask for the evidence under subregulation (3) no later than 5 business days after the transferring entity has been unable to verify or validate the information under subsection (2).
- (5) If the transferring entity does not receive the evidence requested under subregulation (3) within 10 business days after making the request the transferring entity must make reasonable further inquiries of the RSA holder to obtain the information.

#### **4.35J Rollover or transfer of RSA holder's withdrawal benefit**

##### *Application of regulation*

- (1) This regulation applies to an RSA provider (the *transferring entity*) if:
- (a) the transferring entity receives a request to roll over or transfer the whole or part of an RSA holder's withdrawal benefit in an RSA provided by the transferring entity to any of the following (the *receiving entity*):
    - (i) a superannuation entity;
    - (ii) an RSA provided by another RSA provider;

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(iii) an EPSSS; and

Note: The request could come from the RSA holder, the receiving entity or the Commissioner of Taxation.

- (b) for a request to roll over or transfer the whole of the RSA holder's withdrawal benefit—the transferring entity receives all information that is mandatory information in the Schedule 2A request form (if the receiving entity is not a self managed superannuation fund) or the Schedule 2B request form (if the receiving entity is a self managed superannuation fund); and
- (c) for a request to roll over or transfer part of the RSA holder's withdrawal benefit—the transferring entity receives:
  - (i) the information that would be required by the Schedule 2A request form (if the receiving fund is not a self managed superannuation fund) or the Schedule 2B request form (in any other case); and
  - (ii) any other information that is reasonably required by the transferring entity to give effect to the rollover or transfer; and
- (d) for a request to which subregulation 4.35G(4) applies—the transferring entity has received sufficient information, following the request, to reasonably enable the transferring entity to give effect to the rollover or transfer; and
- (e) for a request to which subregulation 4.35H(3) applies—the transferring entity has received sufficient information, following the request, to reasonably enable the transferring entity to give effect to the rollover or transfer.

*Transferring entity must rollover or transfer*

- (2) Subject to regulation 4.35P, the transferring entity must roll over or transfer the amount in accordance with the request.

Note: Standards made under subsection 45B(3) of the Act may set out how the amount is to be rolled over or transferred, and information that must accompany the rollover or transfer.

- (3) The transferring entity must assign a payment reference number to the rollover or transfer, and include the payment reference number in the rollover or transfer.
- (4) The payment reference number must be unique to:
- (a) the rollover or transfer; or
  - (b) a number of rollovers or transfers made together on the same day by the transferring entity.

Note: Standards made under subsection 45B(3) of the Act may set out how the payment reference number is to be determined.

- (5) Before the transferring entity rolls over or transfers the amount, the transferring entity must, unless it has received the request from the receiving entity under regulation 4.35D or the Commissioner of Taxation under Part 4AA, reasonably believe that the RSA holder:
- (a) is aware that the RSA holder may ask the transferring entity for information that the RSA holder reasonably requires for the purpose of
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understanding any benefit entitlements that the RSA holder may have, including:

- (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
  - (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the RSA holder may have; and
- (b) either:
- (i) has obtained any information the RSA holder reasonably requires; or
  - (ii) does not require such information.

Note: Under section 1017C of the *Corporations Act 2001*, an RSA provider must, on request by an RSA holder, give the RSA holder the information and documents mentioned in subsection 1017C(2) or (2A) and subsection 1017C(5) of the *Corporations Act 2001*. See also regulations 7.9.46 and 7.9.47 of the *Corporations Regulations 2001*.

#### 4.35K Timeframes for rollovers and transfers

- (1) This regulation applies if an RSA provider (the **transferring entity**) is required to roll over or transfer an amount to a receiving entity under regulation 4.35J.

##### *Timeframe—standard*

- (2) Subject to subregulation (3), the transferring entity must roll over or transfer the amount as soon as practicable, but in any case no later than 3 business days after:
- (a) the transferring entity received the rollover or transfer request; or
  - (b) if the transferring entity seeks further information under regulation 4.35F or subregulation 4.35G(4) or 4.35H(3)—the date the transferring entity receives the information.

##### *Timeframe—non-standard*

- (3) If the receiving entity is unable to receive the rollover or transfer in accordance with any applicable Standards made under subsection 45B(3) of the Act or subsection 34K(3) of the SIS Act, the transferring entity is required to roll over or transfer the amount as soon as practicable, but in any case no later than 30 days after:
- (a) the transferring entity received the rollover or transfer request; or
  - (b) if the transferring entity seeks further information under regulation 4.35F or subregulation 4.35G(4) or 4.35H(3)—the date the transferring entity receives the information.

#### 4.35L RSA holder details for rollover or transfer

- (1) An RSA provider who rolls over or transfers the whole or part of an RSA holder's withdrawal benefit under regulation 4.35J to a regulated superannuation fund, an EPSSS, an approved deposit fund or another RSA provider (the **receiving entity**) must give the following information to the receiving entity in relation to the rollover or transfer:
- (a) the RSA holder's full name;

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- (b) the RSA holder's date of birth;
- (c) the RSA holder's sex;
- (d) the RSA holder's residential address;
- (e) the payment reference number included with the rollover or transfer.

Note: See section 138 of the Act for requirements relating to the provision of the RSA holder's tax file number.

- (2) However, the RSA provider is not required to give the information to the receiving entity if the RSA holder has not given the information to the RSA provider.
- (3) The RSA provider must give the information to the receiving entity on the same day as the RSA provider makes the rollover or transfer.

Note: Standards made under subsection 45B(3) of the Act may set out how the information in subregulation (1) is to be given to the receiving entity (for example, electronically), and may require additional information to be given.

#### 4.35M Receiving entity must electronically receive information and payment

- (1) This regulation applies to an RSA provider (the *receiving entity*) if:
  - (a) another RSA provider or a regulated superannuation fund or approved deposit fund (the *transferring entity*) gives to the receiving entity in relation to a rollover or transfer:
    - (i) the information mentioned in subregulation 4.35L(1); and
    - (ii) a payment of the whole or a part of an RSA holder's withdrawal benefit being rolled over or transferred to the receiving entity; and
  - (b) the information is given, and the payment made, in accordance with the applicable Standards (if any) made under subsection 45B(3) of the Act or subsection 34K(3) of the SIS Act.
- (2) The receiving entity must be able to receive the information and payment electronically.

Note: Standards made under subsection 45B(3) may set out additional requirements for how the receiving entity is to receive the information and payment.

#### 4.35N Receiving entity must allocate amount to RSA holder

- (1) This regulation applies to an RSA provider (the *receiving entity*) if:
  - (a) the receiving entity receives a rollover or transfer of an amount that is the whole or a part of an RSA holder's withdrawal benefit from:
    - (i) a regulated superannuation fund or approved deposit fund; or
    - (ii) another RSA provider; or
    - (iii) the Commissioner of Taxation; and
  - (b) for a rollover or transfer received from another RSA provider (the *transferring entity*):
    - (i) the transferring entity made the rollover or transfer in accordance with any applicable Standards specified under subsection 45B(3) of the Act; and

- (ii) the information required by subregulation 4.35L(1) and any applicable Standards made under subsection 45B(3) of the Act was sent in relation to the rollover or transfer; and
    - (iii) the information was sent in the way required by any applicable Standards made under subsection 45B(3) of the Act; and
  - (c) for a rollover or transfer received from a regulated superannuation fund or approved deposit fund (the *transferring fund*):
    - (i) the transferring fund made the rollover or transfer in accordance with any applicable Standards specified under subsection 34K(3) of the SIS Act; and
    - (ii) the information required by subregulation 6.34B(1) of the SIS Regulations, and any applicable Standards specified under subsection 34K(3) of the SIS Act, was sent in relation to the rollover or transfer; and
    - (iii) the information was sent in the way required by any applicable Standards made under subsection 34K(3) of the SIS Act; and
  - (d) for a rollover or transfer received from the Commissioner of Taxation—the Commissioner made the rollover or transfer in accordance with any applicable Standards specified under subsection 45B(3) of the Act that would apply if the rollover or transfer were being made by an RSA provider.
- (2) If the receiving entity accepts the rollover or transfer, and receives it in accordance with any applicable Standards made under subsection 45B(3) of the Act, the receiving entity must allocate the amount transferred or rolled over to the RSA holder's account as soon as possible, but in any case no later than 3 business days after the receiving entity has received:
- (a) the rollover or transfer of the amount; and
  - (b) either:
    - (i) the information mentioned in subparagraph (1)(b)(ii), sent in accordance with any applicable Standards made under subsection 45B(3) of the Act; or
    - (ii) the information mentioned in subparagraph (1)(c)(ii), sent in accordance with any applicable Standards made under subsection 34K(3) of the SIS Act.

#### **4.35P When an RSA provider may refuse to roll over or transfer an amount**

- (1) An RSA provider may refuse to roll over or transfer an amount under regulation 4.35J if:
  - (a) the superannuation entity or RSA provider to which the RSA holder has requested the amount be rolled over or transferred will not accept the amount; or
  - (b) the amount to be rolled over or transferred is part only of the RSA holder's withdrawal benefit in the RSA, and the effect of rolling over or transferring the amount would be that the RSA holder's withdrawal benefit in the RSA

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from which the amount is to be rolled over or transferred would be less than \$5,000; or

- (c) the RSA provider has, under regulation 4.35J, rolled over or transferred an amount of the RSA holder's withdrawal benefit within 12 months before the request is received.
- (2) If an RSA provider refuses to roll over or transfer an amount under subregulation (1), the RSA provider must tell the RSA holder of the refusal in writing.

## **Division 4.5—Spouse contributions-splitting amounts**

### **4.37 Interpretation**

In this Division:

***applicant*** means a RSA holder who makes an application under subregulation 4.41(1).

***concessional contributions*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***concessional contributions cap*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***contributions segment*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***contributions-splitting superannuation benefit*** means a payment made in accordance with subregulation 4.42(2).

***crystallised segment*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***directed termination payment*** has the meaning given by subsection 82-10F(1) of the *Income Tax (Transitional Provisions) Act 1997*.

***element taxed in the fund*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***element untaxed in the fund*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***foreign superannuation fund*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***maximum splittable amount***, in relation to a financial year, means:

- (a) for taxed splittable contributions—the lesser of:
  - (i) 85% of the concessional contributions for that financial year; and
  - (ii) the concessional contributions cap for that financial year; and
- (b) for untaxed splittable contributions—100% of the amount of the untaxed splittable contributions made in the financial year.

***preservation age*** has the meaning given by regulation 4.01.

***relevant financial year***, in relation to an application made under:

- (a) paragraph 4.41(1)(a), means the last financial year that ended before the date of the application; or
- (b) paragraph 4.41(1)(b), means the financial year in which the application is made.

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***splittable contribution*** has the meaning given by regulation 4.39.

***superannuation benefit*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***superannuation interest*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***superannuation lump sum*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***taxable component*** has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

***taxed splittable contribution*** has the meaning given by regulation 4.38.

***untaxed splittable contribution*** has the meaning given by regulation 4.38.

**4.38 Meaning of *taxed splittable contribution* and *untaxed splittable contribution***

- (1) Subject to subregulation (2), a ***taxed splittable contribution*** is a contribution that is:
    - (a) a contribution that will be included in the assessable income of an entity as:
      - (i) a taxable contribution for section 274 of the Tax Act; or
      - (ii) a contribution under Subdivision 295-C of the 1997 Tax Act; or
    - (b) made on or after 1 January 2006.
  - (2) Each of the following is not a ***taxed splittable contribution***:
    - (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
    - (b) an amount allotted under this Division;
    - (c) a superannuation lump sum that is paid from a foreign superannuation fund.
  - (3) Each of the following is not an ***untaxed splittable contribution***:
    - (a) a payment made to a superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer;
    - (b) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
    - (c) an amount allotted under this Division;
    - (d) a superannuation lump sum that is paid from a foreign superannuation fund.
  - (4) Each of the following is not an ***untaxed splittable contribution***:
    - (a) a payment made to an RSA by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing RSA benefits for, or for dependants of, an employee of the employer;
    - (b) an amount that has been rolled over, transferred or allotted;
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- (c) a lump sum payment from an eligible non-resident non-complying superannuation fund.

#### **4.39 Meaning of *splittable contribution***

- (1) Subject to subregulation (2), a ***splittable contribution*** is a contribution to an RSA on or after 1 January 2006.
- (2) Each of the following, received for an RSA holder, is not a ***splittable contribution***:
  - (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
  - (b) an amount allotted under this Division;
  - (c) a superannuation lump sum that is paid from a foreign superannuation fund;
  - (d) a directed termination payment or an amount that would form part of the contributions segment of the superannuation interest.

#### **4.40 Application of Division 4.5**

This Division does not apply to an RSA interest:

- (a) that is subject to a payment split; or
- (b) on which a payment flag (within the meaning of Part VIIIB or VIIC of the *Family Law Act 1975*) is operating.

#### **4.41 Application to roll over, transfer or allot an amount of contributions**

- (1) An RSA holder may, in a financial year, apply to the RSA provider to roll over, transfer or allot an amount of benefits, for the benefit of the RSA holder's spouse, that is equal to an amount of the splittable contributions made to that RSA provider by, for, or on behalf of the RSA holder in:
  - (a) the last financial year that ended before the application; or
  - (b) the financial year in which the application is made—where the RSA holder's entire benefit is to be rolled over, transferred or cashed in that year.

Note: This arrangement applies at the request of the RSA holder, and is not an arrangement by which the RSA holder's interest is subject to a payment split under Part VIIIB or VIIC of the *Family Law Act 1975*. Part 4A of these Regulations deals with those payment splitting arrangements.

- (2) However, the application is taken to be invalid:
  - (a) if in the financial year in which it is made:
    - (i) the RSA holder has already made an application in respect of the relevant financial year; and
    - (ii) the RSA provider:
      - (A) is considering the application; or
      - (B) has given effect to that application; or

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- (b) if the amount of benefits to which the application relates exceeds the maximum splittable amount; or
- (c) subject to subregulation (3), if, at the time of application:
  - (i) the RSA holder's spouse is aged 65 years or more; or
  - (ii) both:
    - (A) the RSA holder's spouse is aged between the relevant preservation age and 65 years; and
    - (B) the RSA holder's spouse satisfies the condition of release specified in item 101 of Schedule 2.
- (3) Despite paragraph (2)(c), an application is not taken to be invalid under that paragraph if the application includes a statement by the RSA holder's spouse to the effect that, at the time of application, the spouse:
  - (a) is aged less than the relevant preservation age; or
  - (b) both:
    - (i) is aged between the relevant preservation age and 65 years; and
    - (ii) does not satisfy the condition of release specified in item 101 of Schedule 2.
- (4) The applicant must specify, in the application, the amount of the benefit from the following:
  - (a) the RSA holder's taxed splittable contributions;
  - (b) the RSA holder's untaxed splittable contributions;that the RSA holder seeks to split for the benefit of the RSA holder's spouse.

Note: An amount rolled over, transferred or allotted under this Division is a contributions-splitting superannuation benefit.

**4.42 Decision on application**

- (1) An RSA provider may accept an application made under subregulation 4.41(1) if all of the following conditions are satisfied:
    - (a) the application complies with regulation 4.41;
    - (b) the RSA provider has no reason to believe the statement mentioned in subregulation 4.41(3) is untrue;
    - (c) the amount to which the application relates is not more than the maximum splittable amount for the relevant financial year.
- Note: An RSA provider may voluntarily provide a service that allows an RSA holder to roll over, transfer or allot an amount to the applicant's spouse (a *splittable contribution*). The RSA provider is not required to offer the service.
- (2) An RSA provider that accepts an application in accordance with subregulation (1) must as soon as practicable, and in any case within 30 days after receiving the application, roll over, transfer or allot the amount of benefits for the benefit of the receiving spouse.
  - (3) If the application requests a split of untaxed splittable contributions the RSA provider can only give effect to the application where the amount specified in the application is less than or equal to the crystallised segment that would form part
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of the superannuation interest that would be payable if the RSA holder withdrew the RSA holder's entire benefits at the time of the RSA provider giving effect to the application.

- (4) If the application requests a split of taxed splittable contributions the RSA provider can only give effect to the application where the amount specified in the application is less than or equal to the taxable component that would form part of the superannuation benefit that would be payable if the RSA holder withdrew the RSA holder's entire benefits at the time of the RSA provider giving effect to the application.

#### **4.43 Receiving spouse**

For this Part, if a RSA provider accepts an application made under subregulation 4.41(1), the applicant's spouse is a *receiving spouse*.

## **Division 4.6—Conditions for the use of tax file numbers to facilitate consolidation or rollover**

### **4.44 Definitions for Division 4.6**

In this Division:

**RSA holder** means a person who quotes his or her tax file number to an RSA provider in accordance with subsection 137A(1) of the Act, and that is:

- (a) a holder of an RSA; or
- (b) a person applying to become such a holder.

**RSA provider or superannuation entity** means an RSA provider, eligible superannuation entity or regulated exempt public sector superannuation scheme.

### **4.45 Conditions for use of tax file numbers**

For subsection 137A(2) of the Act, this Division contains the conditions for the use of tax file numbers quoted by an RSA holder to an RSA provider in accordance with subsection 137A(1) of the Act.

### **4.46 Consent to use RSA holder's tax file number**

An RSA provider must obtain the consent of the RSA holder to use the RSA holder's tax file number in order to facilitate the consolidation of amounts for the RSA holder by undertaking either or both of the procedures in regulation 4.47.

### **4.47 Procedure for searching for amounts to facilitate consolidation by rollover**

In order to facilitate the consolidation of amounts for an RSA holder, an RSA provider must use either or both of the following procedures to determine whether amounts are held for the RSA holder by another RSA provider or superannuation entity:

- (a) seeking superannuation information relating to the RSA holder using a facility provided by the Australian Taxation Office;
- (b) contacting an RSA provider or superannuation entity to seek superannuation information relating to the RSA holder.

## **Part 4AA—Portability Forms**

### **4AA.01 Establishment of scheme**

- (1) The purpose of this Part is to establish a scheme under which:
  - (a) an RSA holder may give the Commissioner of Taxation a request to roll over or transfer the RSA holder's withdrawal benefit held by an RSA provider; and
  - (b) the Commissioner of Taxation may pass the request mentioned in paragraph (a) to the RSA provider.
- (2) This Part is made for section 39A of the Act.

### **4AA.02 Request to rollover or transfer withdrawal benefit**

- (1) An RSA holder may give the Commissioner of Taxation a request to roll over or transfer the RSA holder's withdrawal benefit held by the RSA provider if:
  - (a) the Commissioner of Taxation holds information about the holder's RSA; and
  - (b) the request is to roll over or transfer an amount that is the whole of the holder's withdrawal benefit to a complying superannuation fund.
- (2) The request to the Commissioner of Taxation must:
  - (a) be in the approved form; and
  - (b) contain the information required by the Commissioner.

### **4AA.03 Verification of data**

- (1) The Commissioner of Taxation must:
  - (a) confirm the identity of the RSA holder and his or her membership of the complying superannuation fund to which the roll over or transfer is to be made; and
  - (b) confirm the ownership of the withdrawal benefit; and
  - (c) identify the account in the complying superannuation fund to which the roll over or transfer is to be made; and
  - (d) then give the request to the RSA provider that holds the RSA holder's withdrawal benefit.
- (2) Despite subregulation (1), the Commissioner may decline to give the request to the RSA provider if:
  - (a) the request does not comply with the requirements mentioned in regulation 4AA.02; or
  - (b) it appears to the Commissioner that conduct has been, is being, or is proposed to be, engaged in by a trustee or an investment manager of the complying superannuation fund to which the roll over or transfer is to be

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made that is likely to adversely affect the values of the interests of beneficiaries of that fund.

## **Part 4A—RSA interests subject to payment split**

### **Division 4A.1—General**

#### **4A.01 Purpose of Part 4A**

The purpose of this Part is:

- (a) to facilitate the payment splitting arrangements established under Parts VIII B and VIII C of the *Family Law Act 1975*; and
- (b) to provide for additional options that may be exercised in relation to RSA interests that are subject to a payment split under that Act.

#### **4A.01A Relevant condition of release**

In this Part:

- (a) **relevant condition of release** means a condition of release mentioned in item 101, 102, 103 or 106 of Schedule 2; and
- (b) a non-member spouse satisfies a relevant condition of release if the event specified in the condition has occurred in relation to the non-member spouse; and
- (c) in the application of item 101 or 103 of Schedule 2 to a non-member spouse, a reference to an RSA holder in:
  - (i) the definition of **permanent incapacity** in subregulation 4.01(2); or
  - (ii) the definition of **retirement** in subregulation 4.01(4);is taken to be a reference to the non-member spouse.

#### **4A.02 Operating standards**

For subsection 38(1) of the Act, the standards set out in this Part are applicable to the operation of RSAs.

#### **4A.03 RSA provider to give payment split notice**

- (1) If an RSA interest becomes subject to a payment split, the RSA provider must notify the member spouse and the non-member spouse in relation to the interest that the interest is subject to a payment split.
- (2) The notice must:
  - (a) be in writing; and
  - (b) state the date on which it is given.
- (3) The notice must be given:
  - (a) for a payment split under a superannuation agreement or flag lifting agreement—within 28 days after the operative time for the payment split; and
  - (b) for a payment split under a splitting order—by the later of:

**Part 4A** RSA interests subject to payment split

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- (i) the end of 28 days after the operative time for the payment split; and
  - (ii) the end of 28 days after the RSA provider receives a copy of the order.
- (4) Despite subregulation (1), the RSA provider is not required to give a payment split notice in respect of an RSA interest if the interest ceases to be subject to the payment split:
- (a) before the end of the period applying under subregulation (3); and
  - (b) for a reason other than the creation of a non-member spouse interest under regulation 4A.05.

Note: A non-member spouse may also be entitled to information under section 1017C of the *Corporations Act 2001* and Division 2.3A.

## **Division 4A.2—Options available for interests**

### **4A.04 Application of Division 4A.2**

- (1) This Division applies in relation to an RSA interest (the *original interest*) if:
  - (a) the original interest is subject to a payment split; and
  - (b) an allocated pension, market linked pension or account based pension is being paid in respect of the original interest; and
  - (c) the RSA provider has not received a request under regulation 4A.16, 4A.17 or 4A.18 or taken an action under regulation 4A.21 in relation to the original interest.
- (2) This Division also applies in relation to an RSA interest (the *original interest*) if:
  - (a) the original interest is subject to a payment split; and
  - (b) the original interest is an accumulation interest in the growth phase; and
  - (c) the RSA provider has not received a request under regulation 4A.16, 4A.17 or 4A.18 or taken an action under regulation 4A.21 in relation to the original interest.
- (3) This Division does not apply to an RSA interest that is determined by reference to a policy of life insurance mentioned in regulation 3.11.

### **4A.05 RSA provider may open a new RSA**

- (1) The RSA provider may, at or after the operative time for the payment split, open a new RSA (the *non-member spouse interest*) for the non-member spouse in the non-member spouse's name.
- (2) If the RSA provider creates a non-member spouse interest under subregulation (1), the person known as the non-member spouse at the operative time will continue to be a non-member spouse for the purposes of Part 4A until the RSA provider takes an action under regulation 4A.11, 4A.12, 4A.13 or 4A.14.
- (3) Subject to subregulation (4), the value of the benefits that the non-member spouse has in the new RSA must be:
  - (a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse when the new RSA is opened—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  - (b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse when the new RSA is opened—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  - (c) if the payment split is a percentage payment split:

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- (i) for an entitlement in respect of an interest in the growth phase—the amount in relation to the interest at the time when the new RSA is opened, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  - (ii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time when the new RSA is opened, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split.
- (4) The value of the benefits in the non-member spouse interest must not be more than the value of the withdrawal benefit in relation to the member spouse and the original interest immediately before the non-member spouse interest is opened.
- (5) The value of the benefits that the member spouse has in his or her interest must be reduced by:
  - (a) the value of the benefits in the non-member spouse interest; and
  - (b) the amount of any fees payable by the non-member spouse in respect of the payment split.
- (6) In opening the new RSA for the non-member spouse:
  - (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  - (b) the proportion taken from each category of benefits must be the same as the proportion that the category bears to the member spouse's interest immediately before the payment split.
- (6A) The benefits in the non-member spouse interest are:
  - (a) if the original interest is in the growth phase—unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that they had in the member spouse's interest; and
  - (b) if the original interest is an allocated pension, market linked pension or account based pension—unrestricted non-preserved benefits.
- (7) The new RSA is taken to be opened on the day when the RSA provider opens the new RSA.
- (8) At the time that the payment split notice is given or, if a payment split notice is not required, within 28 days after the later of:
  - (a) the operative time; and



(b) the time when the RSA provider creates the non-member spouse interest; the RSA provider must give to the member spouse and the non-member spouse a written notice stating:

- (c) that the new interest has been created; and
- (d) that the value of the original interest has been reduced; and
- (e) the amount of the non-member spouse interest.

#### **4A.06 Request to retain a non-member spouse interest**

The non-member spouse may request the RSA provider to retain in the new RSA the non-member spouse's benefits in the non-member spouse interest.

#### **4A.07 Request to roll over or transfer benefits**

The non-member spouse may request the RSA provider to roll over or transfer the withdrawal benefit from the non-member spouse interest to an RSA provided by another RSA provider, or to a superannuation entity or an EPSSS, specified in the request, to be held for the benefit of the non-member spouse.

#### **4A.08 Request for lump sum payment**

- (1) This regulation applies if:
  - (a) the non-member spouse has satisfied a relevant condition of release at the operative time for the payment split; or
  - (b) an allocated pension, market linked pension or account based pension is being paid in respect of the original interest; or
  - (c) the non-member spouse's interest derives from an original interest that comprises only unrestricted non-preserved benefits.
- (2) The non-member spouse may request the RSA provider to pay to the non-member spouse, as a lump sum, the withdrawal benefit from the non-member spouse interest.

#### **4A.09 Requirements for requests**

- (1) A request by a person under this Division must be made:
  - (a) before the end of 28 days after the RSA provider gives the payment split notice to the person; or
  - (b) if the RSA provider allows a longer period, before the end of the longer period allowed.
- (2) The request must be made by a written notice given to the RSA provider.
- (3) The notice must:
  - (a) be signed by the person making the request; and
  - (b) state the date when it is given to the RSA provider; and
  - (c) include the name, date of birth and postal address of the person making the request.

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- (4) A notice containing a request to retain the non-member spouse interest under regulation 4A.06 must be accompanied by such other information as the RSA provider requires.
- (5) The RSA provider may allow the request to be withdrawn.

**4A.10 Giving effect to a request**

- (1) This regulation applies if an RSA provider receives a request under this Division within the time allowed under regulation 4A.09.
- (2) The RSA provider must give effect to the request unless:
  - (a) the RSA provider has received an earlier request under this Division in respect of the same interest and the earlier request has not been withdrawn; or
  - (b) for a request under regulation 4A.06—the RSA provider of the original interest is not permitted to retain the interest in an RSA for the non-member spouse; or
  - (c) for a request under regulation 4A.07—the RSA provider, superannuation entity or EPSSS specified in the request does not accept the rollover or transfer of benefits for the non-member spouse.
- (3) If paragraph (2)(b) or (c) applies, the RSA provider must:
  - (a) roll over or transfer the amount to an RSA provided by another RSA provider, or to another superannuation entity or an EPSSS, nominated by the non-member spouse; or
  - (b) if there has been no such nomination by the non-member spouse—consider whether it would be in the best interests of the non-member spouse to pay the amount of the withdrawal benefits to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**4A.11 RSA provider's options if no request received**

- (1) If the RSA provider does not receive a request under this Division within the time allowed under regulation 4A.09, the RSA provider may:
    - (aa) open a new RSA for the non-member spouse in the non-member spouse's name; or
    - (a) subject to subregulation (2), roll over or transfer the withdrawal benefit from the non-member spouse interest to an RSA provided by another RSA provider, or to a superannuation entity or an EPSSS nominated by the non-member spouse (subject to the terms and conditions of the RSA or the governing rules of the superannuation entity or the EPSSS), to be held for the benefit of the non-member spouse; or
    - (b) if the RSA provider does not, within the 28 day period specified in paragraph (2)(a), receive from the non-member spouse a written notice nominating an RSA, superannuation entity or EPSSS to which the withdrawal benefit from the non-member spouse interest may be rolled over or transferred, consider whether it would be in the best interests of the
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non-member spouse to pay that amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

- (2) Subject to subregulation (3A), before rolling over or transferring the withdrawal benefit from the non-member spouse interest to an RSA, superannuation entity or EPSSS under paragraph (1)(a), the RSA provider must give to the non-member spouse a written notice stating that:
- (a) the non-member spouse has 28 days from the date of the notice in which to nominate, by written notice to the RSA provider, an RSA, superannuation entity or EPSSS to which the withdrawal benefit from the non-member spouse interest may be rolled over or transferred; and
  - (b) if the non-member spouse does not, within that 28-day period, nominate an RSA, superannuation entity or EPSSS for that purpose, the RSA provider will consider whether it would be in the best interests of the non-member spouse to pay that amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

(3A) If an RSA provider:

- (a) has made reasonable attempts to obtain sufficient information about a non-member spouse to be able to give a payment split notice; and
- (b) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is permitted to act under paragraphs (1)(a) and (b) as if those paragraphs did not require the giving of the payment split notice or the notice under subregulation (2).

Example for paragraph (a)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

(3B) If an RSA provider:

- (a) proposes to give a non-member spouse a notice under subregulation (2); and
- (b) has made reasonable attempts to obtain sufficient information about the non-member spouse to be able to give the notice; and
- (c) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is not required to give the notice, and is permitted to act under paragraphs (1)(a) and (b) as if those paragraphs did not require the giving of the notice.

Example for paragraph (b)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

- (4) If the RSA provider does not take an action under subregulation (1), the RSA provider must give to the non-member spouse a written notice:
- (a) confirming that the non-member spouse has an RSA; and

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- (b) informing the non-member spouse of the relevant cooling-off arrangements.
- (5) The RSA provider must take an action under subregulation (1) or (4) within 6 months after the later of:
  - (a) the operative time; and
  - (b) the time when the RSA provider creates the non-member spouse interest.

**4A.12 Confirming a non-member spouse RSA**

- (1) This regulation applies if the RSA provider receives a request under regulation 4A.06 within the time allowed under regulation 4A.09, and paragraph 4A.10(2)(b) does not apply to the request.
- (2) The RSA provider must give to the non-member spouse a written notice:
  - (a) confirming that the non-member spouse has an RSA; and
  - (b) informing the non-member spouse of the relevant cooling-off arrangements.

**4A.13 Rolling over or transferring the non-member spouse's interest**

- (1) This regulation applies if the RSA provider rolls over or transfers the withdrawal benefit from the non-member spouse's interest:
  - (a) to give effect to a request under regulation 4A.07; or
  - (b) on the RSA provider's initiative under subregulation 4A.11(1).
- (2) The RSA provider must roll over or transfer the amount as follows:
  - (a) if the rollover or transfer is to give effect to a request under regulation 4A.07, it must be done within:
    - (i) 30 days after receiving the request; or
    - (ii) any longer period allowed by the Regulator;
  - (b) if the rollover or transfer is to be done on the RSA provider's initiative under paragraph 4A.11(1)(a), it must be done within 30 days after the RSA provider receives the nomination from the non-member spouse under subregulation 4A.11(2).
- (3) Within 28 days after the amount is rolled over or transferred, the RSA provider must give a notice to the non-member spouse, stating:
  - (a) that the benefits have been rolled over or transferred; and
  - (c) the amount that was rolled over or transferred.

**4A.14 Paying a lump sum**

- (1) This regulation applies if, to give effect to a request under regulation 4A.08, the RSA provider pays to the non-member spouse, as a lump sum, the withdrawal benefit from the non-member spouse interest.
  - (2) The RSA provider must pay the lump sum within:
    - (a) 30 days after receiving the request under regulation 4A.08; or
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- (b) any longer period allowed by the Regulator.
- (3) The RSA provider must give to the non-member spouse, within 28 days after the lump sum is paid, a written notice stating:
  - (a) that the lump sum has been paid; and
  - (b) the amount that was paid.

## Division 4A.3—Options available for certain RSA interests

### 4A.15 Application of Division 4A.3

- (1) This Division applies if:
  - (a) an RSA interest (the *original interest*) is subject to a payment split; and
  - (b) either:
    - (i) the original interest is in the growth phase; or
    - (ii) an allocated pension, market linked pension or account based pension is being paid in respect of the original interest.
- (2) This Division does not apply to an original interest if the RSA provider has created a non-member spouse interest under regulation 4A.05.
- (3) This Division does not apply to an RSA interest that is determined by reference to a policy of life insurance mentioned in regulation 3.11.

### 4A.16 Request to open new RSA

If the RSA provider is an RSA institution, the non-member spouse may request the RSA provider to open a new RSA for the non-member spouse in the non-member spouse's name.

- Note: For requirements about financial product disclosure that may apply in relation to a request for an RSA provider to open a new RSA, see:
- (a) Division 2.2 of the old Regulations for an interest to which a transition period (within the meaning of section 1440 of the *Corporations Act 2001*) applies; and
  - (b) Part 7.9 of the *Corporations Act 2001* for an interest to which a transition period (within the meaning of section 1440 of the *Corporations Act 2001*) does not apply.

### 4A.17 Request for transfer of benefits

The non-member spouse may request the RSA provider to roll over or transfer the transferable benefits to an RSA provided by another RSA provider, or to a superannuation entity or an EPSSS, specified in the request, to be held for the benefit of the non-member spouse.

### 4A.18 Request for lump sum payment

- (1) This regulation applies if:
  - (a) the non-member spouse has satisfied a relevant condition of release at the operative time for the payment split; or
  - (b) an allocated pension, market linked pension or account based pension is being paid in respect of the original interest; or
  - (c) the non-member spouse's interest derives from an original interest that comprises only unrestricted non-preserved benefits.

- (2) The non-member spouse may request the RSA provider to pay to the non-member spouse, as a lump sum, the amount to which the non-member spouse is entitled under the payment split.

#### **4A.19 Requirements for requests**

- (1) A request by a non-member spouse under this Division must be made:
  - (a) before the end of 28 days after the RSA provider gives a payment split notice to the non-member spouse; or
  - (b) if the RSA provider allows a longer period, before the end of the longer period allowed.
- (2) The request must:
  - (a) be made by written notice given to the RSA provider; and
  - (b) for a request under regulation 4A.16, be accompanied by an eligible application made by the non-member spouse.
- (3) The notice required by paragraph (2)(a) must:
  - (a) be signed by the non-member spouse; and
  - (b) state the date when it is given to the RSA provider; and
  - (c) state the non-member spouse's name, date of birth and postal address.
- (4) The RSA provider may allow the request to be withdrawn.

#### **4A.20 Giving effect to a request**

- (1) This regulation applies if an RSA provider receives a request under this Division within the time allowed under regulation 4A.19.
- (2) The RSA provider must give effect to the request unless:
  - (a) the RSA provider has received an earlier request under this Division in respect of the same interest and the earlier request has not been withdrawn; or
  - (b) for a request under regulation 4A.16—the RSA provider of the original interest is not permitted to open a new RSA for the non-member spouse or the request was not accompanied by an eligible application; or
  - (c) for a request under regulation 4A.17—the RSA provider, superannuation entity or EPSSS specified in the request does not accept the rollover or transfer of benefits for the non-member spouse.
- (3) If paragraph (2)(b) or (c) applies in relation to a request, the RSA provider must:
  - (a) roll over or transfer the transferable benefits to an RSA provided by another RSA provider, or another superannuation entity or EPSSS, nominated by the non-member spouse; or
  - (b) if there has been no such nomination by the non-member spouse—consider whether it would be in the best interests of the non-member spouse to pay the amount of the transferable benefits to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

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**4A.21 RSA provider options if no request received**

- (1) If the RSA provider does not receive a request under regulation 4A.16, 4A.17 or 4A.18 within the time allowed under regulation 4A.19, the RSA provider may:
  - (aa) open a new RSA for the non-member spouse in the non-member spouse's name; or
  - (a) subject to subregulation (2), roll over or transfer the transferable benefits to an RSA provided by another RSA provider, or to a superannuation entity or an EPSSS, nominated by the non-member spouse (subject to the terms and conditions of the RSA or the governing rules of the superannuation entity or EPSSS), to be held for the benefit of the non-member spouse; or
  - (b) if the RSA provider does not, within the 28-day period specified in paragraph (2)(a), receive from the non-member spouse a written notice nominating an RSA, superannuation entity or EPSSS to which the transferable benefits may be rolled over or transferred, consider whether it would be in the best interests of the non-member spouse to pay the amount of the transferable benefits to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (2) Subject to subregulation (4), before rolling over or transferring the transferable benefits to an RSA, superannuation entity or EPSSS under paragraph (1)(a), the RSA provider must give to the non-member spouse a written notice stating that:
  - (a) the non-member spouse has 28 days from the date of the notice in which to nominate, by written notice to the RSA provider, an RSA, superannuation entity or EPSSS to which the transferable benefits may be rolled over or transferred; and
  - (b) if the non-member spouse does not, within that 28-day period, nominate an RSA, superannuation entity or EPSSS for that purpose, the RSA provider will consider whether it would be in the best interests of the non-member spouse to pay the transferable benefits to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (4) If an RSA provider:
  - (a) has made reasonable attempts to obtain sufficient information about a non-member spouse to be able to give a payment split notice; and
  - (b) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is permitted to act under paragraphs (1)(a) and (b) as if those paragraphs did not require the giving of the payment split notice or the notice under subregulation (2).

Example for paragraph (a)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

- (5) If an RSA provider:
  - (a) proposes to give a non-member spouse a notice under subregulation (2); and



(b) has made reasonable attempts to obtain sufficient information about the non-member spouse to be able to give the notice; and

(c) has been unable to obtain sufficient information about the non-member spouse;

the RSA provider is not required to give the notice, and is permitted to act under paragraphs (1)(a) and (b) as if those paragraphs did not require the giving of the notice.

Example for paragraph (b)

The RSA provider may be unable, after reasonable attempts, to identify an address or location of the non-member spouse.

#### 4A.22 Opening a new RSA

(1) This regulation applies if the RSA provider opens a new RSA in the non-member spouse's name:

(a) to give effect to a request under regulation 4A.16; or

(b) on the RSA provider's initiative under paragraph 4A.11(1)(aa) or 4A.21(1)(aa).

(2) Subject to subregulations (3) and (4), the value of the benefits that the non-member spouse has in the new RSA must be:

(a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse when the new RSA is opened—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse when the new RSA is opened—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(c) if the payment split is a percentage payment split:

(i) for an entitlement in respect of an interest in the growth phase—the amount in relation to the interest at the time when the new RSA is opened, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001* multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split; or

(ii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time when the new RSA is opened, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting

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agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split.

- (3) If the payment split is a base amount payment split, and a splittable payment becomes payable in respect of the member spouse's interest before the new RSA is opened, the value of the benefits that the non-member spouse has in the new RSA must be the amount applying under subregulation (2) less the amount the non-member spouse is entitled to be paid in respect of the splittable payment.
- (4) The value of the benefits that the non-member spouse has in the new RSA must not be more than the value of the withdrawal benefit in relation to the member spouse immediately before the new RSA is opened.
- (5) The value of the benefits that the member spouse has in his or her interest must be reduced by:
  - (a) the value of the benefits that the non-member spouse has in the new RSA; and
  - (b) the amount of any fees payable by the non-member spouse in respect of the payment split.
- (6) In opening the new RSA for the non-member spouse:
  - (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  - (b) the proportion taken from each category of benefits must be the same as the proportion that the category bears to the member spouse's interest immediately before the payment split.
- (7) The benefits held in the new RSA are unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that they had in the member spouse's interest.
- (8) The new RSA is taken to be opened on the day when the RSA provider receives the request and eligible application in accordance with regulation 4A.19.
- (9) The RSA provider must give a notice to the non-member spouse and the member spouse, within 28 days after the new RSA is opened, stating:
  - (a) that the new RSA has been opened; and
  - (b) the amount of the benefits in the new RSA; and
  - (c) if the payment split is a base amount payment split, any adjustment that has been made to the base amount since:
    - (i) if the RSA provider had previously provided information to the non-member spouse under regulation 2.18C—the end of the last completed reporting period; or
    - (ii) in any other case—the operative time.

**4A.23 Rolling over or transferring transferable benefits**

- (1) This regulation applies if the RSA provider rolls over or transfers transferable benefits:
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- (a) to give effect to a request under regulation 4A.17; or
  - (b) on the RSA provider's initiative under subregulation 4A.21(1); or
  - (c) under subregulation 4A.20(3).
- (2) Subject to paragraph (4)(c), the value of the benefits that the member spouse has in his or her interest must be reduced by:
- (a) the value of the benefits that are rolled over or transferred; and
  - (b) the amount of any fees payable by the non-member spouse in respect of the payment split.
- (3) If the payment split is a base amount payment split, and a splittable payment becomes payable in respect of the member spouse's interest before the RSA provider rolls over or transfers the transferable benefits, the amount rolled over or transferred for the non-member spouse must be the transferable benefits less the amount the non-member spouse is entitled to be paid in respect of the splittable payment.
- (4) In rolling over or transferring the transferable benefits for the non-member spouse:
- (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  - (b) the proportion taken from each category of benefits must be the same as the proportion that the category bears to the member spouse's interest immediately before the payment split; and
  - (c) the total amount that is rolled over or transferred must not exceed the withdrawal benefit of the member spouse immediately before the roll over or transfer.
- (5) The benefits held in the new interest are unrestricted non-preserved benefits, restricted non-preserved benefits or preserved benefits in accordance with the character that the benefits had in the member spouse's interest.
- (6) The RSA provider must roll over or transfer the transferable benefits as follows:
- (a) if the rollover or transfer is to give effect to a request under regulation 4A.17, it must be done within:
    - (i) 30 days after receiving the request; or
    - (ii) any longer period allowed by the Regulator;
  - (b) if the rollover or transfer is to be done on the RSA provider's initiative under paragraph 4A.21(1)(a), it must be done within 30 days after the RSA provider receives the nomination from the non-member spouse under subregulation 4A.21(2);
  - (c) if the rollover or transfer is to be done on the RSA provider's initiative under paragraph 4A.21(1)(b), it must be done within 30 days after the end of the 28-day period mentioned in subregulation 4A.21(2).
- (7) The RSA provider must give a notice to the non-member spouse and the member spouse, within 28 days after the benefits are rolled over or transferred, stating:
- (a) that the benefits have been rolled over or transferred; and
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- (b) the amount that was rolled over or transferred; and
- (c) if the payment split is a base amount payment split, any adjustment that has been made to the base amount since:
  - (i) if the RSA provider had previously provided information to the non-member spouse under regulation 2.18C—the end of the last completed reporting period; or
  - (ii) in any other case—the operative time.

### **4A.24 Paying a lump sum**

- (1) This regulation applies if, to give effect to a request under regulation 4A.18, the RSA provider pays to the non-member spouse, as a lump sum, the amount to which the non-member spouse is entitled under the payment split.
- (2) Subject to subregulations (3) and (4), the value of the lump sum to be paid to the non-member spouse must be:
  - (a) if the payment split is a base amount payment split and an adjusted base amount applies to the non-member spouse at the date of the payment—the adjusted base amount less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  - (b) if the payment split is a base amount payment split and an adjusted base amount does not apply to the non-member spouse at the date of the payment—the base amount allocated to the non-member spouse, within the meaning of regulation 45 of the *Family Law (Superannuation) Regulations 2001*, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
  - (c) if the payment split is a percentage payment split:
    - (i) for an entitlement in respect of an interest in the growth phase—the amount in relation to the interest at the time of the payment, determined in the way in which a court would determine an amount in accordance with regulation 28 and subregulation 31(2A) of the *Family Law (Superannuation) Regulations 2001* multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split; or
    - (ii) for an entitlement in respect of any other interest—the amount in relation to the interest at the time of the payment, determined in the way in which a court would determine an amount in accordance with the relevant method in Part 5 of the *Family Law (Superannuation) Regulations 2001*, multiplied by the percentage specified in the relevant superannuation agreement, flag lifting agreement or splitting order, less the amount of any fees payable by the non-member spouse in respect of the payment split.
- (3) For a base amount payment split, if a splittable payment becomes payable in respect of the member spouse's interest before the lump sum is paid to the non-member spouse, the value of the lump sum to be paid to the non-member spouse must be the amount applying under paragraph (2)(a) or (b) less the

amount the non-member spouse is entitled to be paid in respect of the splittable payment.

- (4) The value of the lump sum to be paid to the non-member spouse must not be more than the value of the withdrawal benefit in relation to the member spouse immediately before the lump sum is paid.
- (5) The value of the benefits that the member spouse has in his or her interest must be reduced by:
  - (a) the value of the lump sum paid to the non-member spouse; and
  - (b) the amount of any fees payable by the non-member spouse in respect of the payment split.
- (6) In paying the lump sum to the non-member spouse:
  - (a) a proportion must be taken from the unrestricted non-preserved benefits, the restricted non-preserved benefits and the preserved benefits of the member spouse; and
  - (b) the proportion taken from each category of benefits must be the same as the proportion that the category bears to the member spouse's interest immediately before the payment split.
- (7) The RSA provider must pay the lump sum within:
  - (a) 30 days after receiving the request under regulation 4A.18; or
  - (b) any longer period allowed by the Regulator.
- (8) The RSA provider must give a notice to the non-member spouse and the member spouse, within 28 days after the lump sum is paid, stating:
  - (a) that a lump sum has been paid to the non-member spouse; and
  - (b) the amount that was paid; and
  - (c) if the payment split is a base amount payment split, any adjustment that has been made to the base amount since:
    - (i) if the RSA provider had previously provided information to the non-member spouse under regulation 2.18C—the end of the last completed reporting period; or
    - (ii) in any other case—the operative time.

## **Division 4A.4—Splittable payments—payment standards for non-member spouse entitlements**

### **4A.25 Application of Division 4A.4**

- (1) This Division applies if:
  - (a) an RSA interest (the *original interest*) is subject to a payment split; and
  - (b) the non-member spouse is entitled to be paid an amount from the original interest because a splittable payment in respect of the interest has become payable; and
  - (c) a new RSA has not been opened for the non-member spouse, or the transferable benefits of the non-member spouse have not been transferred or rolled out of the fund, as a result of a payment split.
- (2) However, if an amount under the Act would be a superannuation death benefit within the meaning of the 1997 Tax Act if it were paid to the non-member spouse, a requirement in this Division:
  - (a) to pay the amount; or
  - (b) to roll over or transfer the amount to another regulated superannuation fund, an RSA, an approved deposit fund or an EPSSS, to be held for the benefit of the non-member spouse; or
  - (c) to allocate the amount to an interest that the trustee creates for the non-member spouse in the regulated superannuation fund or approved deposit fund;

is taken to be a requirement to pay the amount to the non-member spouse in cash.

### **4A.27 Preservation of non-member spouse entitlements**

- (1) This regulation applies if:
  - (a) the non-member spouse has not satisfied a relevant condition of release at the time of the splittable payment; and
  - (b) the splittable payment does not derive from an allocated pension, market linked pension or account based pension.
- (2) The RSA provider of the RSA in which the original interest is held must:
  - (a) if the RSA provider has received an eligible application from the non-member spouse to open a new RSA, and the RSA provider is otherwise permitted to open a new RSA for the non-member spouse—open a new RSA in the non-member spouse’s name and transfer the amount to the new RSA; or
  - (b) roll over or transfer the amount to an RSA provided by another RSA provider, or to a regulated superannuation fund, an approved deposit fund or an EPSSS, to be held for the benefit of the non-member spouse.
- (3) The RSA provider must preserve the amount mentioned in subregulation (2).

- (4) The RSA provider must roll over or transfer the lump sum within:
  - (a) 30 days after the splittable payment becomes payable; or
  - (b) any longer period allowed by the Regulator.
- (5) Subject to subregulation (6), the amount must not be allocated, rolled over or transferred unless the transferor RSA provider:
  - (a) has received, from the non-member spouse, consent to the allocation, rollover or transfer; or
  - (b) in the case of a rollover or transfer—believes, on reasonable grounds, that:
    - (i) the receiving RSA provider; or
    - (ii) the trustee of the receiving regulated superannuation fund, approved deposit fund or EPSSS;has received from the non-member spouse consent to the rollover or transfer.
- (6) If the transferor RSA provider believes, on reasonable grounds and after making reasonable inquiries, that the non-member spouse has not given a consent mentioned in subregulation (5), the RSA provider must:
  - (a) consider whether it would be in the best interests of the non-member spouse to pay the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
  - (b) if the RSA provider does not pay the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*—roll over or transfer the transferable benefits to a MySuper product.
- (7) The consent of the member spouse to a rollover or transfer under this regulation is not required.
- (8) In subregulation (5):

**consent** means:

  - (a) written consent; or
  - (b) any other form of consent determined by APRA as sufficient in the circumstances.

#### **4A.28 Cashing of non-member spouse entitlements**

- (1) This regulation applies if:
  - (a) the non-member spouse has satisfied a relevant condition of release at the time of the splittable payment; or
  - (b) the splittable payment derives from an allocated pension, market linked pension or account based pension.
- (2) When the splittable payment becomes payable, the RSA provider of the RSA in which the original interest is held must:
  - (a) pay the amount to which the non-member spouse is entitled to the non-member spouse; or

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- (b) if the amount is not a pension and the non-member spouse so requests:
  - (i) subject to subregulation (4), open a new RSA in the non-member spouse's name and transfer the amount to the new RSA; or
  - (ii) roll over or transfer the amount to an RSA provided by another RSA provider, or to a regulated superannuation fund, an approved deposit fund or an EPSSS, nominated by the non-member spouse, to be held for the benefit of the non-member spouse.
- (3) The RSA provider must comply with subregulation (2) within 30 days after the splittable payment becomes payable.
- (4) An RSA provider must not open a new RSA for a non-member spouse unless:
  - (a) the RSA provider has received an eligible application from the non-member spouse to open a new RSA; and
  - (b) the RSA provider is otherwise permitted to open a new RSA for the non-member spouse.
- (5) If the RSA provider is unable to open a new RSA because of subregulation (4), the RSA provider must:
  - (a) if the non-member spouse asks the RSA provider to pay the amount to which the non-member spouse is entitled to the non-member spouse—pay the amount; or
  - (b) if paragraph (a) does not apply—roll over or transfer the amount to an RSA provided by another RSA provider, or to a regulated superannuation fund, an approved deposit fund, or an EPSSS, nominated by the non-member spouse; or
  - (c) if paragraph (a) does not apply and there has been no such nomination by the non-member spouse—consider whether it would be in the best interests of the non-member spouse to pay the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (6) If a non-member spouse makes a request under subparagraph (2)(b)(ii), and the RSA provider, regulated superannuation fund, approved deposit fund, or EPSSS does not accept the rollover or transfer, the RSA provider must:
  - (a) if the non-member spouse asks the RSA provider to pay the amount to which the non-member spouse is entitled to the non-member spouse—pay the amount; or
  - (b) if paragraph (a) does not apply—roll over or transfer the amount to an RSA provided by another RSA provider, or to a regulated superannuation fund, an approved deposit fund, or an EPSSS, nominated by the non-member spouse; or
  - (c) if paragraph (a) does not apply and there has been no such nomination by the non-member spouse—consider whether it would be in the best interests of the non-member spouse to pay the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.



## Part 5—Contribution standards

### 5.01 Interpretation

Expressions used in this Part that are defined for the purposes of Part 3 have the same meanings respectively as in that Part.

## Division 5.1—Operating standards

### 5.02 Operating standards

- (1) For the purposes of subsection 38(1) of the Act, the requirement set out in subregulation (2) is a standard applicable to the operation of RSAs.
- (2) An RSA institution must not accept contributions except in accordance with this Division.

### 5.03 Acceptance of contributions

- (1) An RSA institution may accept contributions only in accordance with the following table and subregulations (1A), (2), (4) and (6).

Item	If an RSA holder ...	the RSA institution may accept contributions made in respect of the RSA holder that are ...
1	is under 60	(a) employer contributions; or (b) RSA holder contributions
2	is not under 60, but is under 75	(a) employer contributions; or (b) RSA holder contributions (including downsizer contributions)
3	is not under 75	(a) mandated employer contributions; or (b) downsizer contributions

- (1A) Despite items 2 and 3 of the table in subregulation (1), the RSA institution may also accept contributions made in respect of an RSA holder, and received on or before the day that is 28 days after the end of the month in which the RSA holder turns 75, that are:
  - (a) employer contributions other than mandated employer contributions; or
  - (b) RSA holder contributions other than downsizer contributions.

Note: Other rules may be relevant to making certain contributions in respect of an RSA holder. For example:

- (a) downsizer contributions are limited to persons aged 60 or over (see paragraph 292-102(1)(a) of the 1997 Tax Act); and
- (b) there are rules about deducting personal contributions to an RSA (see Subdivision 290-C of the 1997 Tax Act). In particular, work test conditions apply to deducting certain contributions made from age 67 until the day referred to in subregulation (1A) (see subsection 290-165(1A) of the 1997 Tax Act).

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- (2) In addition to subregulations (1) and (1A), the RSA institution must not accept any RSA holder contributions if the RSA holder's tax file number has not been quoted (for superannuation purposes) to the RSA provider.
- (4) If an RSA institution receives an amount in a manner that is inconsistent with subregulation (1), (1A) or (2):
  - (a) the RSA institution must return the amount to the entity or person that paid the amount within 30 days of becoming aware that the amount was received in a manner that is inconsistent with subregulation (1), (1A) or (2), unless:
    - (i) the amount was received in a manner that is inconsistent with subregulation (2); and
    - (ii) the RSA holder's tax file number is quoted (for superannuation purposes) within 30 days of the amount being received by the RSA institution; and
  - (b) the RSA institution is also authorised to take any of the following action to the extent that the rules of the RSA institution allow:
    - (i) if the price at which the interest could have been acquired on the day on which the amount is returned is less than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the entity or person that paid the amount may be reduced by the amount of the difference between the prices;
    - (ii) if the price at which the interest could have been acquired on the day of return of the amount is greater than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the entity or person that paid the amount may be increased by the amount of the difference between the prices;
    - (iii) if the price at which the interest could be acquired cannot be determined in accordance with the contract or legal relationship on the day on which the amount is returned, the price is to be determined:
      - (A) on the basis of the most recent day on which a price was calculated in accordance with the contract or legal relationship; or
      - (B) if there is no day of that kind—as soon as practicable after the decision is made to return the amount;
    - (iv) in addition to subparagraph (i), the amount that would, but for this subparagraph, be returned to the entity or person that paid the amount may be reduced to account for reasonable administration costs and transaction costs, incurred by the RSA institution, that:
      - (A) are reasonably related to the acquisition of the interest and the return of the amount; and
      - (B) do not exceed the true cost of an arm's length transaction; other than costs related to commissions or similar benefits;
    - (v) if:
      - (A) the interest is a risk insurance interest, or the part of an interest that is a risk insurance interest; and

- (B) the interest has been issued for a specific period, or the premium for the interest has been paid in relation to cover for a specific period; and
  - (C) a proportion of the specific period has already passed when the decision is made to return the amount to the entity or person that paid the amount;  
the amount that would otherwise be returned to the entity or person that paid the amount may be reduced by the sum of:
    - (D) that part of any amount received in a manner inconsistent with subregulation (1), (1A) or (2) as has been paid by the RSA institution to any person in connection with the risk insurance product and which is not recoverable by the RSA institution from that person; and
    - (E) the proportion equal to the proportion of the period that has passed of the difference between the amount that would otherwise be returned and the amount referred to in paragraph (a).
- (5) If an RSA institution acts under subregulation (4), the RSA institution is taken not to have contravened the Act or these Regulations in relation to the acceptance of the amount or in relation to the return of the amount to the entity or person that paid the amount.
- (6) An RSA institution may accept contributions in respect of an RSA holder if the RSA institution is reasonably satisfied that the contribution is in respect of a period during which, under an item in the table in subregulation (1) or under subregulation (1A), the RSA institution may accept the contribution in respect of that RSA holder, even though the contribution is actually made after that period.
- (7) In this regulation:
- administration costs** has the same meaning as in subregulation 5.01(1).
- downsizer contribution** means a contribution covered under section 292-102 of the 1997 Tax Act.
- employer contribution** has the same meaning as in subregulation 1.03(1).
- mandated employer contributions** has the same meaning as in subregulation 1.03(1).
- quoted (for superannuation purposes)** has the same meaning as in section 295-615 of the 1997 Tax Act.
- RSA holder contributions** has the same meaning as in subregulation 1.03(1).
- tax file number** has the meaning given by section 16 of the Act.
- transaction costs** means any of the following:
- (a) brokerage paid because of an investment transaction;
  - (b) a cost arising from maintenance of a property investment;

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- (c) stamp duty on an investment transaction.

## **Division 5.2—Data and payment matters relating to RSAs**

### **5.04 Data and payment matters relating to RSAs**

For subsection 45B(1) of the Act, regulations 5.05 to 5.10 prescribe matters to be complied with.

### **5.05 Application**

- (1) This regulation is made for subitem 20(6) of Part 4 of Schedule 1 to the *Superannuation Legislation Amendment (Stronger Super) Act 2012* (the *amending Act*).
- (2) This Division applies in relation to a medium to large employer on 1 July 2014 in relation to conduct that occurs on or after 1 July 2014.
- (3) This Division applies in relation to a small employer on 1 July 2015 in relation to conduct that occurs on or after 1 July 2015.

- (4) In this regulation:

*medium to large employer* has the meaning given by subitem 20(4) of Part 4 of Schedule 1 to the amending Act.

*small employer* has the meaning given by subitem 20(4) of Part 4 of Schedule 1 to the amending Act.

### **5.06 RSA provider may give policy or account number to Commissioner of Taxation**

An RSA provider may give the Commissioner of Taxation the policy number, or account number, for an RSA holder of an RSA provided by the RSA provider.

### **5.07 Employee details for contribution**

- (1) This regulation applies to an employer who makes a contribution for an employee to an RSA provider.
- (2) The employer must give the following information to the RSA provider for the RSA, in relation to the contribution:
  - (a) the employee's full name;
  - (b) the employee's residential address;
  - (c) the employee's tax file number;
  - (d) the employee's telephone number.
- (3) However, the employer is not required to give the information mentioned in subregulation (2) to the RSA provider if the employee has not given the information to the employer, and the employer has made reasonable efforts to obtain the information from the employee.

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- (4) The employer must give the information to the RSA provider on the same day as the employer makes the contribution to the RSA.

Note: Standards made under subsection 45B(3) of the Act may set out how the information in subregulation (2) is to be given to the RSA provider, additional information that must be given, and how the contribution must be made.

- (5) The employer must assign a payment reference number to the contribution and include the payment reference number with the contribution.

**5.08 RSA provider must electronically receive contributions and information**

- (1) This regulation applies on and after 1 July 2014 to an RSA provider if:
- (a) either or both of the following is sent to the RSA provider by an employer:
    - (i) a contribution and the information mentioned in subregulation 5.07(2);
    - (ii) any other information relating to a contribution; and
  - (b) the information is sent to the RSA provider on or after 1 July 2014; and
  - (c) the information is, or the information and contribution are, sent to the RSA provider in accordance with any applicable Standards made under subsection 45B(3) of the Act.
- (2) The RSA provider must be able to receive the information, or the information and contribution, electronically.

Note: Standards made under subsection 45B(3) of the Act may set out additional requirements for how the information and contribution are to be received by the RSA provider.

**5.09 Incomplete contribution information**

- (1) This regulation applies to an RSA provider if:
- (a) the RSA provider receives a contribution from an employer for an RSA holder; and
  - (b) the contribution is not accompanied by all of the information mentioned in subregulation 5.07(2).
- (2) The RSA provider must, no later than 5 business days after receiving the contribution, ask the employer to give the RSA provider the correct and complete information mentioned in subregulation 5.07(2) for the RSA holder.
- (3) If an employer receives a request from an RSA provider under subregulation (2), the employer must make all reasonable efforts to give the RSA provider the complete or correct information for the RSA holder no later than 10 business days after receiving the request.
- (4) If the RSA holder is still unable to allocate the contribution to an RSA holder, the RSA provider must refund the contribution to the employer no later than 20 business days after receiving the contribution.
- (5) If a contribution is refunded under subregulation (4), the contribution is taken not to have been made to the RSA provider by the employer.

### **5.10 Contributions to be allocated to an RSA holder**

- (1) This regulation applies to an RSA provider if:
  - (a) all of the following apply:
    - (i) the RSA provider receives a contribution from an employer for an RSA holder;
    - (ii) the contribution was made in accordance with any applicable Standards made under subsection 45B(3) of the Act;
    - (iii) the information mentioned in subregulation 5.07(2) for the employee was given by the employer to the RSA provider;
    - (iv) the information was given in accordance with any applicable Standards made under subsection 45B(3) of the Act; or
  - (b) both of the following apply:
    - (i) the RSA provider receives a contribution from the Commissioner of Taxation for an RSA holder;
    - (ii) the Commissioner made the contribution in accordance with any applicable Standards made under subsection 45B(3) of the Act that would apply if the contribution were being made by an employer.
- (2) If the RSA provider accepts the contribution, and receives it in accordance with any applicable Standards made under subsection 45B(3) of the Act, the RSA provider must allocate the contribution to the RSA holder as soon as practicable, but in any case no later than 3 business days after both the contribution and the information mentioned in subregulation 5.07(2) have been received by the RSA provider.

## Part 6—Miscellaneous

### Division 6.1—Reconsideration and review of decisions

#### 6.01 Notice of reviewable decisions and reasons for decisions

- (1) As soon as practicable after APRA makes a reviewable decision, APRA must give written notice of the decision to the person at whose request the decision was made.
- (2) The notice must have with it a statement by APRA of APRA's reasons for making the decision.
- (3) The notice must include a statement to the effect that, if dissatisfied with the decision, the person may:
  - (a) in the case of notice of a decision (other than a decision made by APRA under regulation 6.02 confirming or varying an earlier reviewable decision of APRA)—request reconsideration of the decision under regulation 6.02; and
  - (b) in the case of notice of a decision made by APRA under regulation 6.02 confirming or varying an earlier reviewable decision of APRA—apply to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.
- (4) Failure to comply with subregulation (3) in relation to a decision does not affect the validity of the decision.

#### 6.02 Reconsideration of certain decisions

- (1) If a person is dissatisfied with a reviewable decision (other than a decision made by APRA under this regulation), the person may give notice in writing to APRA within:
  - (a) the period of 21 days after the day on which the person first receives notice of the decision; or
  - (b) such further period as APRA reasonably allows; requesting APRA to reconsider the decision.
- (2) The person must set out in the notice the reasons for the request.
- (3) Subject to subregulation (4), APRA must reconsider the decision and may:
  - (a) confirm the decision; or
  - (b) vary or revoke the decision.
- (4) If APRA does not confirm, vary or revoke the decision before the end of the period of 60 days after the day on which APRA received the request, APRA is taken to have confirmed the decision under subregulation (3) at the end of that period.



### **6.03 AAT review of reconsidered decisions**

Application may be made to the Administrative Appeals Tribunal for review of a decision of APRA to confirm or vary a decision under subregulation 6.02(3), including a decision that is taken under subregulation 6.02(4) to have been confirmed.

**Part 6** Miscellaneous

**Division 6.2** Matters prescribed or specified in relation to RSA institutions and providers

Regulation 6.04

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**Division 6.2—Matters prescribed or specified in relation to RSA institutions and providers**

**6.04 Application for approval as an RSA institution**

For the purposes of paragraph 23(2)(c) of the Act, the prescribed amount of an application fee is \$500.

## **Division 6.3—Information to be given to APRA or Commissioner of Taxation and related matters**

### **6.08 Operating standards—disclosure of information to APRA**

- (1) For the purposes of subsection 38(1) of the Act, it is a standard applicable to the operation of RSAs that an RSA provider must give notice in writing to APRA, in accordance with subregulation (2), of any change in:
  - (a) the name of the RSA provider; or
  - (b) the postal address, registered address or address for service of notices, of the RSA provider; or
  - (c) details of the contact person, and contact telephone and facsimile numbers.
- (2) A notice mentioned in subregulation (1) must be given within 1 month of the occurrence of the change.
- (3) In subregulation (1):

*contact person* means a named individual, or a person holding a designated office or position, who is available to receive and deal with inquiries from APRA.

### **6.10 Lodgment of annual returns**

For the purposes of subsection 44(1) of the Act, the prescribed period after the end of each year of income of an RSA provider is 5 months.

## Division 6.3A—Cooperation with AFCA

### 6.10A Cooperation with AFCA

- (1) For the purposes of subsection 38(1) of the Act, the requirement set out in subregulation (2) is a standard applicable to the operation of RSAs.
- (2) An RSA provider that is required to be a member of the AFCA scheme by paragraph 47(1)(a) of the Act must take reasonable steps to cooperate with AFCA in resolving any complaint under the AFCA scheme to which the RSA provider is a party, including by:
  - (a) giving reasonable assistance to AFCA in resolving the complaint; and
  - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
  - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (3) Subregulation (2) does not apply to superannuation complaints (within the meaning of Chapter 7 of the *Corporations Act 2001*).

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the *Corporations Act 2001*.

## **Division 6.4—Other matters**

### **6.11 RSA holder benefits—specified age**

For the purposes of paragraph 15(2)(b) of the Act, 65 years is the specified age.

### **6.12 Prescribed regulatory agencies**

For the purposes of subsections 26(2), 33(3), paragraphs 96(1)(c) and 182(2)(b) of the Act and regulation 4.34, the following agencies are prescribed:

- (b) in the case of building societies and credit unions:
  - (i) Australian Capital Territory—Registrar of Financial Institutions;
  - (ii) Australian Financial Institutions Commission;
  - (iii) New South Wales Financial Institutions Commission;
  - (iv) Queensland Office of Financial Supervision;
  - (v) South Australian Office of Financial Supervision;
  - (vi) Tasmanian Office of Financial Supervision;
  - (vii) Territory Supervisory Authority constituted by the Registrar of Financial Institutions;
  - (viii) Victorian Financial Institutions Commission;
  - (ix) Western Australian Financial Institutions Authority.

### **6.13 Period to notify RSA holder or employer of suspension or revocation**

For the purposes of paragraph 34(1)(a) of the Act, the prescribed period is 28 days.

### **6.15 Amount to be transferred**

For the purposes of subsection 50(3) of the Act, the amount of an RSA is the RSA holder's withdrawal benefit in the RSA.

### **6.16 Period within which audit report must be given**

For the purposes of subsection 65(1) of the Act, the period within which a report mentioned in that subsection must be given after the year of income to which it relates is 5 months.

### **6.16A Conditional offer of goods or services—exemptions**

- (1) For subsections 78(1) and (2) of the Act, the following kinds of goods and services are prescribed:
  - (a) the supply of a business loan to a person by an RSA provider, or an associate of an RSA provider, that is supplied:
    - (i) on condition that the person holds an RSA; and
    - (ii) on a commercial arm's length basis;

## Regulation 6.17

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- (b) a service that is supplied by an RSA provider, or an associate of an RSA provider, to a person for the forwarding of superannuation contributions and information:
    - (i) to other RSAs or superannuation funds; and
    - (ii) on behalf of the person; and
    - (iii) in relation to employees of the person who have chosen those RSAs or funds;
  - (c) advice or an administration service that relates to the payment of superannuation contributions to an RSA provider, that is supplied by an RSA provider, or an associate of an RSA provider, of the fund to:
    - (i) a person; or
    - (ii) the employees of the person;
  - (d) the supply, or the offer to supply, goods or services to a person by an RSA provider, or an associate of an RSA provider, if:
    - (i) the supply or offer is available to the employees of the person who holds an RSA with the RSA provider; and
    - (ii) the terms of the supply or offer to each employee are no less advantageous than the terms supplied or offered to the person.
- (2) Paragraph (1)(a) does not apply to the supply of a business loan that is supplied on the condition that a person other than the person receiving the loan holds an RSA.

### **6.17 Payment of benefit to eligible rollover fund**

- (1) For subsection 89(1) of the Act, it is a condition that the beneficiary is not a non-member spouse whose entitlement under a payment split is to be dealt with under regulation 4A.27.
- (2) Subject to subregulation (3), for paragraph 89(3)(b) of the Act, the amount of the consideration for the issue of a superannuation interest is equal to the amount of the RSA holder's withdrawal benefit in the RSA.
- (3) For paragraph 89(3)(b) of the Act, the amount of the consideration for the issue of a superannuation interest does not include any amount that would be payable to the member's spouse or former spouse under a payment split.

Note: Section 89 of the Act sets out the circumstances in which the RSA provider may apply to the trustee of an eligible rollover fund, on behalf of an RSA holder, for the issue to the RSA holder of a superannuation interest in the eligible rollover fund.

### **6.18 Report of inspector—prescribed agencies**

For the purposes of subparagraph 114(3)(c)(iv) of the Act, the following agencies are prescribed:

- (a) Australian Capital Territory—Registrar of Financial Institutions;
- (b) Australian Financial Institutions Commission;
- (d) Australian Transactions Reports and Analysis Centre;
- (e) Commissioner of Taxation;

- (f) New South Wales Crime Commission;
- (g) New South Wales Financial Institutions Commission;
- (h) New South Wales Independent Commission Against Corruption;
- (i) Queensland Criminal Justice Commission;
- (j) Queensland Office of Financial Supervision;
- (k) Reserve Bank of Australia;
- (l) South Australian Office of Financial Supervision;
- (m) Tasmanian Office of Financial Supervision;
- (n) Territory Supervisory Authority constituted by the Registrar of Financial Institutions;
- (o) Victorian Financial Institutions Commission;
- (p) Western Australian Financial Institutions Authority;
- (q) an authority of a State or Territory having functions and powers similar to those of the Director of Public Prosecutions;
- (r) the police force of a State or Territory.

### **6.19 Statements made at an examination—manner of authentication**

For the purposes of subsection 120(7) of the Act, it is a prescribed manner of authentication of a written record of an examination mentioned in the subsection if:

- (a) the written record is produced as soon as practicable after the conclusion of the examination; and
- (b) the written record is endorsed by a person (*the endorser*) other than the person examined at the examination; and
- (c) the endorser:
  - (i) was present throughout the examination; and
  - (ii) reads and endorses the written record as soon as practicable after it is produced; and
- (d) the endorsement:
  - (i) is to the effect that the record is a true record of what was said in the examination; and
  - (ii) is signed and dated by the endorser.

## Part 7—Transitional matters

### 7.1 Amendments made by *Retirement Savings Accounts Amendment Regulation 2012 (No. 3)*

- (1) The amendments made by items [1], [2], [3] and [5] of Schedule 1 to the *Retirement Savings Accounts Amendment Regulation 2012 (No. 3)* apply in relation to a request to roll over or transfer an RSA holder's withdrawal benefit made on or after the commencement of this regulation.
- (2) The amendment made by item [4] of Schedule 1 to the *Retirement Savings Accounts Amendment Regulation 2012 (No. 3)* applies in relation to an application that is accepted by an RSA provider under subregulation 4.42(1) on or after the commencement of this regulation.
- (3) The amendment made by item [7] of Schedule 1 to the *Retirement Savings Accounts Amendment Regulation 2012 (No. 3)* applies in relation to an RSA interest that becomes subject to a payment split on or after the commencement of this regulation.

### 7.2 Amendments made by the *Tax and Superannuation Laws Amendment (Release Conditions for Non-concessional Contributions) Regulation 2015*

The amendment of these Regulations made by item 6 of Schedule 1 to the *Tax and Superannuation Laws Amendment (Release Conditions for Non-concessional Contributions) Regulation 2015* applies in relation to non-concessional contributions (within the meaning of the *Income Tax Assessment Act 1997*) for the 2013-14 financial year and later financial years.

### 7.3 Amendments made by the *Treasury Laws Amendment (2016 Measures No. 1) Regulation 2016*

The amendments made by items 1 to 4 of Schedule 3 to the *Treasury Laws Amendment (2016 Measures No. 1) Regulation 2016* apply on and after 1 July 2016.

### 7.4 Amendments made by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017*

- (1) The amendments made by items 6 to 11 of Schedule 1 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* apply on and after 1 July 2017.
- (2) The amendments made by items 1 to 6 of Schedule 3 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* apply in relation to the financial year starting on 1 July 2017 and later financial years.



- (3) The amendments made by items 2 to 7 of Schedule 8 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017* apply in relation to release authorities given to superannuation providers on or after the commencement of that item.

**7.5 Amendments made by the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018***

Regulation 6.14 of these Regulations continues to have effect, despite its repeal by item 6 of Schedule 3 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Regulations 2018*, in relation to an order, direction or determination made under the *Superannuation (Resolution of Complaints) Act 1993* before the commencement of that item.

**7.6 Amendments made by the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2018***

The amendments of these Regulations made by Schedule 1 to the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2018* apply in relation to applications for the release of benefits on compassionate grounds made after the commencement of that Schedule.

**7.7 Amendments made by the *Treasury Laws Amendment (Work Test Exemption) Regulations 2018***

The amendments made by items 1 to 3 of Schedule 1 to the *Treasury Laws Amendment (Work Test Exemption) Regulations 2018* apply in relation to contributions made in the 2019-20 financial year and later financial years.

**7.8 Amendments made by the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019***

The amendment made by item 10 of Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* applies on and after the commencement of that item in relation to complaints made under the AFCA scheme before, on or after that commencement.

**7.9 Amendments made by the *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020***

The amendments made by items 1 to 4 of Schedule 1 to the *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020* apply in relation to contributions made in the 2020-21 financial year and later financial years.

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### **7.10 Amendments made by the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021***

- (1) The amendment made by item 3 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* applies in relation to requests made under Division 4A.2 on or after 1 May 2021.
- (2) The amendments made by items 4 to 9 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* apply in relation to non-member spouse interests in relation to which requests have not, as at 1 May 2021, been made under Division 4A.2 within the time allowed under subregulation 4A.09(1).
- (3) The amendment made by item 10 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* applies in relation to requests made under Division 4A.3 on or after 1 May 2021.
- (4) The amendments made by items 11 to 14 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* apply in relation to non-member spouse interests in relation to which requests have not, as at 1 May 2021, been made under Division 4A.3 within the time allowed under subregulation 4A.19(1).
- (5) The amendment made by item 15 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* applies in relation to:
  - (a) non-member spouse interests in relation to which requests have not, as at 1 May 2021, been made under Division 4A.2 within the time allowed under subregulation 4A.09(1); and
  - (b) non-member spouse interests in relation to which requests have not, as at 1 May 2021, been made under Division 4A.3 within the time allowed under subregulation 4A.19(1).
- (6) The amendment made by item 16 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* applies in relation to non-member spouse interests in relation to which a belief is formed in accordance with subregulation 4A.27(6) on or after 1 May 2021.
- (7) The amendments made by items 17 and 18 of Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* apply in relation to requests mentioned in paragraph 4A.28(2)(b) on or after 1 May 2021.

### **7.11 Amendments made by the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020***

The amendment made by item 64 of Schedule 1 to the *Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020* applies on and after 25 March 2020.

**7.12 Amendments made by the Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022**

- (1) The amendments made by items 2 to 10 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022* apply in relation to contributions made in the 2022-23 financial year and later financial years.
- (2) Despite the amendments made by those items in that Schedule, regulation 5.03, as in force immediately before the commencement of that Schedule, continues to apply in relation to contributions made on or after that commencement but before 1 July 2022.

## Schedule 1—Payment limits for pensions with a commencement day before 1 January 2006

(subregulation 1.07(2))

1. Subject to clauses 3, 4 and 4A, the maximum limits mentioned in paragraph 1.07(2)(d) are determined under the formula:

$$\frac{AB}{PVF}$$

where:

**AB** means the amount in the RSA:

- (a) on 1 July in the financial year in which the payments are made; or
- (b) if that year is the year in which the pension payments commence—on the commencement day; and

**PVF** means the maximum pension valuation factor set out in Column 3 of Table 1 in this Schedule in relation to the item in the Table that represents the age of the beneficiary (or, subject to clause 5, in the case of the death of the original beneficiary, the age of the reversionary beneficiary) on:

- (a) 1 July in the financial year in which the payments are made; or
- (b) if that is the year in which the pension payments commence—the commencement day.

2. Subject to clauses 3, 3A, 3B and 4, the minimum limits mentioned in paragraph 1.07(2)(d) or (e) are determined under the formula:

$$\frac{AB}{PVF}$$

where:

**AB** means the amount in the RSA:

- (a) on 1 July in the financial year in which the payments are made; or
- (b) if that year is the year in which the pension payments commence—on the commencement day; and

**PVF** means the minimum pension valuation factor set out in Column 4 of Table 1 in this Schedule in relation to the item in the Table that represents the age of the beneficiary (or, subject to clause 5, in the case of the death of the original beneficiary, the age of the reversionary beneficiary) on:

- (a) 1 July in the financial year in which the payments are made; or
- (b) if that is the year in which the pension payments commence—the commencement day.

3. For a calculation of the maximum or minimum limit in the year in which the commencement day of the pension occurs if that day is a day other than 1 July, the appropriate value set out in Column 3 or Column 4 of Table 1 or Table 2, as the case requires, in this Schedule must be applied proportionally to the number of days in the financial year that include and follow the commencement day.
- 3A. For the financial years commencing on 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019, 1 July 2020, 1 July 2021 and 1 July 2022, the minimum limit is half of the amount determined under the formula in clause 2.
- 3B. For the financial years commencing on 1 July 2011 and 1 July 2012, the minimum limit is 75% of the amount determined under the formula in clause 2.
4. An amount determined under the formula that is not evenly divisible by 10 is to be rounded to the nearest amount that is so divisible.
- 4A. In a year in which a PVF of 1 is used in calculating the maximum limit under clause 1, payment of the full account balance may be made at any time during the year.
5. If the reversionary beneficiary mentioned in clause 1 or 2 is a child beneficiary at the time of the first payment, the maximum and minimum pension valuation factors set out in Column 3 and Column 4 of Table 2 in this Schedule must be used.
6. In the case of a reversionary beneficiary mentioned in clause 1 or 2, the maximum and minimum limits for reversionary benefits must be calculated:
  - (a) on or before the 1 July next after the death of the original beneficiary; or
  - (b) if the death of the original beneficiary occurs in the period from 1 April to 30 June (inclusive) in a year, recalculation may be extended beyond 1 July in that year to the earliest normal RSA recalculation date after the financial year in which the death occurred.
7. For the purposes of clause 5, a reversionary beneficiary is a child beneficiary until:
  - (a) his or her 16th birthday; or
  - (b) if the person mentioned in paragraph (a) is a full-time student at age 16—the end of his or her full-time studies or his or her 25th birthday (whichever occurs sooner).

**Table 1 Factors for allocated pensions—general**

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
1	20 or less	10	28.6
2	21	10	28.5
3	22	10	28.3
4	23	10	28.1
5	24	10	28.0
6	25	10	27.8

**Schedule 1** Payment limits for pensions with a commencement day before 1 January 2006

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
7	26	10	27.6
8	27	10	27.5
9	28	10	27.3
10	29	10	27.1
11	30	10	26.9
12	31	10	26.7
13	32	10	26.5
14	33	10	26.3
15	34	10	26.0
16	35	10	25.8
17	36	10	25.6
18	37	10	25.3
19	38	10	25.1
20	39	10	24.8
21	40	10	24.6
22	41	10	24.3
23	42	10	24.0
24	43	10	23.7
25	44	10	23.4
26	45	10	23.1
27	46	10	22.8
28	47	10	22.5
29	48	10	22.2
30	49	10	21.9
31	50	9.9	21.5
32	51	9.9	21.2
33	52	9.8	20.9
34	53	9.7	20.5
35	54	9.7	20.1
36	55	9.6	19.8
37	56	9.5	19.4
38	57	9.4	19.0
39	58	9.3	18.6
40	59	9.1	18.2
41	60	9.0	17.8
42	61	8.9	17.4
43	62	8.7	17.0
44	63	8.5	16.6

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
45	64	8.3	16.2
46	65	8.1	15.7
47	66	7.9	15.3
48	67	7.6	14.9
49	68	7.3	14.4
50	69	7.0	14.0
51	70	6.6	13.5
52	71	6.2	13.1
53	72	5.8	12.6
54	73	5.4	12.2
55	74	4.8	11.7
56	75	4.3	11.3
57	76	3.7	10.8
58	77	3.0	10.4
59	78	2.2	10.0
60	79	1.4	9.5
61	80	1	9.1
62	81	1	8.7
63	82	1	8.3
64	83	1	7.9
65	84	1	7.5
66	85	1	7.1
67	86	1	6.8
68	87	1	6.4
69	88	1	6.1
70	89	1	5.8
71	90	1	5.5
72	91	1	5.3
73	92	1	5.0
74	93	1	4.8
75	94	1	4.6
76	95	1	4.4
77	96	1	4.2
78	97	1	4.0
79	98	1	3.8
80	99	1	3.7
81	100 or more	1	3.5

## Schedule 1 Payment limits for pensions with a commencement day before 1 January 2006

### Example

Iva Fortune, who turns 60 on 5 September 1997, invests \$100,000 in an RSA on 1 October 1997. The date of the first payment to Ms Fortune is 1 January 1998.

Assume that the interest applied to the RSA is 7%.

1997/98: The maximum and minimum payments for 1997/98 are based on:

- (a) the RSA balance on the day of purchase; and
- (b) the beneficiary's age of 60 on the day of purchase:

$$\frac{\$100,000}{9.0} \times \frac{273}{365} = \$8,310.50 \text{ (maximum limit, rounded to } \$8,310)$$

$$\frac{\$100,000}{17.8} \times \frac{273}{365} = \$4,201.93 \text{ (minimum limit, rounded to } \$4,200)$$

Assume that total payments to Ms Fortune at 30 June 1998 are \$6,000.

1998/99: The maximum and minimum payments for the year 1998/99 are based on:

- (a) the RSA balance on 1 July 1998 which is \$99,145 (residue \$94,000 + interest of \$5,145); and
- (b) the beneficiary's age of 60 on 1 July 1998:

$$\frac{\$99,145}{9.0} = \$11,016.11 \text{ (maximum limit, rounded to } \$11,020)$$

$$\frac{\$99,145}{17.8} = \$5,569.94 \text{ (minimum limit, rounded to } \$5,570)$$

**Table 2 Factors for allocated pensions—child beneficiary (reversion)**

Item	Age of Beneficiary	Maximum Pension Valuation Factor	Minimum Pension Valuation Factor
1	0	8.3	17.4
2	1	8.1	16.9
3	2	7.9	16.4
4	3	7.6	15.9
5	4	7.3	15.4
6	5	7.0	14.8
7	6	6.6	14.3
8	7	6.2	13.7
9	8	5.8	13.1
10	9	5.4	12.4
11	10	4.8	11.8
12	11	4.3	11.1
13	12	3.7	10.5
14	13	3.0	9.7
15	14	2.2	9.0



<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
16	15	1.4	8.3
17	16	1.0	7.5
18	17	1.0	6.7
19	18	1.0	5.9
20	19	1.0	5.1
21	20	1.0	4.2
22	21	1.0	3.3
23	22	1.0	2.4
24	23	1.0	1.5
25	24	1.0	1.0

## Schedule 1A—Payment limits for pensions with a commencement day on or after 1 January 2006

(subregulation 1.07(2))

1. Subject to clauses 3, 4 and 5, the maximum limits mentioned in paragraph 1.07(2)(d) are determined under the formula:

$$\frac{AB}{PVF}$$

where:

**AB** means the amount in the RSA:

- (a) on 1 July in the financial year in which the payments are made; or
- (b) if that year is the year in which the pension payments commence—on the commencement day.

**PVF** means the maximum pension valuation factor set out in Column 3 of Table 1 in this Schedule in relation to the item in the Table that represents the age of the beneficiary (or, subject to clause 5, in the case of the death of the original beneficiary, the age of the reversionary beneficiary) on:

- (a) 1 July in the financial year in which the payments are made; or
- (b) if that is the year in which the pension payments commence—the commencement day.

2. Subject to clauses 3, 3A, 3B and 4, the minimum limits mentioned in paragraph 1.07(2)(d) or (e) are determined under the formula:

$$\frac{AB}{PVF}$$

where:

**AB** means the amount in the RSA:

- (a) on 1 July in the financial year in which the payments are made; or
- (b) if that year is the year in which the pension payments commence—on the commencement day.

**PVF** means the minimum pension valuation factor set out in Column 4 of Table 1 in this Schedule in relation to the item in the Table that represents the age of the beneficiary (or, subject to clause 5, in the case of the death of the original beneficiary, the age of the reversionary beneficiary) on:

- (a) 1 July in the financial year in which the payments are made; or
- (b) if that is the year in which the pension payments commence—the commencement day.

3. For a calculation of the maximum or minimum limit in the year in which the commencement day of the pension occurs if that day is a day other than 1 July, the appropriate value set out in Column 3 or Column 4 of Table 1 or Table 2, as the case requires, in this Schedule must be applied proportionally to the number of days in the financial year that include and follow the commencement day.
- 3A. For the financial years commencing on 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019, 1 July 2020, 1 July 2021 and 1 July 2022, the minimum limit is half of the amount determined under the formula in clause 2.
- 3B. For the financial years commencing on 1 July 2011 and 1 July 2012, the minimum limit is 75% of the amount determined under the formula in clause 2.
4. An amount determined under the formula that is not evenly divisible by 10 is to be rounded to the nearest amount that is so divisible.
5. In a year in which a PVF of 1 is used in calculating the maximum limit under clause 1, payment of the full account balance may be made at any time during the year.
6. If the reversionary beneficiary mentioned in clause 1 or 2 is a child beneficiary at the time of the first payment, the maximum and minimum pension valuation factors set out in Column 3 and Column 4 of Table 2 in this Schedule must be used.
7. In the case of a reversionary beneficiary mentioned in clause 1 or 2, the maximum and minimum limits for reversionary benefits must be calculated:
  - (a) on or before the 1 July next after the death of the original beneficiary; or
  - (b) if the death of the original beneficiary occurs in the period from 1 April to 30 June (inclusive) in a year, recalculation may be extended beyond 1 July in that year to 1 July in the following year.
8. For clause 6, a reversionary beneficiary is a child beneficiary until:
  - (a) his or her 16th birthday; or
  - (b) if the reversionary beneficiary is a full-time student at age 16—the earlier of:
    - (i) the end of his or her full-time studies; or
    - (ii) his or her 25th birthday.

**Table 1 Factors for allocated pensions—general**

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
1	20 or less	12.0	29.2
2	21	12.0	29.0
3	22	12.0	28.9
4	23	12.0	28.7
5	24	12.0	28.6
6	25	12.0	28.4

**Schedule 1A** Payment limits for pensions with a commencement day on or after 1 January 2006

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
7	26	12.0	28.3
8	27	12.0	28.1
9	28	12.0	27.9
10	29	12.0	27.8
11	30	12.0	27.6
12	31	12.0	27.4
13	32	12.0	27.2
14	33	12.0	27.0
15	34	12.0	26.8
16	35	12.0	26.6
17	36	12.0	26.4
18	37	12.0	26.2
19	38	12.0	26.0
20	39	12.0	25.8
21	40	12.0	25.5
22	41	12.0	25.3
23	42	12.0	25.0
24	43	12.0	24.8
25	44	12.0	24.5
26	45	12.0	24.2
27	46	12.0	24.0
28	47	12.0	23.7
29	48	12.0	23.4
30	49	12.0	23.1
31	50	12.0	22.8
32	51	11.9	22.5
33	52	11.8	22.2
34	53	11.8	21.8
35	54	11.7	21.5
36	55	11.5	21.1
37	56	11.4	20.8
38	57	11.3	20.4
39	58	11.2	20.1
40	59	11.0	19.7
41	60	10.9	19.3
42	61	10.7	18.9
43	62	10.5	18.5
44	63	10.3	18.1

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
45	64	10.1	17.7
46	65	9.9	17.3
47	66	9.6	16.8
48	67	9.3	16.4
49	68	9.1	16.0
50	69	8.7	15.5
51	70	8.4	15.1
52	71	8.0	14.6
53	72	7.6	14.2
54	73	7.2	13.7
55	74	6.7	13.3
56	75	6.2	12.8
57	76	5.7	12.3
58	77	5.1	11.9
59	78	4.5	11.4
60	79	3.8	10.9
61	80	3.1	10.5
62	81	2.3	10.0
63	82	1.4	9.6
64	83	1	9.1
65	84	1	8.7
66	85	1	8.3
67	86	1	7.9
68	87	1	7.5
69	88	1	7.2
70	89	1	6.9
71	90	1	6.6
72	91	1	6.3
73	92	1	6.0
74	93	1	5.8
75	94	1	5.5
76	95	1	5.3
77	96	1	5.1
78	97	1	4.9
79	98	1	4.7
80	99	1	4.5
81	100 or more	1	4.4

**Schedule 1A** Payment limits for pensions with a commencement day on or after 1 January 2006

Example

Clive Long, who turns 65 on 8 February 2006, invests \$100,000 in an allocated pension fund on 1 March 2006. The date of the first payment to Mr Long is 1 April 2006.

2005/06: The maximum and minimum payments for 2005/06 are based on:

- (a) the account balance on the day of purchase; and
- (b) the beneficiary's age of 65 on the day of purchase:

$$\frac{\$100,000}{9.9} \times \frac{122}{365} = \$3,376.23 \text{ (maximum limit, rounded to } \$3,380)$$

$$\frac{\$100,000}{17.3} \times \frac{122}{365} = \$1,932.06 \text{ (minimum limit, rounded to } \$1,930)$$

Assume that total payments to Mr Long at 30 June 2006 are \$3,000.

2006/07: The maximum and minimum payments for 2006/07 are based on:

- (a) the account balance on 1 July 2006 which is \$99,300 (residue \$97,000 + earnings of \$2,300); and
- (b) the beneficiary's age of 65 on 1 July 2006:

$$\frac{\$99,300}{9.9} = \$10,030.30 \text{ (maximum limit, rounded to } \$10,030)$$

$$\frac{\$99,300}{17.3} = \$5,739.88 \text{ (minimum limit, rounded to } \$5,740)$$

**Table 2** Factors for allocated pensions—child beneficiary (reversion)

Item	Age of Beneficiary	Maximum Pension Valuation Factor	Minimum Pension Valuation Factor
1	0	9.3	17.4
2	1	9.1	16.9
3	2	8.7	16.4
4	3	8.4	15.9
5	4	8.0	15.4
6	5	7.6	14.8
7	6	7.2	14.3
8	7	6.7	13.7
9	8	6.2	13.1
10	9	5.7	12.4
11	10	5.1	11.8
12	11	4.5	11.1
13	12	3.8	10.5
14	13	3.1	9.7
15	14	2.3	9.0
16	15	1.4	8.3
17	16	1	7.5
18	17	1	6.7

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Maximum Pension Valuation Factor</b>	<b>Minimum Pension Valuation Factor</b>
19	18	1	5.9
20	19	1	5.1
21	20	1	4.2
22	21	1	3.3
23	22	1	2.4
24	23	1	1.5
25	24	1	1.0

## **Schedule 2—Conditions of release and cashing restrictions—preserved benefits and restricted non-preserved benefits**

(regulations 4.01 and 4.01A)

<b>Item</b>	<b>Conditions of release</b>	<b>Cashing restrictions</b>
101	Retirement	Nil
102	Death	Nil
102A	Terminal medical condition	Nil
103	Permanent incapacity	Nil
104	Former temporary resident to whom regulation 4.23A applies, requesting in writing the release of his or her benefits	Amount that is at least the amount of the temporary resident’s withdrawal benefit in the RSA, paid: (a) as a single lump sum; or (b) if the RSA provider receives any combination of contributions, transfers and rollovers after cashing the benefits—in a way that ensures that the amount is cashed
104A	The RSA provider is required to pay an amount to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> , or may pay an amount to the Commissioner of Taxation under Part 3D of that Act, for the person’s interest in the RSA	Amount that the RSA provider is required to pay to the Commissioner of Taxation under the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> , or may pay to the Commissioner of Taxation under Part 3D of that Act, for the person’s interest in the RSA, paid as a lump sum to the Commissioner
105	Severe financial hardship	For a person taken to be in severe financial hardship under paragraph 4.01(5)(a)—in each 12 month period (beginning on the date of first payment), a single lump sum not less than \$1,000 (except if the amount of the person’s preserved benefits and restricted non-preserved benefits is less than that amount) and not more than \$10,000  For a person taken to be in severe financial hardship under paragraph 4.01(5)(b)—Nil.
106	Attaining age 65	Nil
107	Termination of gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the RSA in relation to the RSA holder	1. <i>Preserved benefits:</i> Non-commutable life pension or non-commutable life annuity  2. <i>Restricted non-preserved benefits:</i> Nil



<b>Item</b>	<b>Conditions of release</b>	<b>Cashing restrictions</b>
108	Temporary incapacity	A non-commutable income stream cashed from the RSA for: <ul style="list-style-type: none"> <li>(a) the purpose of continuing (in whole or part) the gain or reward which the RSA holder was receiving before the temporary incapacity; and</li> <li>(b) a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the temporary incapacity</li> </ul>
109	The Regulator has determined under subregulation 4.22A(2) that a specified amount of benefits in the RSA may be released on a compassionate ground	A single lump sum, not exceeding the amount determined, in writing, by the Regulator, being an amount that: <ul style="list-style-type: none"> <li>(a) taking account of the ground and of the person's financial capacity, is reasonably required; and</li> <li>(b) in the case of the ground mentioned in paragraph 4.22A(1)(b)—in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of: <ul style="list-style-type: none"> <li>(i) 3 months' repayments; and</li> <li>(ii) 12 months' interest on the outstanding balance of the loan.</li> </ul> </li> </ul>
109AA	The Regulator has determined under subregulation 4.22B(3) (about coronavirus) that a specified amount of benefits in the RSA may be released on a compassionate ground	A single lump sum, not exceeding the amount determined, in writing, by the Regulator in relation to the RSA
109A	For acquiring a superannuation interest (within the meaning of the 1997 Tax Act) that supports a deferred superannuation income stream (within the meaning of that Act) to be provided under a contract or rules that meet the standards of subregulation 1.06A(2) of the SIS Regulations	The restrictions contained in paragraph 1.06A(3)(e) of the SIS Regulations
110	Attaining preservation age	Any of the following: <ul style="list-style-type: none"> <li>(a) a transition to retirement pension;</li> <li>(b) a non-commutable allocated pension;</li> <li>(c) a non-commutable pension;</li> <li>(d) a non-commutable allocated annuity, or a non-commutable annuity, within the meaning of Part 6 of the SIS Regulations;</li> </ul>

**Schedule 2** Conditions of release and cashing restrictions—preserved benefits and restricted non-preserved benefits

<b>Item</b>	<b>Conditions of release</b>	<b>Cashing restrictions</b>
		(e) an annuity being provided as a transition to retirement income stream within the meaning of Part 6 of the SIS Regulations.
111	Being a lost RSA holder who is found, and the value of whose benefit in the RSA, when released, is less than \$200	Nil
111A	The Commissioner of Taxation gives a superannuation provider a release authority under Division 131 in Schedule 1 to the <i>Taxation Administration Act 1953</i>	The restrictions contained in sections 131-35 and 131-40 in that Schedule
111B	A person gives a superannuation provider a release authority under section 135-40 in Schedule 1 to the <i>Taxation Administration Act 1953</i>	The restrictions contained in sections 135-75 and 135-85 in that Schedule
113	A person gives a transitional release authority to a superannuation provider under section 292-80B of the <i>Income Tax (Transitional Provisions) Act 1997</i>	Restrictions contained in subsections 292-80C(1) and (2) of the <i>Income Tax (Transitional Provisions) Act 1997</i>
114	Any other condition, if expressed to be a condition of release, in an approval under paragraph 15(4)(d) of the Act	Restrictions expressed in the approval to be cashing restrictions applying to the condition of release

Note: The definitions set out in subregulation 4.01(2) apply, unless they are immaterial or expressed not to apply, to Schedule 2; see that subregulation.

## Schedule 4—Payments for market linked pensions

(paragraph 1.07(3A)(b))

1. Subject to the following clauses, the total amount of the payments mentioned in paragraph 1.07(3A)(b) is determined using the formula:

$$\frac{AB}{PF}$$

where:

**AB** means the amount of the market linked pension account balance:

- (a) on 1 July in the financial year in which the payment is made; or
- (b) if that year is the year in which the pension commences—on the commencement day; and

**PF** means the payment factor set out in Column 3 in the Table in relation to the item in the Table that represents the term of the pension remaining, expressed in whole years in accordance with clause 5, on:

- (a) 1 July in the financial year in which the payment is made; or
- (b) if that is the year in which the pension commences—the commencement day.

2. Payment of the account balance is sufficient to meet the payment for the financial year if, during the year, the account balance becomes less than the lesser of the following amounts:
  - (a) the amount determined under clause 1;
  - (b) the balance of the amount determined under clause 1 that remains to be paid for the year.
3. If, in the final year of the pension, after payment of the amount determined under clause 1, there is a residual balance in the account—payment of the account balance must be made within 28 days after:
  - (a) the end of the term of the pension; or
  - (b) if a period is chosen under clause 7—the end of that period.
4. An amount determined under the formula in clause 1 is rounded to the nearest 10 whole dollars.
5. For clause 1, the remaining term of a market linked pension is rounded as follows:
  - (a) if the commencement day of the pension is on or after 1 January in a financial year—rounded up to the nearest whole year;
  - (b) if the commencement day of the pension is on or before 31 December in a financial year—rounded down to the nearest whole year.
6. If the commencement day of the pension is a day other than 1 July—the appropriate factor set out in Column 3 of the Table must be applied

proportionally to the number of days in the financial year that include and follow the commencement day in that financial year.

7. If, on 1 July in a financial year (*current year*):
- (a) the payment factor that applies to an account balance for a market linked pension is 1.00; and
  - (b) the payment factor that applied on 1 July in the previous financial year was not 1.00;
- payments made in respect of the current year and the period after (if any) are taken to be determined in accordance with clause 1 if they comply with the following conditions:
- (c) payment of the account balance over one of the following periods:
    - (i) if the remaining term of the pension is greater than 12 months—that period;
    - (ii) 12 months;
  - (d) if payments are made in accordance with paragraph (c)—the provider has no obligation to make any other payment that, but for this clause, would have been determined on 1 July in the subsequent financial year.
8. An amount is taken to have been determined in accordance with clause 1 of this Schedule if the amount is:
- (a) not less than the amount determined in accordance with clause 1 of this Schedule, less 10 per cent of that amount; and
  - (b) not greater than the amount determined in accordance with clause 1 of this Schedule, plus 10 per cent of that amount.
9. Clause 8 does not apply if clause 10 or 11 applies.
10. For the financial years commencing on 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019, 1 July 2020, 1 July 2021 and 1 July 2022, an amount is taken to have been determined in accordance with clause 1 if the amount is:
- (a) not less than 45% of the amount determined in accordance with clause 1; and
  - (b) not greater than 110% of the amount determined in accordance with clause 1.
11. For the financial years commencing on 1 July 2011 and 1 July 2012, an amount is taken to have been determined in accordance with clause 1 if the amount is:
- (a) not less than 67.5% of the amount determined in accordance with clause 1; and
  - (b) not greater than 110% of the amount determined in accordance with clause 1.

**Table**

<b>Item</b>	<b>Term of pension remaining rounded in whole years</b>	<b>Payment Factor</b>	<b>Item</b>	<b>Term of pension remaining rounded in whole years</b>	<b>Payment Factor</b>
1	70 or more	26.00	36	35	20.00
2	69	25.91	37	34	19.70
3	68	25.82	38	33	19.39
4	67	25.72	39	32	19.07
5	66	25.62	40	31	18.74
6	65	25.52	41	30	18.39
7	64	25.41	42	29	18.04
8	63	25.30	43	28	17.67
9	62	25.19	44	27	17.29
10	61	25.07	45	26	16.89
11	60	24.94	46	25	16.48
12	59	24.82	47	24	16.06
13	58	24.69	48	23	15.62
14	57	24.55	49	22	15.17
15	56	24.41	50	21	14.70
16	55	24.26	51	20	14.21
17	54	24.11	52	19	13.71
18	53	23.96	53	18	13.19
19	52	23.80	54	17	12.65
20	51	23.63	55	16	12.09
21	50	23.46	56	15	11.52
22	49	23.28	57	14	10.92
23	48	23.09	58	13	10.30
24	47	22.90	59	12	9.66
25	46	22.70	60	11	9.00
26	45	22.50	61	10	8.32
27	44	22.28	62	9	7.61
28	43	22.06	63	8	6.87
29	42	21.83	64	7	6.11
30	41	21.60	65	6	5.33
31	40	21.36	66	5	4.52
32	39	21.10	67	4	3.67
33	38	20.84	68	3	2.80
34	37	20.57	69	2	1.90
35	36	20.29	70	1 or less	1.00

## Schedule 5—Minimum payment amount for an account-based pension

(regulation 1.08A)

- 1 (1) Subject to clauses 2, 3, 3A and 3B, the amount of payments mentioned in paragraph 1.07(3D)(a) is the amount worked out using the formula:
- Account balance × Percentage factor
- (2) In subclause (1):
- account balance** means:
- (a) the amount of the pension account balance:
    - (i) on 1 July in the financial year in which the payment is made; or
    - (ii) if that year is the year in which the pension payments commence—on the commencement day; or
  - (b) if the amount of the pension account balance under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the pension were to be fully commuted—the amount of the withdrawal benefit.
- percentage factor** means the percentage factor specified in the item in the table in clause 4 that applies to the beneficiary because of the beneficiary's age on:
- (a) 1 July in the financial year in which the payment is made; or
  - (b) if that is the year in which the pension payments commence—the commencement day.
- 2 For the determination of the minimum total payment in the year in which the commencement day of the pension occurs, if that day is a day other than 1 July, the applicable value specified in column 3 of the table must be applied proportionally to the number of days in the financial year that include and follow the commencement day.
- 3 If the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
- 3A For the financial years commencing on 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019, 1 July 2020, 1 July 2021 and 1 July 2022, the amount of payments is half of the amount worked out using the formula in clause 1.
- 3B. For the financial years commencing on 1 July 2011 and 1 July 2012, the amount of payments is 75% of the amount worked out using the formula in clause 1.
- 4 An amount determined under this Schedule is to be rounded to the nearest 10 whole dollars. If the amount ends in an exact 5 dollars, it is to be rounded up to the next 10 whole dollars.

**Table**

<b>Item</b>	<b>Age of Beneficiary</b>	<b>Percentage factor</b>
1	Under 65	4
2	65 — 74	5
3	75 — 79	6
4	80 — 84	7
5	85 — 89	9
6	90 — 94	11
7	95 or more	14

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.



**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
116, 1997	29 May 1997	2 June 1997 (r 1.02 and gaz 1997, No S202)	
150, 1997	26 June 1997	1 July 1997 (r 1.1)	—
151, 1997	26 June 1997	1 July 1997 (r 1.1)	—
242, 1997	10 Sept 1997	10 Sept 1997 (r 1.1)	—
294, 1997	16 Oct 1997	16 Oct 1997 (r 1.1)	—
308, 1997	5 Nov 1997	5 Nov 1997 (r 1.1)	—
342, 1997	9 Dec 1997	9 Dec 1997 (r 1.1)	r 5
82, 1998	5 May 1998	r 6: 1 Nov 1998 (r 1.1) Remainder: 5 May 1998	—
176, 1998	30 June 1998	30 June 1998 (r 1.1)	—
178, 1998	30 June 1998	r 4: 1 July 1998 (r 1.2) Remainder: 1 Jan 1998	—
192, 1998	30 June 1998	1 July 1998 (r 2)	—
13, 1999	11 Feb 1999	11 Feb 1999 (r 2)	—
315, 1999	15 Dec 1999	15 Dec 1999 (r 2)	—
279, 2000	18 Oct 2000	r 1–3: 18 Oct 2000 (r 2(a)) Remainder: 1 July 1999	—
20, 2002	21 Feb 2002	11 Mar 2002 (r 2 and gaz 2001, No. GN42)	—
47, 2002	7 Mar 2002	7 Mar 2002 (r 2)	—
90, 2002	9 May 2002	1 July 2002 (r 2)	—
149, 2002	27 June 2002	1 July 2002 (r 2)	—
200, 2002	29 Aug 2002	29 Aug 2002 (r 2)	—
352, 2002	20 Dec 2002	28 Dec 2002 (r 2)	—
41, 2003	27 Mar 2003	27 Mar 2003 (r 2)	—
195, 2003	31 July 2003	Note: disallowed by the Senate on 18 September 2003	—
11, 2004	20 Feb 2004	20 Feb 2004	—
147, 2004	25 June 2004	Sch 1: 1 July 2004 (r 2(a)) Sch 2: 1 Sept 2004 (r 2(b)) Remainder: 20 Sept 2004	—
197, 2004	1 July 2004	1 July 2004 (r 2)	—
348, 2004	8 Dec 2004	1 July 2004 (r 2)	—
403, 2004	23 Dec 2004	20 Sept 2004 (r 2)	—
55, 2005	4 April 2005 (F2005L00728)	1 July 2005 (r 2)	—

## Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
149, 2005	30 June 2005 (F2005L01676)	1 July 2005 (r 2)	—
218, 2005	7 Oct 2005 (F2005L02918)	Sch 1 (items 15–17): 8 Oct 2005 (r 2(a))	—
260, 2005	14 Nov 2005 (F2005L03449)	15 Nov 2005 (r 2)	—
330, 2005	20 Dec 2005 (F2005L04048)	Sch 1: 21 Dec 2005 Remainder: 1 Jan 2006	—
331, 2005	20 Dec 2005 (F2005L04026)	Sch 1: 21 Dec 2005 Remainder: 1 Jan 2006	—
188, 2006	17 July 2006 (F2006L02314)	18 July 2006 (r 2)	—
104, 2007	27 Apr 2007 (F2007L01123)	r 1–3 and Sch 1: 28 Apr 2007 (r 2(a)) r 4 and Sch 2: 30 Apr 2007 (r 2(b)) Remainder: 1 July 2007 (r 2(c))	—
203, 2007	29 June 2007 (F2007L01894)	1 July 2007 (r 2)	—
8, 2008	15 Feb 2008 (F2008L00375)	16 Feb 2008 (r 2)	—
14, 2009	6 Feb 2009 (F2009L00257)	r 1–3 and Sch 1: 7 Feb 2009 (r 2(a)) r 4 and Sch 2: 1 Apr 2009 (r 2(b))	—
45, 2009	16 Mar 2009 (F2009L00986)	17 Mar 2009 (r 2)	—
105, 2009	5 June 2009 (F2009L02157)	6 June 2009 (r 2)	—
23, 2010	26 Feb 2010 (F2010L00390)	27 Feb 2010 (r 2)	—
186, 2010	30 June 2010 (F2010L01813)	1 July 2010 (r 2)	—
236, 2010	22 July 2010 (F2010L02057)	23 July 2010	—
81, 2011	3 June 2011 (F2011L00938)	4 June 2011 (r 2)	—
148, 2011	5 Aug 2011 (F2011L01608)	6 Aug 2011 (r 2)	—
197, 2011	21 Oct 2011 (F2011L02101)	1 Nov 2011 (r 2 and F2011L02110)	—
277, 2011	9 Dec 2011 (F2011L02613)	1 Jan 2012 (r 2)	—

## Endnotes

### Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
1, 2012	13 Feb 2012 (F2012L00269)	14 Feb 2012 (s 2)	—
202, 2012	20 Aug 2012 (F2012L01709)	21 Aug 2012 (s 2)	—
315, 2012	11 Dec 2012 (F2012L02403)	12 Dec 2012 (s 2)	—
13, 2013	18 Feb 2013 (F2013L00208)	19 Feb 2013 (s 2)	—
61, 2013	30 Apr 2013 (F2013L00707)	Sch 1: 1 May 2013 (s 2 item 2) Sch 2 (items 1–5): 1 July 2013 (s 2 item 3)	—
278, 2013	16 Dec 2013 (F2013L02118)	Sch 1 (items 1–6): 17 Dec 2013 (s 2)	—
127, 2014	26 Aug 2014 (F2014L01133)	Sch 3 (item 1): 27 Aug 2014 (s 2)	—
79, 2015	1 June 2015 (F2015L00773)	Sch 1 (item 4): 17 Dec 2013 (s 2 item 3) Sch 1 (items 3, 5–7): 2 June 2015 (s 2 items 2, 4)	—
91, 2015	18 June 2015 (F2015L00840)	Sch 1 (items 31–33, 40–45): 1 July 2015 (s 2(1) item 2)	Sch 1 (items 40–45)
110, 2015	29 June 2015 (F2015L00968)	Sch 1 (item 2): 1 July 2015 (s 2(1) item 1)	—
156, 2015	9 Sept 2015 (F2015L01416)	Sch 1 (item 4): 10 Sept 2015 (s 2(1) item 1)	SLI No 155, 2015 (s 23)

Name	Registration	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (2016 Measures No. 1) Regulation 2016	26 Feb 2016 (F2016L00156)	Sch 3 (items 1–5): 27 Feb 2016 (s 2(1) item 1)	—
Treasury Laws Amendment (2016 Measures No. 2) Regulation 2016	9 May 2016 (F2016L00705)	Sch 1 (items 1, 2): never commenced (s 2(1) item 2)	—
Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017	27 Mar 2017 (F2017L00321)	Sch 1 (items 5–11), Sch 3 (items 1–6), Sch 8 (item 22) and Sch 10 (item 3): 28 Mar 2017 (s 2(1) items 2, 6, 7) Sch 8 (items 2–7): 1 July 2018 (s 2(1) item 5)	—
Treasury Laws Amendment (2017 Measures No. 1) Regulations 2017	21 June 2017 (F2017L00704)	Sch 1 (item 10): 1 July 2017 (s 2(1) item 1)	—

## Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Regulations 2018	7 Mar 2018 (F2018L00210)	Sch 2 (items 1–3): 8 Mar 2018 (s 2(1) item 3)	—
Treasury Laws Amendment (Putting Consumers First— Establishment of the Australian Financial Complaints Authority) Regulations 2018	24 Apr 2018 (F2018L00515)	Sch 3 (items 6, 7): 5 Mar 2022 (s 2(1) item 10)	—
Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2018	30 May 2018 (F2018L00676)	Sch 1 (items 1–4): 1 July 2018 (s 2(1) item 2)	—
Treasury Laws Amendment (Work Test Exemption) Regulations 2018	7 Dec 2018 (F2018L01682)	Sch 1 (items 1–4): 1 Jan 2019 (s 2(1) item 2)	—
Treasury Laws Amendment (AFCA Cooperation) Regulations 2019	5 Apr 2019 (F2019L00537)	Sch 1 (items 9–11): 6 Apr 2019 (s 2(1) item 1)	—
Superannuation (Unclaimed Money and Lost Members) and Other Laws (Repeal and Consequential Amendments) Regulations 2019	16 Dec 2019 (F2019L01618)	Sch 1 (item 2): 17 Dec 2019 (s 2(1) item 1)	—
Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020	16 Apr 2020 (F2020L00431)	Sch 1 (items 1–4): 17 Apr 2020 (s 2(1) item 1)	—
Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 2) 2020	30 Apr 2020 (F2020L00532)	Sch 1 (item 1): 1 May 2020 (s 2(1) item 1)	—
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020	29 May 2020 (F2020L00645)	Sch 1 (items 1–5): 30 May 2020 (s 2(1) item 1)	—
Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020	3 Sept 2020 (F2020L01133)	Sch 1 (item 1): 4 Sept 2020 (s 2(1) item 1)	—
Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020	14 Dec 2020 (F2020L01610)	Sch 1 (items 64, 65): 15 Dec 2020 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021	4 Mar 2021 (F2021L00199)	Sch 1 (item 2): 1 Apr 2021 (s 2(1) item 1)	—
Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021	1 Apr 2021 (F2021L00412)	Sch 1 (items 1–23): 2 Apr 2021 (s 2(1) item 1)	—
Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021	24 June 2021 (F2021L00833)	Sch 1 (items 1–4): 25 June 2021 (s 2(1) item 1)	—
Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021	17 Dec 2021 (F2021L01841)	Sch 1 (items 13, 14): 18 Dec 2021 (s 2(1) item 2)	—
Superannuation Legislation Amendment (Western Australia De Facto Superannuation Splitting) Regulations 2021	23 Dec 2021 (F2021L01893)	Sch 1 (items 155–169): 28 Sept 2022 (s 2(1) item 1)	—
Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022	3 Mar 2022 (F2022L00241)	Sch 1 (items 2–11): 1 Apr 2022 (s 2(1) item 1)	—
Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2022	1 Apr 2022 (F2022L00498)	Sch 1 (items 1–4): 2 Apr 2022 (s 2(1) item 1)	—
Treasury Laws Amendment (Allowing Commutation of Certain Income Streams) Regulations 2022	4 Apr 2022 (F2022L00511)	Sch 1 (items 3–5): 5 Apr 2022 (s 2(1) item 1)	—

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Tax Laws Amendment (2012 Measures No. 6) Act 2013	84, 2013	28 June 2013	Sch 8 (items 1–7): 1 July 2007 (s 2(1) item 3)	—
Coronavirus Economic Response Package Omnibus Act 2020	22, 2020	24 Mar 2020	Sch 10 (items 1–4) and Sch 13 (items 2–7): 25 Mar 2020 (s 2(1) items 6, 8)	—

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**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
r 1.01.....	rs 1999 No 13
r 1.02.....	rep LA s 48D
r 1.03.....	am No 294, 1997; No 308, 1997; No 192, 1998; No 13, 1999; No 20, 2002; No 47, 2002; No 149, 2002; No 352, 2002; No 11, 2004; No 147, 2004; No 197, 2004; No 55, 2005; No 218, 2005; No 331, 2005; No 104, 2007; F2017L00321; F2019L00537; F2021L01893
r 1.05.....	am 2007 No 104
r 1.05A.....	ad 2002 No 352
r 1.06.....	am 1999 No 13 and 315; 2002 No 200; 2004 No 197; 2007 No 104; 2012 No 315; F2016L00156; F2019L01618
r 1.07.....	am No 352, 2002; No 147, 2004; No 330, 2005; No 188, 2006; No 104, 2007; No 8, 2008; No 14, 2009; No 105, 2009; No 278, 2013; No 156, 2015; F2017L00321; F2022L00511
r 1.08.....	ad No 147, 2004 am No 403, 2004; No 104, 2007; No 105, 2009; No 278, 2013; F2017L00321; F2022L00511
r 1.08A.....	ad No 104, 2007 am No 105, 2009; F2017L00321
r 1.09.....	ad 2005 No 260
<b>Part 2</b>	
Division 2.1 .....	rep 2002 No 20
r 2.01.....	rep 2002 No 20
r 2.02.....	rep 2002 No 20
r 2.03.....	rep 2002 No 20
r 2.04.....	am 2002 No 47 rep 2002 No 20
r 2.05.....	rep 2002 No 20
Division 2.2 .....	rep F2021L01841
r 2.06.....	rep 2002 No 20
r 2.07.....	rep 2002 No 20
r 2.08.....	rep 2002 No 20
r 2.09.....	rs 2002 No 20 rep F2021L01841
r 2.10.....	rep 2002 No 20
Division 2.3 .....	rep 2002 No 20
r 2.11.....	rep 2002 No 20
r 2.12.....	am 1998 No 192 rep 2002 No 20

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## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r 2.13.....	rep 2002 No 20
r 2.14.....	rep 2002 No 20
r 2.15.....	am 1997 No 308 rep 2002 No 20
r 2.16.....	rep 2002 No 20
r 2.17.....	am 1997 No 308 rep 2002 No 20
r 2.18.....	rep 2002 No 20
<b>Division 2.3A</b>	
Division 2.3A.....	ad 2002 No 352
r 2.18A.....	ad No 352, 2002 am F2021L01841
r 2.18B.....	ad 2002 No 352
r 2.18C.....	ad 2002 No 352
r 2.18D.....	ad 2002 No 352
Division 2.4.....	rep 2002 No 20
r 2.19.....	rep 2002 No 20
r 2.20.....	rep 2002 No 20
Division 2.5.....	rep 2002 No 20
r 2.21.....	rep 2002 No 20
r 2.22.....	rep 2002 No 20
r 2.23.....	rep 2002 No 20
r 2.24.....	am 2002 No 47 rep 2002 No 20
r 2.25.....	rep 2002 No 20
r 2.26.....	rep 2002 No 20
r 2.27.....	am 2002 No 47 rep 2002 No 20
r 2.28.....	am 1999 No 13; 2002 No 47 rep 2002 No 20
r 2.29.....	am 1999 No 13; 2002 No 47 rep 2002 No 20
r 2.30.....	rep 2002 No 20
Division 2.6.....	rep 2002 No 20
r 2.31.....	rep 2002 No 20
r 2.32.....	rep 2002 No 20
r 2.33.....	rep 2002 No 20
r 2.34.....	am 2002 No 47 rep 2002 No 20
r 2.35.....	rs 1998 No 82 rep 2002 No 20

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
Division 2.7 .....	rep 2002 No 20
r 2.36.....	rep 2002 No 20
r 2.37.....	rep 2002 No 20
r 2.38.....	rep 2002 No 20
r 2.39.....	rep 2002 No 20
r 2.40.....	rep 2002 No 20
r 2.41.....	am 1997 No 308 rep 2002 No 20
r 2.42.....	rep 2002 No 20
r 2.43.....	am 1999 No 13 rep 2002 No 20
r 2.44.....	am 1997 No 308 rep 2002 No 20
Division 2.8 .....	rep 2002 No 20
r 2.45.....	rep 2002 No 20
r 2.46.....	rep 2002 No 20
r 2.47.....	rep 2002 No 20
Part 2A.....	ad 2002 No 149 rep 2004 No 147
r 2A.01.....	ad 2002 No 149 rep 2004 No 147
r 2A.02.....	ad 2002 No 149 rep 2004 No 147
r 2A.03.....	ad 2002 No 149 rep 2004 No 147
r 2A.04.....	ad 2002 No 149 rep 2004 No 147
r 2A.05.....	ad 2002 No 149 rep 2004 No 147
r 2A.06.....	ad 2002 No 149 rep 2004 No 147
r 2A.07.....	ad 2002 No 149 rep 2004 No 147
<b>Part 3</b>	
<b>Division 3.1</b>	
r 3.01.....	am 1997 No 308; 1999 No 13; 2007 No 104; 2009 No 14
<b>Division 3.2</b>	
r 3.05.....	am 2002 No 352; 2005 No 331; 2011 No 148
r 3.06A.....	ad 1997 No 308
r 3.06B.....	ad 1997 No 308
<b>Division 3.3</b>	
r 3.07.....	am 2002 No 20

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r 3.09.....	am 2002 No 20
r 3.12.....	am 1999 No 315; 2002 No 200
<b>Part 3A</b>	
Part 3A.....	ad No 61, 2013
r 3A.01.....	ad No 61, 2013
r 3A.02.....	ad No 61, 2013
r 3A.03.....	ad No 61, 2013
<b>Part 4</b>	
<b>Division 4.1</b>	
<b>Subdivision 4.1.1</b>	
r 4.01.....	am No 150, 1997; No 151, 1997; No 294, 1997; No 342, 1997; No 82, 1998; No 176, 1998 (md not incorp r 3.7); No 178, 1998; No 192, 1998; No 13, 1999; No 90, 2002; No 41, 2003; No 55, 2005; No 331, 2005; No 104, 2007; No 8, 2008; No 14, 2009; No 186, 2010; No 278, 2013; No 79, 2015; Act No 22, 2020; F2020L00431 ed C66
r 4.01AA.....	ad No 278, 2013 am F2017L00321
r 4.01A.....	ad 2008 No 8 am No 110, 2015; F2021L00199
r 4.01B.....	ad No 14, 2009 am No 202, 2012; No 79, 2015; F2017L00321; F2020L00431
r 4.02.....	rep 1998 No 176
r 4.03.....	rs 1998 No 176
<b>Subdivision 4.1.2</b>	
r 4.04.....	am 1997 No 294; 1998 No 176; 2005 No 218
r 4.05.....	am 1998 No 176
r 4.06.....	rep 1998 No 176
r 4.07.....	rep 1998 No 176
r 4.08.....	am 1998 No 176
<b>Subdivision 4.1.3</b>	
r 4.09.....	am 1998 No 176
r 4.10.....	rs 1998 No 176 am 1999 No 13; 2007 No 104
r 4.11.....	rep 1998 No 176
r 4.12.....	rs 1998 No 176
<b>Subdivision 4.1.4</b>	
r 4.13.....	am 1997 No 294; 1998 No 176; 2004 No 147; 2007 No 104
r 4.16.....	rep 1998 No 176
<b>Subdivision 4.1.5</b>	
r 4.17.....	rs 2005 No 331
r 4.17A.....	ad 1998 No 82

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r 4.17B.....	ad 2000 No 279 rs 2005 No 330
r 4.18.....	am 1998 No 82 and 176
<b>Division 4.2</b>	
r 4.19.....	am Act No 22, 2020 ed C61
r 4.20.....	rs 2002 No 352 am No 331, 2005; No 104, 2007; No 148, 2011; F2021L01893
r 4.20A.....	ad 2007 No 104
r 4.20B.....	ad Act No 22, 2020
<b>Division 4.3</b>	
r 4.21.....	am 1998 No 176; 2007 No 104; 2009 No 14
r 4.22.....	am 1998 No 176; 2007 No 104; 2009 No 14
r 4.22A.....	ad 1997 No 150 am 1997 No 342; 1998 No 192; 2007 No 104; 2011 No 197; F2018L00676; Act No 22, 2020
r 4.22B.....	ad Act No 22, 2020 am F2020L00431; F2020L00532; F2020L01133; F2020L01610
r 4.23.....	am 2007 No 104
r 4.23A.....	ad No 90, 2002 am No 41, 2003; No 104, 2007; No 14, 2009; F2017L00321
r 4.23B.....	ad No 14, 2009 am F2021L00412
r 4.24.....	am No 176, 1998; No 13, 1999; No 149, 2002; No 352, 2002; No 147, 2004; No 348, 2004; No 104, 2007; F2017L00321
r 4.26.....	am No 352, 2002; No 104, 2007; No 14, 2009; No 148, 2011; No 202, 2012; No 278, 2013; F2017L00321
r 4.27.....	am 1998 No 192
r 4.28.....	am 2002 No 352
<b>Division 4.4</b>	
r 4.30.....	am 1998 No 192
r 4.31.....	am 1999 No 13
r 4.32.....	am 1999 No 13; 2002 No 20
r 4.33.....	am 1999 No 13, 2002 No 20
<b>Division 4.4A</b>	
Division 4.4A.....	ad 2007 No 104
r 4.35.....	ad 2007 No 104
r 4.35A.....	ad 2007 No 104 rs No 61, 2013
r 4.35B.....	ad 2007 No 104 am No 13, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	rs No 61, 2013
r 4.35C .....	ad 2007 No 104
	rs No 13 and 61, 2013
r 4.35CA .....	ad No 13, 2013
	rep No 61, 2013
r 4.35D .....	ad 2007 No 104
	rs No 13 and 61, 2013
r 4.35E .....	ad 2007 No 104
	rs No 61, 2013
r 4.35F .....	ad No 61, 2013
r 4.35G .....	ad No 61, 2013
r 4.35H .....	ad No 61, 2013
r 4.35J .....	ad No 61, 2013
r 4.35K .....	ad No 61, 2013
r 4.35L .....	ad No 61, 2013
r 4.35M .....	ad No 61, 2013
r 4.35N .....	ad No 61, 2013
r 4.35P .....	ad No 61, 2013
<b>Division 4.5</b>	
Division 4.5 .....	ad 2005 No 331
r 4.37 .....	ad 2005 No 331
	am 2007 No 104
r 4.38 .....	ad 2005 No 331
	am 2007 No 104
r 4.39 .....	ad 2005 No 331
	am 2007 No 104
r 4.40 .....	ad No 331, 2005
	am F2021L01893
r 4.41 .....	ad No 331, 2005
	am No 188, 2006; No 104, 2007; F2021L01893
r 4.42 .....	ad 2005 No 331
	am 2007 No 104; No 13, 2013
r 4.43 .....	ad 2005 No 331
<b>Division 4.6</b>	
Division 4.6 .....	ad 2011 No 277
r 4.44 .....	ad 2011 No 277
r 4.45 .....	ad 2011 No 277
r 4.46 .....	ad 2011 No 277
r 4.47 .....	ad 2011 No 277
<b>Part 4AA</b>	
Part 4AA .....	ad No 13, 2013

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r 4AA.01 .....	ad No 13, 2013
r 4AA.02 .....	ad No 13, 2013
r 4AA.03 .....	ad No 13, 2013
	am No 61, 2013
<b>Part 4A</b>	
Part 4A .....	ad 2002 No 352
<b>Division 4A.1</b>	
r 4A.01 .....	ad No 352, 2002
	am F2021L01893
r 4A.01A .....	ad 2004 No 197
r 4A.02 .....	ad 2002 No 352
r 4A.03 .....	ad 2002 No 352
<b>Division 4A.2</b>	
Division 4A.2 heading .....	rs 2004 No 197
r 4A.04 .....	ad 2002 No 352
	am 2004 No 147 and 197; Act No 84, 2013
r 4A.05 .....	ad 2002 No 352
	am 2004 No 147 and 197; 2006 No 188; Act No 84, 2013
r 4A.06 .....	ad 2002 No 352
r 4A.07 .....	ad 2002 No 352
r 4A.08 .....	ad 2002 No 352
	rs 2004 No 197
	am 2004 No 147; Act No 84, 2013
r 4A.09 .....	ad 2002 No 352
r 4A.10 .....	ad No 352, 2002
	am F2021L00412
r 4A.11 .....	ad No 352, 2002
	am No 197, 2004; No 188, 2006; F2021L00412
r 4A.12 .....	ad 2002 No 352
r 4A.13 .....	ad No 352, 2002
	am No 13, 2013; F2021L00412
r 4A.14 .....	ad 2002 No 352
	am No 13, 2013
<b>Division 4A.3</b>	
r 4A.15 .....	ad 2002 No 352
	am 2004 No 147; Act No 84, 2013
r 4A.16 .....	ad 2002 No 352
r 4A.17 .....	ad 2002 No 352
r 4A.18 .....	ad 2002 No 352
	am 2004 No 147 and 197; Act No 84, 2013
r 4A.19 .....	ad 2002 No 352

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r 4A.20.....	ad No 352, 2002 am F2021L00412
r 4A.21.....	ad No 352, 2002 am No 197, 2004; F2021L00412
r 4A.22.....	ad No 352, 2002 am No 197, 2004; F2021L00412
r 4A.23.....	ad 2002 No 352 am 2004 No 197; No 13, 2013
r 4A.24.....	ad 2002 No 352 am 2004 No 197; No 13, 2013
<b>Division 4A.4</b>	
r 4A.25.....	ad 2002 No 352 am 2004 No 197; 2007 No 104
r 4A.26.....	ad 2002 No 352 rep 2004 No 197
r 4A.27.....	ad No 352, 2002 am No 147, 2004; No 197, 2004; No 13, 2013; Act No 84, 2013; F2021L00412
r 4A.28.....	ad No 352, 2002 am No 147, 2004; No 197, 2004; No 13, 2013; Act No 84, 2013; F2021L00412
Division 4A.5.....	ad 2002 No 352 rep 2004 No 197
r 4A.29.....	ad 2002 No 352 rep 2004 No 197
r 4A.30.....	ad 2002 No 352 rep 2004 No 197
r 4A.31.....	ad 2002 No 352 rep 2004 No 197
r 4A.32.....	ad 2002 No 352 rep 2004 No 197
<b>Part 5</b>	
<b>Division 5.1</b>	
Division 5.1 heading.....	ad No 61, 2013
r 5.02.....	am F2022L00241
r 5.03.....	am No 294, 1997; No 149, 2002; No 352, 2002; No 11, 2004; No 147, 2004; No 104, 2007 rs No 104, 2007 am No 23, 2010; No 91, 2015; F2017L00321; F2018L00210; F2018L01682; F2020L00645; F2022L00241
<b>Division 5.2</b>	
Division 5.2 heading.....	ad No 61, 2013
r 5.04.....	ad No 61, 2013
r 5.05.....	ad No 61, 2013

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r 5.06.....	ad No 61, 2013
r 5.07.....	ad No 61, 2013 am No 127, 2014
r 5.08.....	ad No 61, 2013
r 5.09.....	ad No 61, 2013
r 5.10.....	ad No 61, 2013
<b>Part 6</b>	
<b>Division 6.1</b>	
r 6.01.....	am 1998 No 192
r 6.02.....	am 1998 No 192
r 6.03.....	am 1998 No 192
<b>Division 6.2</b>	
r 6.05.....	rep F2021L00412
r 6.06.....	rep F2021L00412
r 6.07.....	rep F2021L00412
<b>Division 6.3</b>	
Division 6.3 heading.....	am No 192, 1998
r 6.08.....	am No 192, 1998
r 6.09.....	rep No 315, 1999
<b>Division 6.3A</b>	
Division 6.3A.....	ad F2019L00537
r 6.10A.....	ad F2019L00537
<b>Division 6.4</b>	
r 6.12.....	am No 192, 1998; No 20, 2002; F2021L00412
r 6.14.....	rep F2018L00515
r 6.16A.....	ad 2005 No 149
r 6.17.....	rs 2002 No 352
r 6.18.....	am 1998 No 192
r 6.20.....	rep 1998 No 192
r 6.21.....	am 1997 No 242 rep 1998 No 192
<b>Part 7</b>	
Part 7.....	ad No 13, 2013
r 7.1.....	ad No 13, 2013
r 7.2.....	ad No 79, 2015
r 7.3.....	ad F2016L00156 ed C54
r 7.4.....	ad F2017L00321 ed C55
r 7.5.....	ad F2018L00515

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r 7.6.....	ad F2018L00676 ed C57
r 7.7.....	ad F2018L01682
r 7.8.....	ad F2019L00537
r 7.9.....	ad F2020L00645
r 7.10.....	ad F2021L00412 ed C68
r 7.11.....	ad F2020L01610
r 7.12.....	ad F2022L00241
<b>Schedule 1</b>	
Schedule 1 heading.....	rs No 330, 2005
Schedule 1.....	am No 330, 2005; No 45, 2009; No 105, 2009; No 236, 2010; No 81, 2011; No 1, 2012; Act No 22, 2020; F2021L00833; F2022L00498
<b>Schedule 1A</b>	
Schedule 1A.....	ad No 330, 2005 am No 45, 2009; No 105, 2009; No 236, 2010; No 81, 2011; No 1, 2012; Act No 22, 2020; F2021L00833; F2022L00498
<b>Schedule 2</b>	
Schedule 2 heading.....	rs No 8, 2008
Schedule 2.....	am No 150, 1997; No 151, 1997; No 342, 1997; No 192, 1998; No 90, 2002; No 41, 2003; No 55, 2005; No 104, 2007; No 8, 2008; No 14, 2009; No 202, 2012; No 278, 2013; No 79, 2015; F2017L00321; F2017L00704; F2018L00676; Act No 22, 2020; F2021L00412
Schedule 3.....	ad No 90, 2002 am No 331, 2005 rep No 14, 2009
<b>Schedule 4</b>	
Schedule 4.....	ad No 147, 2004 am No 330, 2005; No 45, 2009; No 105, 2009; No 236, 2010; No 81, 2011; No 1, 2012; Act No 22, 2020; F2021L00833; F2022L00498
<b>Schedule 5</b>	
Schedule 5.....	ad No 104, 2007 am No 45, 2009; No 105, 2009; No 236, 2010; No 81, 2011; No 1, 2012; Act No 22, 2020; F2021L00833; F2022L00498

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