Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4) 2004 No. 148

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 148

Issued by authority of the Minister for Revenue and Assistant Treasurer

Retirement Savings Accounts Act 1997
Superannuation Industry (Supervision) Act 1993
Income Tax Assessment Act 1936
Corporations Act 2001

Retirement Savings Accounts Amendment Regulations 2004 (No. 2)
Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4)
Income Tax Assessment Amendment Regulations 2004 (No. 4)
Corporations Amendment Regulations 2004 (No. 5)

The purpose of the Regulations is to amend the *Retirement Savings Account Regulations 1997,* the *Superannuation Industry (Supervision) Regulations 1994,* the *Income Tax Regulations 1936* and the *Corporations Regulations 2001* in order to implement Government policy initiatives announced in the 25 February 2004 statement 'A More Flexible and Adaptable Retirement Income System'.

The announced initiatives broaden the availability of superannuation, provide more choices in financing retirement income, make superannuation more adaptable to changing work arrangements and improve the integrity of the system.

The initiatives include: removing the work test for superannuation contributions before age 65; simplifying the work test and cashing superannuation benefits rules for those aged 65 to 75; changes to cashing superannuation benefits for people over 75; increased choice and competition in the retirement income streams market; and preservation of rolled-over employer eligible termination payment benefits.

Retirement Savings Accounts Amendment Regulations 2004 (No. 2)

Subsection 200(1) of the *Retirement Savings Accounts Act 1997* (the RSA Act) provides in part that the Governor-General may make regulations prescribing matters required or permitted by the RSA Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the RSA Act.

The *Retirement Savings Accounts Regulations 1997,* among other matters, set out the contribution and cashing rules for Retirement Savings Account providers. They also contain the preservation of benefits and the rules relating to the payment of pensions for the purposes of the RSA Act.

The Regulations remove the requirement for those aged under 65 contributing to superannuation to have worked at least 10 hours in a week at some time in the last two years, simplify the work test and cashing rules for those aged 65 to 74, change the rules applying to the cashing of superannuation benefits for people aged over 75 and preserve employer eligible termination payments that are rolled over into a Retirement Savings Account (RSA). The

Regulations also extend the definition of pension to include a new class of market linked pension.

Details of the Regulations are set out in Attachment A.

Regulations 1 to 3 and Schedule 1 commence on 1 July 2004, Schedule 2 commences on 1 September 2004 and Schedule 3 commences on 20 September 2004.

Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4)

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provides in part that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the SIS Act.

The *Superannuation Industry (Supervision) Regulations 1994,* among other matters, set out the contribution and cashing rules for superannuation funds. They also contain the rules relating to the preservation of benefits and the payment of pensions and annuities for the purposes of the SIS Act.

The Regulations remove the requirement for those aged under 65 contributing to superannuation to have worked at least 10 hours in a week at some time in the last two years, simplify the work test and cashing rules for those aged 65 to 74, change the rules applying to the cashing of superannuation benefits for people aged over 75 and preserve employer eligible termination payments that are rolled over into a superannuation fund.

The Regulations will also extend the definition of pension and annuity to include a new class of market linked income stream and align certain features of the existing complying life expectancy income stream with those of the new market linked income stream.

Details of the Regulations are set out in Attachment B.

Regulations 1 to 3 and Schedule 1 commence on 1 July 2004, Schedule 2 commences on 1 September 2004 and Schedule 3 commences on 20 September 2004.

Income Tax Amendment Regulations 2004 (No. 4)

Subsection 266(1) of the *Income Tax Assessment Act 1936* (the Tax Act) provides in part that the Governor-General may make regulations not inconsistent with the Tax Act or the *Income Tax Assessment Act 1997* (the 1997 Act) prescribing all matters which by the Tax Act or the 1997 Act are permitted or required to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Tax Act.

The *Income Tax Regulations 1936,* among other matters, specify the pensions and annuities that meet the pension and annuity standards for the purposes of the Tax Act. These products are commonly referred to as complying pensions and annuities. The Regulations ensure that a new class of market linked income stream is treated as meeting the pension and annuity standards so that these products will be eligible for assessment against the higher pension reasonable benefit limit (RBL). The RBL system imposes a lifetime limit on the amount of superannuation benefits which can attract concessional tax treatment.

Details of the Regulations are set out in Attachment C.

The Regulations commence on 20 September 2004.

Corporations Amendment Regulations 2004 (No. 5)

Subsection 1364(1) of the *Corporations Act 2001* (the Corporations Act) provides in part that the Governor-General may make regulations prescribing matters required or permitted by the Corporations Act to be prescribed by regulations, or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Corporations Act.

The *Corporations Regulations 2001* (Corporations Regulations)*,* among other matters, set out certain requirements in relation to child superannuation account transactions. The Regulations remove the special disclosure and cooling-off rights, and decision making rules which relate to child superannuation accounts view of the intention to cease issuing new child superannuation accounts.

The Corporations Agreement 2002 requires the Commonwealth to consult members of the Ministerial Council for Corporations before making amendments to the Corporations Regulations. The responsible Ministers of the States, the Northern Territory and the Australian Capital Territory on the Ministerial Council for Corporations have been consulted regarding the Regulations.

The Corporations Act otherwise specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Ministerial Council for Corporations has been consulted about the Regulations and no adverse comments have been made.

Details of the Regulations are set out in Attachment D.

Regulations 1 to 3 and Schedule 1 commence on 1 July 2004 and regulation 4 and Schedule 2 commence on 1 October 2004.

The varying start dates allow for the orderly withdrawal of child superannuation accounts from the market.

REGULATION IMPACT STATEMENT

The Government announced a number of new retirement income initiatives on 25 February 2004 in its statement 'A more flexible and adaptable retirement income system'. These initiatives include changes to the superannuation contribution and payment rules, the preservation of rolled over employer eligible termination payments (ETPs) and to superannuation complying income streams.

Simplifying the work test for contributions and payment of benefits for members aged 65 to 74

Policy objective

The objective in modifying the work test provisions is to:

- make the test more consistent with current and future work trends for people in this age group who pay prefer to work on an irregular part time basis than every week; and

- reduce compliance costs for superannuation providers associated with administering the current superannuation work tests.

Implementation options

Option 1

Amend the Superannuation Industry (Supervision) Regulations 1993 and Retirement Savings Accounts Regulations 1997 to change the 10 hours a week work test for people aged 65 to 74 to an annual test.

Option 2

Remove the work test completely for people below the age of 75.

Option 3

Do not amend the above mentioned legislation and retain the status quo.

Assessment of impacts

Impact group identification

The superannuation industry is required to administer the current 10 hour a week work test in accordance with circulars issued by the Australian Prudential Regulation Authority. This requires superannuation providers having to monitor and verify the employment status of members aged 65 and more at least on a monthly basis.

The work test also imposes burdens and costs on members over the age of 65 in responding to superannuation providers' monitoring requirements - for example, completing an employment status declaration.

The Productivity Commission Review of the *Superannuation Industry (Supervision) Act 1993* and Certain other Superannuation Acts (the Productivity Commission review) noted that these compliance costs would tend to be larger for industry and public offer (retail) funds than for

corporate funds and funds with less than 5 members, given the former group's larger member bases and more distant relationship between trustees and members.

Industry and retail funds account for approximately 44 per cent of superannuation assets under management and 80 per cent of the total number of superannuation accounts. Statistics are not available on the proportion of people who are over 65 and still have money in a superannuation fund or Retirement Savings Account (RSA).

Analysis of costs / benefits

Options 1 and 2 should benefit individuals who have more intermittent work arrangements. Currently a person who only works for three months of the year must take their benefits out of the system and cannot make superannuation contributions, as they do not satisfy the 10 hours a week test. These options accommodate these more flexible work arrangements.

Individuals are also likely to benefit from Option 1 as they would only have to respond to requests from their superannuation provider about their employment status once instead of 12 times a year. Option 2 would remove this requirement completely.

Option 1 should also reduce compliance costs for superannuation providers as employers will only have to confirm a member's work status annually instead of monthly. The change to annual monitoring is not expected to impose any new costs as funds are likely to follow the same procedures they already have in place to do monthly monitoring.

Option 2 would mean that providers would never have to check the work status of a member aged 65 to 74 and would completely remove these costs. However, removing the work test for people aged over 65 is inconsistent with superannuation's intended role as retirement vehicle. Without a work test people could abuse the taxation concessions provided to superannuation.

Option 3 provides no benefits to individuals or superannuation providers. Evidence given to the Productivity Commission review indicated that administering the current work test imposes costs on businesses through the need to monitor and verify the employment status of members over the age of 65 every month.

As an example of the magnitude of these costs, the Productivity Commission received evidence from a firm administering 21,000 accounts for members aged over 65 that the annual cost of monitoring the work status of these members amounted to around $77,000 per annum.

Other survey evidence presented to the Productivity Commission indicated an average annual cost of around $12,000 for individual funds associated with monitoring the current work test for members aged over 65.

Consultation

In 2002, the Government reviewed the operation of the work test for contributions and compulsory cashing for superannuation fund members aged 65 and over. The Government consulted with the superannuation industry about the review in general, and certain particular options for reform. Industry organisations generally expressed support for a move to annual monitoring of the workforce status of members over 65.

Targeted confidential consultation with the superannuation industry on implementation issues associated with this measure has taken place following its announcement. As a result of these consultations the Government agreed to have a contribution test where a person must have worked at least 40 hours in a consecutive 30 day period and a payment test of 240 work hours in a financial year.

Conclusion and recommended option

Option 1 is preferred as it reduces compliance costs for the superannuation industry. These costs savings would not be attained under Option 3.

Option 2 is not preferred as there is a need to maintain a work test for integrity purposes.

Compulsory cashing of benefits at age 75

Policy objective

The objective of this measure is to ensure that money saved within the superannuation system is used for retirement income and not for estate planning purposes.

Implementation options

Option 1

Amend the Superannuation Industry (Supervision) Regulations 1993 and Retirement Savings Accounts Regulations 1997 to require people who reach age 75 from 1 July 2004 to start drawing down on their superannuation as either a lump sum or an income stream.

Option 2

Extend the changes to include anyone who is aged 75 or over as at 1 July 2005.

Option 3

Do not amend the above mentioned legislation and retain the status quo.

Impact group identification

Option 1, will affect anyone who turns 75 from 1 July 2004 onwards and has yet to access their superannuation benefits. This is expected to only affect a very small number of individuals each year as the overwhelming majority of people take their superannuation benefits before they turn age 75. Option 2 would impact on more people as it would also include people who are aged 75 or over but can currently keep their benefits in a superannuation fund as they meet the 30 hours a week test.

The superannuation industry is currently required to administer this work test in accordance with circulars issued by the Australian Prudential Regulation Authority. This involves superannuation providers frequently monitoring and verifying the employment status of members once they reach the age of 75.

Analysis of costs / benefits

Option 1 requires superannuation providers to advise their members they must commence to take their benefits once they turn 75. This should reduce administrative costs for superannuation providers compared to the current rules which require them to determine on a monthly basis if the person had worked at least 30 hours a week. Under Option 1 they will only have to advise the member once that they must commence to take their benefits and get the member to advise them if they wish to take their benefit as an income stream or lump sum.

Superannuation providers will still be required to monitor the employment status of people who were at least age 75 on 30 June 2004 and remain a member of the fund. However, the number of people that fall into this category will reduce over time as people either stop working 30 hours a week or die.

Option 2 would remove the need for ongoing monitoring of the people who were at least 75 on 30 June 2004 therefore it would reduce costs in relation to these members compared to Option 1. However, Option 2 removes the member's current ability to retain their benefits within a superannuation fund or RSA if they are working 30 hours a week.

There would be no benefits to providers from adopting Option 3 as it retains the status quo. Option 3 also does not satisfy the objective of the measure which is to ensure superannuation benefits are used for retirement income purposes.

Consultation

Consultations prior to the decision making stage in relation to this measure was not regarded as appropriate as it is an integrity measure.

Targeted confidential consultation with the superannuation industry on implementation issues associated with this measure has taken place following its announcement.

Conclusion and recommended option

Option 1 and 2 will reduce compliance costs for the superannuation industry compared to the current rules. Option 3 would not reduce costs or satisfy the policy objective.

Option 2 would remove a current right for certain members to maintain benefits in superannuation. Therefore, Option 1 is preferred.

Preservation of rolled-over employer eligible termination payments (ETPs)

Policy objective

The policy objective of this measure is to treat employer ETPs (such as a redundancy benefit) that are rolled over to a superannuation fund or RSA in a consistent manner as other monies invested in superannuation which must be preserved. This will ensure superannuation savings are used for their intended purpose of supporting retirement income.

Implementation options

Option 1

Amend the Superannuation Industry (Supervision) Regulations 1993 and Retirement Savings Accounts Regulations 1997 to require employer ETPs that are rolled over into a superannuation fund or RSA from 1 July 2004 to be preserved. This will mean that people will be unable to withdraw these benefits until they have reached their preservation age and retired. Part of the purpose of a redundancy benefit is to provide an employee with a source of money on which to draw while looking for work. The change would not interfere with this purpose, as employees would be free to choose whether to take the ETP in cash or roll it over into superannuation.

Option 2

Extend the changes to anyone who has previously rolled over an employer ETP. This will mean that that anyone who has ever rolled over an employer ETP, even before 1 July 2004, cannot access these benefits until preservation age.

Option 3

Do not amend the above mentioned legislation and retain the status quo.

Impact group identification

Option 1 will affect employees who receive an employer ETP from 1 July 2004 and wishes to roll that benefit over to a superannuation fund. Option 2 would affect anyone who made a decision to roll over an employer ETP before 1 July 2004.

Options 1 and 2 will require superannuation providers to preserve amounts which would have previously been unpreserved. Option 3 would have no impact on individuals or superannuation providers.

Analysis of costs / benefits

Option 1 is expected to simplify the superannuation preservation rules and reduce compliance costs for providers by avoiding the need for separate classification of rolled-over employer ETPs. At present, these payments need to be identified and recorded separately in funds' systems, both for purposes of reporting member benefits and for future cashing purposes. Under Option 1, a rolled over employer ETP would be preserved like a new contribution so the provider would follow their current guidelines. Therefore, it is not expected to impose additional costs on providers.

Option 2 may impose additional upfront costs on providers as they would have to distinguish between unpreserved benefits that relate to employer ETPs and those which don't. It would also retrospectively disadvantage people who have already rolled over their employer ETP on the basis they could access these benefits at any time.

Option 3 does not meet the policy objective to ensure consistency between employer ETPs and other monies invested in superannuation.

Consultation

Consultations prior to the decision making stage in relation to this measure was not regarded as appropriate as it is an integrity measure.

Targeted confidential consultation with the superannuation industry on implementation issues associated with this measure has taken place following its announcement.

Conclusion and recommended option

Option 1 and 2 are the only options which satisfy the policy objective to ensure superannuation savings are used for their intended purpose of supporting retirement income. Therefore, Option 3 is not preferred.

Option 2 has the potential to impose additional costs on superannuation providers as well as retrospectively disadvantaging individuals. Therefore, Option 1 is preferred.

Changes to retirement income streams

Policy objective

The objectives of this measure are to improve the operation of the complying income streams market by:

- providing consumers with increased choice of income stream products and
- improving competition among income stream providers.

Implementation options

Option 1

Amend the Superannuation Industry (Supervision) Regulations 1993, Retirement Savings Accounts Regulations 1997 and Income Tax Regulations 1936 to introduce a new class of market linked complying income stream which will qualify for the higher pension Reasonable Benefit Limit (RBL) and an exemption from the social security assets test.

The new market linked income stream (MLIS) will be similar in most respects to existing complying income streams, except that income payments will not be guaranteed. The MLIS is designed so that a person will fully exhaust the capital invested in the income stream over the term of the product.

The term of the new MLIS will be based on the purchaser's life expectancy at the age at which they purchase the product, with an option to set the term within a range between life expectancy at the age of purchase and life expectancy at an age 5 years younger. In the case of a couple, there will also be an option to choose a term based on the longer of the two spouses' life expectancies.

This Option will also align certain features of the existing complying life expectancy income stream with those of the market linked income stream. Aligning the rules relating to term and purchase age for the existing complying life expectancy income stream with those for the new MLIS will enable the two products to compete on an even footing, and will allow retirees to more readily compare the two products on the basis of their fundamental characteristics.

Finally, this Option will increase the maximum guarantee period for complying lifetime income streams to the lesser of life expectancy or 20 years. This will allow lifetime products to compete more effectively with life expectancy products (including the MLIS) by offering annuitants a similar level of protection against forfeiture of capital in the event of early death.

Option 2

Do not amend the above mentioned legislation and retain the status quo.

Impact group identification

The above changes to the regulation of complying income streams will impact on income stream providers (including superannuation funds, RSAs and annuity providers such as life insurance companies), retirees and the Government.

Analysis of costs / benefits

Income stream providers

Because of the current restriction that payments from complying income streams must be guaranteed many superannuation funds are unable to provide a complying income stream. Removing this restriction will open up the market to more participants.

The need to provide a guarantee has also meant that income stream providers invest premiums for these products in low risk, low yielding fixed interest securities. This creates a distortion in the investment market which prevents investments from being allocated across asset classes in the way they would be in the absence of the restriction.

Removing this restriction will allow a new class of market linked complying income stream to be offered. This will increase competition between providers of complying income streams and lead to a more efficient allocation of pension investments across different asset classes (eg fixed interest, equities, property).

While the MLIS will be a new product with payment rules which are different from other income stream products, providers will be free to choose whether to offer the new product. Most retail or public offer pension providers currently offer account-based income stream products in the form of allocated income streams. The regulatory arrangements applying to MLIS will be similar or the same as allocated income streams in some key respects.

- The capital value of a MLIS for tax purposes will be determined in the same way as an allocated pension - that is, with reference to the products purchase price.

- An income tax exemption will apply to earnings on a fund's assets supporting a MLIS in the same way that it does for allocated income streams and for pensions and annuities generally.

- The drawdown, or payment arrangements for the MLIS involve a single annual drawdown amount based on the product's account balance and a set of prescribed payment factors. These drawdown rules are relatively straightforward and are similar to those which currently apply to allocated income streams, with the exception that allocated products allow some discretion to choose annual income between minimum and maximum limits.

Given these similarities, the system changes required for providers to accommodate the new MLIS should be minimal. It is envisaged that the new product will be offered by public offer superannuation funds, as well as some industry and self-managed superannuation funds. Life offices may also choose to offer the MLIS alongside their existing guaranteed income stream products.

Changing the term rules that apply to existing complying life expectancy income streams will require providers of these products to offer the same term options as will be available for the MLIS. Given that providers of life expectancy products are currently required to offer a choice between a term of 15 years and a term equal to the purchaser's life expectancy (if that is greater than 15 years), the required changes to systems should not be significant.

Removing the restriction on the age at which complying life expectancy products can be purchased will also remove any costs for income stream providers associated with verifying the age of purchasers.

Increasing the maximum guarantee period for complying lifetime income streams will not disadvantage providers as they will have the choice of whether to offer the longer guarantee period or not. In any case, providers of lifetime pensions will tend to offset the impact of longer guarantee periods through lower income payments. The change should allow lifetime income streams to compete more effectively with life expectancy products (including the MLIS) by offering annuitants a similar level of protection against loss of capital in the event of early death

(life expectancy income stream products allow a return of remaining capital to the recipient's estate if they die before the term of the product has expired).

Retirees

Because MLIS will be supported by higher yielding diversified assets rather than low yielding fixed interest assets, investment returns from market linked income streams will tend to be higher on average than for existing complying income streams. However, in any one year investment returns from a MLIS could fall below those from existing complying products, and in some years could be negative.

Compared with existing complying products, market linked income streams involve a transfer of investment risk from the product provider to the retiree. Purchasers can choose whether to accept this higher risk as a trade off for potentially higher investment returns over time.

The risk profile of a MLIS will depend, as it does with allocated income streams, on the composition of the underlying asset portfolio. Providers of allocated income streams generally offer a range of different asset compositions with different risk profiles. It is expected that similar choices will be offered in respect of the MLIS. Purchasers should therefore be able to choose an asset mix which is best suited to their individual circumstances and risk tolerance.

Currently, individuals entering retirement can be forced to sell out of diversified assets when markets are low if they choose to move into a complying income stream. Where this occurs, retirees may not benefit from any subsequent gains when the investment market recovers. Market linked income streams will allow retirees to maintain their allocation of investments between asset classes when moving from the accumulation phase to the drawdown phase of superannuation.

Under the current rules, the maximum term available for complying life expectancy products is the purchaser's life expectancy at age of purchase. Aligning the term rules for existing complying life expectancy income stream with those of the new market linked income stream will give retirees the option of choosing a longer term. Given that 50 per cent of people on average will outlive their statistically estimated life expectancy, the option of a longer term will offer a greater degree of income certainty for retirees who expect to live longer than the average.

Aligning the term rules for the guaranteed and market linked life expectancy products will also enable retirees to more readily compare the two products on the basis of their fundamental characteristics.

Increasing the maximum guarantee period for lifetime products will benefit consumers by allowing them to choose a lifetime income stream which reduces the potential for forfeiture of capital in the event of early death.

Government

Compared with existing complying income stream products, market linked income streams will involve some degree of volatility in income. Through the operation of the social security income test this will tend to translate into some volatility in age pension payments at the margin. This volatility already occurs to some extent with allocated pensions as income can fluctuate according to the market value of the investments making up the account balance.

The changes to retirement income streams outlined above, in conjunction with the changes to the social security assets test treatment of complying income streams, are expected to lead to an overall budgetary saving.

Consultation

Targeted confidential consultation with the superannuation industry on implementation issues associated with this measure has taken place following its announcement.

Issues relating to the MLIS were canvassed in the Senate Select Committee on Superannuation's report "Superannuation and standards of living in retirement" and "Planning for Retirement". A number of submissions to these inquiries called for an extension of complying status to a MLIS type product.

Conclusion and recommended option

The measures relating to retirement income streams are designed to improve the operation of the complying income streams market, including by removing a specific distortion which prevents pension investments from being allocated in an efficient way across asset classes and restricts competition among income stream providers. Option 1 is considered to be the only suitable method for achieving this objective.

Details of the *Retirement Savings Accounts Amendment Regulations 2004 (No. 2)*

Regulation 1 specifies the name of the regulations as the *Retirement Savings Accounts Amendment Regulations 2004 (No. 2)*.

Regulation 2 provides that regulations 1 to 3 and Schedule 1 commence on 1 July 2004, Schedule 2 commences on 1 September 2004 and Schedule 3 commences on 20 September 2004. The commencement dates for Schedules 1 and 3 reflect the Government's announcement of 25 February 2004. The commencement date for Schedule 2 will provide for a period of time in which RSA institutions can issue new child accounts before they are superseded by the removal of the work test for superannuation contributions before age 65.

Regulation 3 provides that Schedule 1, Schedule 2 and Schedule 3 amend the *Retirement Savings Accounts Regulations 1997* (the RSA Regulations).

Schedule 1 - Amendments commencing you on 1 July 2004

Removing the work test for superannuation contributions before age 65

Items 1, 2, 9, 10 and 11

Subregulation 5.03(1) of the RSA Regulations sets out the rules under which an RSA institution may accept contributions made in respect of an RSA holder under the age of 65. Generally an RSA holder under the age of 65 must have worked at least 10 hours in a week sometime in the past two years in order to make superannuation contributions.

The Regulations will remove the work test rules thereby allowing anyone under the age of 65 to make a superannuation contribution. This will mean that the exemptions to the work test rules are no longer necessary. These include eligible spouse contributions; child contributions; and contributions for people on authorised leave.

The Regulations will amend subregulation 1.03(1) to insert a definition of a 'child' and a definition of 'child contributions' **(Items 1 and 2)**. Definitions of a 'child' and 'child contributions' will still be necessary during the period that child accounts are withdrawn from the market place. The existing definition of 'child contributions' refers to the definition of 'child contributions' in paragraph 5.03(1)(d). The definition of 'child' is in existing subregulation 5.03(6). These provisions will also be amended to remove these definitions.

The Regulations will insert a new subregulation 5.03(1) into the RSA Regulations allowing anyone under the age of 65 to contribute to superannuation **(Item 9)**.

The Regulations will omit subregulation 5.03(2) because as a consequence of the new subregulation 5.03(1) a definition of 'authorised leave' will no longer be necessary **(Item 10)**.

The Regulations will remove the reference to paragraph 5.03(1)(d) in subregulation 5.03(2A) as a consequence of new subregulation 5.03(1) **(Item 11).**

Simplifying the work test and cashing rules for those aged 65 to 74

Items 4, 6, 8, 12, 13 and 14

The Regulations will simplify the rules relating to contributions made by RSA holders aged 65 to 74 and the cashing of their benefits from an RSA institution. The amendments reflect the changing work arrangements for people in this age group.

Currently, an individual aged 65 to 74 must work at least 10 hours in a week to be eligible to make contributions. Where an RSA holder fails this test the RSA institution must pay out the individual's benefits. This is considered too stringent and does not accommodate flexible working arrangements, which are likely to be preferred by mature workers.

The Regulations will amend subparagraphs 4.24(1)(a)(ii) and 4.24(2)(a)(ii) **(Items 4 and 6)** to simplify the cashing rules for individuals aged 65 to 74. An individual will only be required to have worked on a part-time equivalent level in order to prevent both the member-financed benefit and the employer-financed benefit from being cashed out from the Retirement Savings Account (RSA).

The Regulations will insert a new definition of 'part-time equivalent level' into the RSA Regulations **(Item 8)**. To be gainfully employed on a part-time equivalent level an individual must work at least 240 hours during the most recent financial year.

The Regulations will amend paragraphs 5.03(3)(b) and 5.03(4)(b) **(Items 12 and 13)** to simplify the contribution rules for contributions made into RSA institutions in respect of an RSA holder aged 65 to 69 and 70 to 74 respectively.

The Regulations will amend paragraph 5.03(3)(b) **(Item 12)** so that an RSA institution may accept contributions in respect of an RSA holder aged 65 to 69 years if the RSA holder has been gainfully employed on at least a part-time basis during the financial year in which the contribution is made.

The Regulations will amend paragraph 5.03(4)(b) **(Item 13)** so that an RSA institution may accept contributions made by an RSA holder aged 70 to 74 years for their benefit if the RSA holder has been gainfully employed on a part-time basis in the financial year in which the contribution is made.

The Regulations will insert a new definition of 'part-time basis' into the RSA Regulations **(Item 14)** in relation the Regulations and remove the definition of 'child' contained in subregulation 5.03(6) of the RSA Regulations.

An individual will be gainfully employed on a part-time basis where they work at least 40 hours in a period of not more than 30 consecutive days in that financial year. For example, a person who works 40 hours in a fortnight will be able to make superannuation contributions for the rest of the financial year.

Changes to cashing superannuation benefits for people aged over 75

Items 5 and 7

Substantial tax concessions are provided to superannuation to encourage people to save for their retirement. In order to ensure that superannuation is not specifically used for estate planning the Regulations will require RSA institutions to commence paying benefits to an RSA holder as soon as practicable after the RSA holder reaches the age of 75. RSA institutions will not need to pay post-65 employer-financed benefits to RSA holders over the age of 75 who still receive superannuation contributions under an industrial award.

The Regulations will substitute paragraphs 4.24(1)(b) and (c), and insert a new paragraph (d) to require the cashing of an RSA holder's benefits, not including post-65 employer-financed benefits where any of the following events occur **(Item 5)**:

- the RSA holder reached age 75 on 30 June 2004 and has not been gainfully employed at least 30 hours per week since 1 July 2004;

- the RSA holder reached age 75 and the previous condition does not apply;

- the RSA holder dies.

The Regulations will omit subparagraph 4.24(2)(b)(ii) of the RSA Regulations **(Item 7)**. An RSA institution will have to cash a member's post-65 employer-financed benefit irrespective of the RSA holder's employment status unless the employment results in mandated employment contributions.

Preservation of rolled-over employer eligible termination payment benefits

Item 3

Regulation 4.13 specifies the benefits in an RSA which are classified as unrestricted non-preserved benefits. These benefits are not preserved and can be withdrawn from the superannuation system at any time.

The definition of unrestricted non-preserved benefits includes employer eligible termination payments (ETPs) that are rolled over into an RSA. The Regulations will amend this definition so that only employer ETPs that are received by an RSA institution before 1 July 2004 are unrestricted non-preserved benefits. Employer ETPs which are received by an RSA institution after this date will be preserved.

Schedule 2 - Amendments commencing on 1 September 2004

Items 1 to 3

The Regulations will remove the decision making provisions, transitional provisions and application provisions specific to child superannuation accounts.

The Regulations will allow anyone under the age of 65 to contribute to superannuation from 1 July 2004. It will therefore no longer be necessary to specifically allow for the issuing of new child superannuation accounts.

The Regulations will remove all of the provisions in the RSA Regulations which give effect to child superannuation accounts. These provisions include limits on the amount of the contribution

that can be made on behalf of a child, decision making rules, issue of child accounts and applications to open a child superannuation account.

The changes will commence on 1 September 2004. This is consistent with the transitional rules in the *Corporations Amendment Regulations 2004 (No.)*, which allow funds to issue child accounts until 31 August 2004.

The Regulations will omit the definition of 'child', 'child account' and 'child contributions' from subregulation 1.03(1) of the RSA Regulations **(Item 1)**. Contributions on behalf of a child into an RSA will not be treated any differently to other contributions made by those under the age of 65. These definitions are no longer necessary as a result of the Regulation to omit Part 2A from the RSA Regulations.

The Regulations will omit Part 2A from the RSA Regulations **(Item 2)**. This part sets out the decision making provisions, application provisions and issue of child superannuation accounts.

The Regulations will omit subregulation 5.03(2A) **(Item 3)**. Subregulation 5.03(2A) restricts the amount of a superannuation contributions which can be made into an RSA on behalf of a child in a three year period. There will no longer be restrictions on the amount of superannuation contributions which can be made on behalf of a child.

Schedule 3 - Amendments commencing on 20 September 2004

The Government is introducing a new class of market linked complying income stream with effect from 20 September 2004. Complying income streams are those products which meet the pension and annuity standards contained in the *Income Tax Regulations 1936*. The Regulations contained in this Schedule will expand the definition of pension in the RSA Regulations to include the new product and to enable it to be offered by RSA providers.

Items 1 and 2

The Regulations will add a definition of life expectancy and a definition of a market linked pension to the RSA Regulations. A definition of life expectancy is needed for the purpose of determining the term over which the new market linked pension will be payable.

Item 3

The Regulations will insert a reference to new subregulation 1.07(3A) (see Item 4, below) to specify that a benefit in the form of a market linked pension meets the definition of a pension for purposes of the *Retirement Savings Accounts Act 1997*.

Item 4

This item will insert a new subregulation 1.07(3A) to set out the minimum requirements which will need to be satisfied for a pension to meet the standards of a market linked pension. These requirements include the term of the pension, the payment rules and the restrictions placed on the commutation and transfer of the pension.

Individuals who purchase a market linked pension will be able to choose the term of the pension from within a specified range. The term will need to be a period of whole years no less than the primary beneficiary's life expectancy on the commencement day of the pension (rounded up to the next whole number) and no greater than the primary beneficiary's life expectancy on the commencement day calculated as if they were 5 years younger (rounded up to the next whole number). For example, a male aged 65 could choose a term of a whole number of years no less than their life expectancy at age 65 and no greater than their life expectancy at age 60.

In the case of a pension that reverts to a spouse on the death of the primary beneficiary, there will be a further option to base the term on the longer of the two spouses' life expectancies. For example, a 65 year old male with a 60 year old spouse will have the option of basing the term of the pension on the younger spouse's life expectancy. Under this option, the term will need to be a period of whole years no less than the spouse's life expectancy on the commencement day of the pension (rounded up to the next whole number) and no greater than the spouse's life expectancy on the commencement day calculated as if the spouse were 5 years younger (rounded up to the next whole number).

Payments from a market linked pension will need to be made at least annually and in accordance with the payment rules contained in Schedule 4 of the Regulations. However, where the pension commences on or after 1 June in a financial year, a payment will not have to be made in the first year. The payment rules for market linked pensions are described under Item 12.

The Regulations will stipulate that a market linked pension can only be commuted in specified circumstances. One of the conditions will allow commutation of a market linked pension on the death of the primary or reversionary beneficiary where a lump sum is paid to either person's legal personal representative, to one or more of their dependants or, where reasonable enquiries have failed to identify either a legal personal representative or a dependant, to another individual. This commutation condition will also allow payment of a new pension on the death of the primary or reversionary beneficiary to a dependant of either person. This will mean that, on the death of the recipient of a market linked pension, the remaining account balance can be paid out in lump sum or pension form.

The ability to commute a market linked pension on death will be restricted in cases where the term of the pension is based on the longer of two spouses' life expectancies. In such cases, the Regulations will allow commutation on death (whether to pay a lump sum or a pension) only after the death of both spouses.

Commutation will also be permitted: within six months of the market linked pension commencing (provided that it was not funded from the commutation of another complying income stream); to purchase another complying income stream; to pay a superannuation contributions surcharge; or to give effect to a payment split under family law.

The Regulations will include a rule preventing a market linked pension from having a residual capital value. This rule will not interfere with the ability to commute a market linked pension on the death of the primary beneficiary or a reversionary beneficiary.

A market linked pension cannot be transferred to another person except on the death of the primary beneficiary or a reversionary beneficiary to one of the dependants of the deceased person or to the deceased person's legal personal representative.

Under the *Income Tax Regulations 1936*, the life tables which are used for pensions and annuities commencing after 1 July 1993 are the Australian Life Tables that are most recently published before the year in which the income stream first commences to be payable. The life tables which are currently in use are the Australian Life Tables 1995-97. While new life tables are expected to be published by the Australian Government Actuary before 20 September 2004, these tables will therefore only come into effect on 1 January 2005.

The Regulations will insert a transitional provision which will give RSA institutions the choice of using either the most recently published life tables or the 1995-97 life tables for pensions which commence between 20 September 2004 and 31 December 2004.

The Regulations will require that the terms and conditions of an RSA market linked pension must also meet the conditions for commutation set out in Regulation 1.08. These conditions are discussed under Item 5, below.

Item 5

The Regulations will insert a new regulation 1.08 which will set out a minimum payment condition that must be satisfied prior to the commutation of a market linked pension. The condition will require that the pension must pay an amount, in the financial year in which the commutation is to take place, of at least the pro-rata of the annual payment amount that will be required under Schedule 4 of the Regulations.

The minimum payment condition in Regulation 1.08 will not apply to a commutation resulting from the death of a pensioner or a reversionary pensioner. Similarly, it will not apply to a commutation for the sole purpose of paying a superannuation contributions surcharge, giving effect to an entitlement of a non member spouse under a payment split or meeting the rights of a client to return a financial product under the cooling-off period provisions in the *Corporations Act 2001*.

The formula for calculating the pro-rata minimum amount will be as follows.

annual amount × days in payment period ÷ days in financial year

The annual amount for the pro-rata calculation will be worked out in accordance with the formula for determining annual payment amounts in clause 1 of Schedule 4 of the Regulations and rounded to the nearest ten dollars.

For market linked pensions that commence in the year in which they are commuted, the pro-rata amount will be calculated using the number of days in the payment period from the commencement day of the pension until the day on which the commutation takes place. For commutations in subsequent years, the pro-rata amount will be calculated using the number of days in the payment period from 1 July in the financial year in which the commutation is to take place until the day on which the commutation takes place. The financial year used for the purposes of the pro-rata calculation will be the year in which the commutation takes place.

Example: Market linked pension commuted in a financial year subsequent to the year in which the pension commences.

Stephanie commences a market linked pension on 1 July 2005 at age 63. The term of the pension is 23 years. On 1 July 2010, the remaining term of the pension is 18 years and the pension account balance is $150,000. On 1 October 2010, after making a pension payment of $2,000, Stephanie decides to commute the pension in order to purchase another market linked product with a different provider. The pro-rata calculation is as follows:

The annual payment amount calculated under Schedule 4 is ($150,000 ÷ 13.19) = $11,370. There are 93 days between 1 July and 1 October (inclusive) and 2010 is not a leap year, so the pro-rata minimum amount is $11,370 × 93 ÷ 365 = $2,897.01. Subtracting the $2,000 payment already made, the pension would still need to pay Stephanie an amount of $897.01 before the commutation.

Items 6 to 11

Family law provides for couples to split their superannuation in the event of a marriage breakdown. The RSA Regulations contain operating standards for providers in relation to family law superannuation splitting. Given that market linked pensions and allocated pensions are both

account based products, the Regulations will ensure that market linked pensions receive the same treatment as allocated pensions in this regard.

Item 12

The Regulations will require that annual payments from a market linked pension be determined in accordance with the payment rules set down in Schedule 4 to the RSA Regulations. This item will insert new Schedule 4.

The annual payment amount from a market linked pension will be determined under the formula contained in clause 1 of Schedule 4. Under this formula, the payment amount will be calculated by dividing the account balance of the pension on 1 July of the relevant year (or the commencement day in the case of the first year of the pension where that is a day other than 1 July) by the payment factor in Column 3 of the Table that corresponds to the remaining term of the pension expressed in whole years in Column 2.

Clause 5 will contain a rounding rule for determining the number of whole years remaining on the term of a pension. Under this rule, the remaining term of a pension on each 1 July will be rounded to a whole number of years according to whether the pension commenced before 1 January, or on or after 1 January in a financial year.

- For pensions commencing before 1 January, the remaining term on each 1 July will be rounded down to the nearest whole number of years. Where the remaining term rounds to zero, a payment factor of 1 will be used to calculate the final payment from the pension.

- For pensions commencing on or after 1 January, the remaining term on each 1 July will be rounded up to the nearest whole number of years.

The effect of this rule is shown in the following example.

Monica commences a market linked pension on 1 April 2005 with a term of 23 years. On 1 July 2005 (the next occurring 1 July), the remaining term of the pension is 22 years and 9 months. Because the pension commenced after 1 January in the financial year, the remaining term for purposes of Column 2 is rounded up to 23 years. For each subsequent 1 July, the remaining term of the pension is also rounded up to the nearest whole number of years.

Under clause 4, the annual payment amount calculated under clause 1 will be rounded to the nearest ten dollars. Where the calculation results in a figure divisible by five, the normal mathematical convention of rounding up will apply.

For example, the account balance of the pension on 1 July 2005 in the preceding example is $200,000. The payment factor corresponding to the remaining term (in whole years) of 23 years is 15.62. (This is the same payment factor that would be used to calculate the pro rata payment for the first year of the pension.) The required annual payment for the financial year 2005-06 is therefore $200,000 ÷ 15.62 = $12,800.

In cases where a market linked pension commences on a day other than 1 July, clause 6 will require the annual payment amount for the first year of the pension to be applied proportionately to the number of days remaining in the financial year that include and follow the commencement day.

For pensions commencing on a day other than 1 July, the rules in clause 7 will provide some payment flexibility towards the end of the term of a pension to avoid any lumpiness in payments that would otherwise arise. These rules will apply where a payment factor of 1 is required to be used for the first time in the annual payment calculation, and the actual remaining term of the

pension on 1 July of that year is a period other than one year. In these cases, the payment rules in clause 1 can be varied to allow the remaining account balance to be paid out over a period of either:

- the remaining term of the pension (where that is greater than 12 months); or
- 12 months.

If a period under clause 7 is chosen, there will be no requirement to calculate a payment on 1 July of the subsequent financial year.

Example 1: A pension commences on 1 October 2004 with a term of 17 years. On 1 July 2020, the remaining term of the pension in whole years will be 1 year, and the actual remaining term will be 15 months. This will mean that a payment factor of 1 will be applied for the payment calculation on that date, requiring the full account balance to be paid out over the following 12 months, notwithstanding that the pension would run for a further 3 months after the account had been exhausted. The first of the above options will allow payment of the account balance on 1 July 2020 to be spread over the next 15 months. The second option will allow the account balance to be paid out fully in the 12 months to 30 June 2021, effectively shortening the term of the pension by 3 months. Under both options, there will be no requirement to calculate a payment on 1 July 2021.

Example 2: A pension commences on 1 April 2005 with a term of 17 years. On 1 July 2021, the remaining term of the pension in whole years will be 1 year, and the actual remaining term will be 9 months. This will mean that a payment factor of 1 will be applied for the payment calculation on that date, requiring the full account balance of the pension to be paid out over the following 9 months. The second of the above options will allow payment of the account balance to be spread over the 12 month period to 30 June 2022, effectively extending the term of the pension by 3 months.

A period chosen under clause 7 will not cause a breach of the requirement to pay a market linked pension over a term of a whole number of years in accordance with subregulation 1.07(3A).

Because annual payments from a market linked pension will be based on the account balance at the start of the financial year, some flexibility is also needed in the final year to allow investment earnings accruing after the start of the year to be fully paid out of the account. For this purpose, clause 3 will provide for an additional income payment in the final year of a market linked pension (up to 28 days after the end of the term or the end of a period chosen under clause 7) in order to exhaust the account balance.

Similar flexibility is needed in situations where, due to negative investment returns, the account balance at any time during the year is insufficient to meet the remaining required payment in that year (this will typically only arise in the final year of a pension). In these situations, clause 2 will allow the remaining account balance to be paid out in satisfaction of the annual payment requirement.

ATTACHMENT B

Details of the *Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4)*

Regulation 1 specifies the name of the regulations as the *Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 4).*

Regulation 2 provides that regulations 1 to 3 and Schedule 1 commence on 1 July 2004, Schedule 2 commences on 1 September 2004 and Schedule 3 commences on 20 September 2004. The commencement dates for Schedules 1 and 3 reflect the Government's announcement of 25 February 2004. The commencement date for Schedule 2 will provide for a period of time in which superannuation funds can issue new child accounts before they are superseded by the removal of the work test for superannuation contributions before age 65.

Regulation 3 provides that Schedules 1, 2 and 3 amend the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations).

Schedule 1 - Amendments commencing on 1 July 2004

Removing the work test for superannuation contributions before age 65

Items 1, 10, 11, 14, 15 and 16

Subregulations 7.04(1) and 7.05(1) of the SIS Regulations set out the rules under which a complying superannuation fund may accept contributions made in respect of a fund member under the age of 65. Generally a member under the age of 65 must have been gainfully employed at least 10 hours in a week sometime in the past two years in order to make superannuation contributions.

The Regulations will remove the work test rules thereby allowing anyone under the age of 65 to make a superannuation contribution. This will mean that the current exceptions to the work test rules are no longer necessary. These include eligible spouse contributions; child contributions; contributions for people on authorised leave.

The Regulations will amend subregulation 1.03(1) **(Item 1)** to insert a definition of 'child contributions'. The existing definition of a 'child contribution' refers to the definition of a 'child contribution' in paragraph 7.04(1)(e). A definition of 'child contributions' will still be necessary for the purposes of regulation 3.01 (Public Offer Funds).

The Regulations will substitute a new subregulation 7.04(1) **(Item 10)** in the SIS Regulations allowing anyone under the age of 65 in an accumulation fund to contribute to superannuation. This new subregulation does not include a definition of a 'child contributions'.

The Regulations will omit subregulation 7.04(1A) **(Item 11)** as a consequence of new subregulation 7.04(1), because a definition of 'authorised leave' will no longer be necessary.

The Regulations will remove the reference to paragraph 7.04(1)(e) in subregulation 7.04(1E) as a consequence of new subregulation 7.04(1) **(Item 14)**.

The Regulations will substitute a new subregulation 7.05(1) **(Item 15)** to enable a defined benefit fund to accrue benefits in respect of any member under the age of 65.

The Regulations will omit subregulation 7.05(1A) **(Item 16)** as a consequence of new subregulation 7.05(1), because a definition of 'authorised leave' will no longer be necessary.

Simplifying the work test and cashing rules for those aged 65 to 74

Items 4, 6, 8, 9, 12, 13, 17, 18

The Regulations will simplify rules relating to contributions made by members to complying superannuation funds aged 65 to 74 and the cashing of their benefits. The amendments reflect the changing work arrangements for people in this age group.

Currently, an individual aged 65 to 74 must work at least 10 hours in a week to be eligible to make contributions. Where a member fails this test the complying superannuation fund must also pay out the member's benefits. This is considered too stringent and does not accommodate flexible working arrangements, which are likely to be preferred by mature workers.

The Regulations will amend subparagraphs 6.21(1)(a)(ii) and 6.21(1A)(a)(ii) **(Items 4 and 6)** to simplify the cashing rules for individuals aged 65 to 74. An individual will only be required to have been gainfully employed on a part-time equivalent level in order to prevent both the member-financed benefit and the employer-financed benefit from being cashed out from their account in a complying superannuation fund.

The Regulations will insert a new definition of 'part-time equivalent level' into the SIS Regulations **(Item 8)** in relation to the Regulations. To be gainfully employed at a part-time equivalent level an individual will have to have been gainfully employed for at least 240 hours during the most recent financial year.

The Regulations will amend paragraphs 7.04(1B)(b) and 7.04(1C)(b) **(Items 12 and 13)** to simplify the contribution rules for contributions made into an accumulation fund by an individual aged 65 to 69 and aged 70 to 74 respectively.

The Regulations will amend paragraph 7.04(1B)(b) **(Item 12)** so that an accumulation fund may accept contributions in respect of a member aged 65 to 69 years if the member is gainfully employed on at least a part-time basis during the financial year in which the contribution is made.

The Regulations will amend paragraph 7.04(1C)(b) **(Item 13)** so that an accumulation fund may accept contributions made by a member aged 70 to 74 years for their benefit if the member is gainfully employed on a part-time basis in the financial year in which the contribution is made.

The Regulations will amend paragraphs 7.05(1B)(b) and 7.05(1C)(b) **(Items 17 and 18)** to simplify the accrual of benefits by a defined benefit fund in respect of a member aged 65 to 69 and aged 70 to 74 respectively.

The Regulations will amend paragraph 7.05(1B)(b) so that a defined benefit fund may accrue benefits in respect of a member aged 65 to 69 years if the member is gainfully employed on at least a part-time basis during the financial year in which the contribution is made.

The Regulations will amend paragraph 7.05(1C)(b) so that a defined benefit fund may accrue benefits in respect of contributions made by a member aged 70 to 74 years if the member is gainfully employed on a part-time basis in the financial year in which the contribution is made.

The Regulations will insert a new definition of 'part-time basis' into the SIS Regulations **(Item 9)** in relation to the regulations**.** An individual will be gainfully employed on a part-time basis where they have worked at least 40 hours in a period of not more than 30 consecutive days in

that financial year. For example, a person who has worked 40 hours in a fortnight will be able to make superannuation contributions for the rest of the financial year.

Changes to cashing superannuation benefits for people aged over 75

Items 5 and 7

Substantial tax concessions are provided to superannuation to encourage people to save for their retirement. In order to ensure that superannuation is not specifically used for estate planning the Regulations will require complying superannuation funds to commence paying benefits to a member as soon as practicable after the member reaches the age of 75. Complying superannuation funds will not need to payout a member's post-65 employer-financed benefits where the member is over the age of 75 but is still receiving superannuation contributions under an industrial award.

The Regulations will substitute paragraph 6.21(1)(b) and (c), and insert a new paragraph 6.21(1)(d) **(Item 5)** to require the cashing of a member's benefits, not including post-65 employer-financed benefits where any of the following events occur:

- the member has reached age 75 on 30 June 2004 and has not been gainfully employed for at least 30 hours per week since 1 July 2004;

- the member has reached age 75 and the previous condition does not apply;

- the member dies.

The Regulations will omit subparagraph 6.21(1A)(b)(ii) of the SIS Regulations **(Item 7)**. A complying superannuation fund will be required to cash a member's post-65 employer-financed benefit irrespective of the member's employment status unless the employment results in mandated employment contributions.

Preservation of rolled-over employer eligible termination payment benefits

Items 2 and 3

Regulations 6.10 and 6.11 specify the benefits in a regulated superannuation fund or regulated approved deposit fund which are classified as unrestricted non-preserved benefits. These benefits are not preserved and can be withdrawn from the superannuation system at any time.

The definition of unrestricted non-preserved benefits includes employer eligible termination payments (ETPs) that are rolled over into a superannuation fund or approved deposit fund.

The Regulations will amend this definition so that only employer ETPs that are received by a superannuation fund or approved deposit fund before 1 July 2004 are unrestricted non-preserved benefits. Employer ETPs which are rolled over into the superannuation system after this date will be preserved.

Schedule 2 - Amendments commencing on 1 September 2004

Child Superannuation Accounts

Items 1, 2 and 3

The Regulations will remove the decision making provisions, transitional provisions and application provisions specific to child superannuation accounts.

The Regulations will allow anyone under the age of 65 to contribute to superannuation from 1 July 2004 **(Item 10 of Schedule 1)**. It will therefore no longer be necessary to specifically allow for child superannuation accounts.

The Regulations will remove the provisions in the SIS Regulations which give effect to child superannuation accounts. These provisions include limits on the amount of the contribution that can be made on behalf of a child, decision making rules, transitional provisions and the provisions relating to applications for child superannuation accounts.

The Regulations will remove the definition of a child account in subregulation 1.03(1) **(Item 1)**. Contributions on behalf of a child into a superannuation fund will not be treated any differently to other contributions made by those under the age of 65. This definition is no longer necessary as a result of the Regulation to omit Part 4A from the SIS Regulations.

The Regulations will omit Part 4A from the SIS Regulations **(Item 2)**. This part sets out the decision making provisions, application provisions and issue of child superannuation accounts.

The Regulations will omit subregulation 7.04(1E) **(Item 3)**. Subregulation 7.04(1E) restricts the amount of superannuation contributions which can be made into a complying superannuation fund on behalf of a child in a three year period. There will no longer be restrictions on the amount of superannuation contributions which can be made on behalf of a child.

The changes commence on 1 September 2004. This is consistent with the transitional rules in *Corporations Amendment Regulations 2004 (No.)*, which allow funds to issue child accounts until 31 August 2004.

Schedule 3 - Amendments commencing on 20 September 2004

The Government is introducing a new class of market linked complying income stream with effect from 20 September 2004. Complying income streams are those which meet the pension and annuity standards contained in the *Income Tax Regulations 1936*. The Regulations contained in this Schedule will expand the definitions of pension and annuity in the SIS Regulations to include the new product and to enable it to be offered by annuity providers and superannuation funds. The Regulations will also: amend the rules for complying life expectancy income streams to provide the same term options for these products as would be available to the new market linked income stream; and increase the commutation and guarantee period for complying lifetime income streams.

Item 1

The Regulations will insert definitions of market linked annuity, market linked income stream and market linked pension into the SIS Regulations.

Item 3

The Regulations will insert a reference to new subregulation 1.05(10) (see Item 13, below) to specify that a benefit provided in the form of a market linked annuity meets the definition of an annuity for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

Items 4 and 5

The Regulations will require that a contract for the provision of an annuity benefit that meets the standards of subregulation 1.05(10) must also meet the conditions for commutation set out in Regulation 1.07C. These conditions will require that a minimum payment be made prior to the commutation of a market linked annuity or pension.

Items 6 to 11

The rules for complying lifetime income streams contained in the SIS Regulations allow the income stream to be commuted on the death of the primary beneficiary within 10 years of the income stream commencing. This rule allows some capital to be returned to a reversionary beneficiary or to the primary beneficiary's estate where the primary beneficiary dies within this period.

Where the income stream is commuted in these circumstances, the rules also allow a commutation payment to be limited to the payments that the primary beneficiary would have received over the remainder of the 10 year period had they not died.

The Regulations will increase this 10 year period to a period equal to the lesser of the primary beneficiary's life expectancy or 20 years. The period will apply for both of the purposes outlined above.

Item 12

The Regulations will amend the rules relating to complying life expectancy annuities contained in Regulation 1.05(9). The Regulations will remove the restriction which prevents a complying life expectancy annuity from being purchased before age pension age and, for products purchased on or after 20 September 2004, align the term options for complying life expectancy annuities with those which will apply to the new market linked annuity. These term options are discussed below under Item 13.

Complying life expectancy annuities can only be commuted in specified circumstances. These circumstances include on the death of the primary beneficiary where a payment is made to a reversionary beneficiary or to the primary beneficiary's estate, or on the death of the reversionary beneficiary where a payment is made to another reversionary beneficiary or to the reversionary beneficiary's estate. In cases where the annuity recipient chooses to base the term of the annuity on the longer of two spouses' life expectancies, the Regulations will allow commutation in these circumstances only after the death of both spouses.

Commutation of a life expectancy annuity is also permitted if the eligible termination payment resulting from the commutation is applied directly to purchase another complying pension or annuity. The Regulations will ensure that a complying life expectancy annuity can be commuted to purchase a market linked annuity or market linked pension (paid from either a superannuation fund or an RSA provider).

Item 13

The Regulations will insert a new subregulation 1.05(10) to set out the minimum requirements which will need to be satisfied for an annuity to meet the standards of a market linked annuity. These requirements include the term of the annuity, the payment rules and the restrictions placed on the commutation and transfer of the annuity.

Individuals who purchase a market linked annuity will be able to choose the term of the annuity from within a specified range. The term will need to be a period of whole years no less than the primary beneficiary's life expectancy on the commencement day of the annuity (rounded up to the next whole number) and no greater than the primary beneficiary's life expectancy on the

commencement day calculated as if they were 5 years younger (rounded up to the next whole number). For example, a male aged 65 can choose a term of a whole number of years no less than their life expectancy at age 65 and no greater than their life expectancy at age 60.

In the case of an annuity that reverts to a spouse on the death of the primary beneficiary, there will be a further option to base the term on the longer of the two spouses' life expectancies. For example, a 65 year old male with a 60 year old spouse will have the option of basing the term of the annuity on the younger spouse's life expectancy. Under this option, the term will need to be a period of whole years no less than the spouse's life expectancy on the commencement day of the annuity (rounded up to the next whole number) and no greater than the spouse's life expectancy on the commencement day calculated as if the spouse were 5 years younger (rounded up to the next whole number).

Payments from a market linked annuity will need to be made at least annually and in accordance with the payment rules contained in Schedule 6 of the Regulations. However, where the annuity commences on or after 1 June in a financial year, a payment will not have to be made in the first year. The payment rules for market linked annuities are described under Item 39.

The Regulations will stipulate that a market linked annuity can only be commuted in specified circumstances. One of the conditions will allow commutation of a market linked annuity on the death of the primary or reversionary beneficiary where a lump sum is paid to either person's legal personal representative, to one or more of their dependants or, where reasonable enquiries have failed to identify either a legal personal representative or a dependant, to another individual. This commutation condition will also allow payment of a new annuity on the death of the primary or reversionary beneficiary to a dependant of either person. This will mean that, on the death of the recipient of a market linked annuity, the remaining account balance can be paid out in lump sum or annuity form.

The ability to commute a market linked annuity on death will be restricted in cases where the term of the annuity is based on the longer of two spouses' life expectancies. In such cases, the Regulations will allow commutation on death (whether to pay a lump sum or an annuity) only after the death of both spouses.

Commutation will also be permitted: within six months of the market linked annuity commencing (provided that it was not funded from the commutation of another complying income stream); to purchase another complying income stream; or to pay a superannuation contributions surcharge.

The Regulations will include a rule preventing a market linked annuity from having a residual capital value. This rule will not interfere with the ability to commute a market linked annuity on the death of the primary beneficiary or a reversionary beneficiary.

A market linked annuity cannot be transferred to another person except on the death of the primary beneficiary or a reversionary beneficiary to one of the dependants of the deceased person or to the deceased person's legal personal representative.

Under the *Income Tax Regulations 1936*, the life tables which are used for pensions and annuities commencing after 1 July 1993 are the Australian Life Tables that are most recently published before the year in which the income stream first commences to be payable. The life tables which are currently in use are the Australian Life Tables 1995-97. While new life tables are expected to be published by the Australian Government Actuary before 20 September 2004, these tables will therefore only come into effect on 1 January 2005.

The Regulations will insert a transitional provision which will give annuity providers the choice of using either the most recently published life tables or the 1995-97 life tables for annuities which commence between 20 September 2004 and 31 December 2004.

Item 14

The Regulations will insert a reference to new subregulation 1.06(8) (see Item 24, below) to specify that a benefit provided in the form of a market linked pension meets the definition of a pension for purposes of the SIS Act.

Items 15 and 16

The Regulations will require that the rules of a superannuation fund that provides a benefit in the form of a market linked pension that meets the standards of new subregulation 1.06(8) must also meet the conditions for commutation set out in Regulation 1.07C. These conditions will require that a minimum payment be made prior to the commutation of a market linked annuity or pension.

Items 17 to 22

The rules for complying lifetime income streams contained in the SIS Regulations allow the income stream to be commuted on the death of the primary beneficiary within 10 years of the income stream commencing. This rule allows some capital to be returned to a reversionary beneficiary or to the primary beneficiary's estate where the primary beneficiary dies within this period.

Where the income stream is commuted in these circumstances, the rules allow a commutation payment to be limited to the payments that the primary beneficiary would have received over the remainder of the 10 year period had they not died.

The Regulations will increase this 10 year period to a period equal to the lesser of the primary beneficiary's life expectancy or 20 years. The new period will apply for both of the purposes outlined above.

Item 23

The Regulations will amend the rules relating to complying life expectancy pensions contained in subregulation 1.06(7). The Regulations will remove the restriction which prevents a complying life expectancy pension from being purchased before age pension age and, for products purchased on or after 20 September 2004, align the term options for complying life expectancy pensions with those which will apply to the new market linked pension. These term options are discussed under Item 24, below.

Complying life expectancy pensions can only be commuted in specified circumstances. These circumstances include on the death of the primary beneficiary where a payment is made to a reversionary beneficiary or to the primary beneficiary's estate, or on the death of the reversionary beneficiary where a payment is made to another reversionary beneficiary or to the reversionary beneficiary's estate. In cases where the pension recipient chooses to base the term of the pension on the longer of two spouses' life expectancies, the Regulations would allow commutation in these circumstances only after the death of both spouses.

Commutation of a life expectancy pension is also permitted if the eligible termination payment resulting from the commutation is applied directly to purchase another complying annuity or pension. The Regulations will ensure that a complying life expectancy pension could be commuted to purchase a market linked annuity or market linked pension (paid from a superannuation fund or an RSA provider).

Item 24

The Regulations will insert a new subregulation 1.06(8) to set out the minimum requirements which will need to be satisfied for a pension to meet the standards of a market linked pension. These requirements include the term of the pension, the payment rules and the restrictions placed on the commutation and transfer of the pension.

Individuals who purchase a market linked pension will be able to choose the term of the pension from within a specified range. The term will need to be a period of whole years no less than the primary beneficiary's life expectancy on the commencement day of the pension (rounded up to the next whole number) and no greater than the primary beneficiary's life expectancy on the commencement day calculated as if they were 5 years younger (rounded up to the next whole number). For example, a male aged 65 can choose a term of a whole number of years no less than their life expectancy at age 65 and no greater than their life expectancy at age 60.

In the case of a pension that reverts to a spouse on the death of the primary beneficiary, there will be a further option to base the term on the longer of the two spouses' life expectancies. For example, a 65 year old male with a 60 year old spouse will have the option of basing the term of the pension on the younger spouse's life expectancy. Under this option, the term will need to be a period of whole years no less than the spouse's life expectancy on the commencement day of the pension (rounded up to the next whole number) and no greater than the spouse's life expectancy on the commencement day calculated as if the spouse were 5 years younger (rounded up to the next whole number).

Payments from a market linked pension will need to be made at least annually and in accordance with the payment rules contained in Schedule 6 of the Regulations. However, where the pension commences on or after 1 June in a financial year, a payment will not have to be made in the first year. The payment rules for market linked pensions are described under Item 39, below.

The Regulations will stipulate that a market linked pension can only be commuted in specified circumstances. One of the conditions will allow commutation of a market linked pension on the death of the primary or reversionary beneficiary where a lump sum is paid to either person's legal personal representative, to one or more of their dependants or, where reasonable enquiries have failed to identify either a legal personal representative or a dependant, to another individual. This commutation condition will also allow payment of a new pension on the death of the primary or reversionary beneficiary to a dependant of either person. This will mean that, on the death of the recipient of a market linked pension, the remaining account balance can be paid out in lump sum or pension form.

The ability to commute a market linked pension on death will be restricted in cases where the term of the pension is based on the longer of two spouses' life expectancies. In such cases, the Regulations will allow commutation on death (whether to pay a lump sum or a pension) only after the death of both spouses.

Commutation will also be permitted: within six months of the market linked pension commencing (provided that it was not funded from the commutation of another complying income stream); to purchase another complying income stream; to pay a superannuation contributions surcharge; or to give effect to a payment split under family law.

The Regulations will include a rule preventing a market linked pension from having a residual capital value. This rule will not interfere with the ability to commute a market linked pension on the death of the primary beneficiary or a reversionary beneficiary.

A market linked pension cannot be transferred to another person except on the death of the primary beneficiary or a reversionary beneficiary to one of the dependants of the deceased person or to the deceased person's legal personal representative.

Under the *Income Tax Regulations 1936*, the life tables which are used for pensions and annuities commencing after 1 July 1993 are the Australian Life Tables that are most recently published before the year in which the income stream first commences to be payable. The life tables which are currently in use are the Australian Life Tables 1995-97. While new life tables are expected to be published by the Australian Government Actuary before 20 September 2004, these tables will therefore only come into effect on 1 January 2005.

The Regulations will insert a transitional provision which will give pension providers the choice of using either the most recently published life tables or the 1995-97 life tables for pensions which commence between 20 September 2004 and 31 December 2004.

Item 25

The Regulations will insert a new regulation 1.07C which will set out a minimum payment condition that must be satisfied prior to the commutation of a market linked annuity or a market linked pension. The condition will require that the annuity or pension must pay an amount, in the financial year in which the commutation is to take place, of at least the pro-rata of the annual payment amount that will be required under Schedule 6 of the Regulations.

The minimum payment condition in Regulation 1.07C will not apply to a commutation resulting from the death of an annuitant or pensioner or a reversionary annuitant or pensioner. Similarly, it will not apply to a commutation for the sole purpose of paying a superannuation contributions surcharge, giving effect to an entitlement of a non member spouse under a payment split or meeting the rights of a client to return a financial product under the cooling-off period provisions in the *Corporations Act 2001*.

The formula for calculating the pro-rata minimum amount will be as follows.

annual amount × days in payment period ÷ days in financial year

The annual amount for the pro-rata calculation will be worked out in accordance with the formula for determining annual payment amounts in clause 1 of Schedule 6 of the Regulations and rounded to the nearest ten dollars.

For market linked annuities or pensions that commence in the year in which they are commuted, the pro-rata amount will be calculated using the number of days in the payment period from the commencement day of the annuity or pension until the day on which the commutation takes place. For commutations in subsequent years, the pro-rata amount will be calculated using the number of days in the payment period from 1 July in the financial year in which the commutation is to take place until the day on which the commutation takes place. The financial year used for the purposes of the pro-rata calculation will be the year in which the commutation takes place.

Example: Market linked pension commuted in a financial year subsequent to the year in which the pension commences.

Stephanie commences a market linked pension on 1 July 2005 at age 63. The term of the pension is 23 years. On 1 July 2010, the remaining term of the pension is 18 years and the pension account balance is $150,000. On 1 October 2010, after making a pension payment of $2,000, Stephanie decides to commute the pension in order to purchase another market linked product with a different provider. The pro-rata calculation is as follows:

The annual payment amount calculated under Schedule 6 is ($150,000 ÷ 13.19) = $11,370. There are 93 days between 1 July and 1 October (inclusive) and 2010 is not a leap year, so the pro-rata minimum amount is $11,370 × 93 ÷ 365 = $2,897.01. Subtracting the $2,000 payment

already made, the pension will still need to pay Stephanie an amount of $897.01 before the commutation.

Items 2 and 26 to 37

Family law provides for couples to split their superannuation in the event of a marriage breakdown. The SIS Regulations contain operating standards for trustees in relation to family law superannuation splitting. Given that market linked pensions and allocated pensions are both account based products, the Regulations will ensure that market linked pensions receive the same treatment as allocated pensions in this regard.

Item 38

The Regulations will insert a new paragraph 9.04E (c) to specify that a market linked pension is excluded from the definition of a defined benefit pension for the purposes of the SIS Act.

Item 39

The Regulations will require that annual payments from a market linked annuity or market linked pension be determined in accordance with the payment rules set down in Schedule 6 to the SIS Regulations. This item will insert new Schedule 6.

The annual payment amount from a market linked annuity or pension will be determined under the formula contained in clause 1 of Schedule 6. Under this formula, the payment amount will be calculated by dividing the account balance of the annuity or pension on 1 July of the relevant year (or the commencement day in the case of the first year of the annuity or pension where that is a day other than 1 July) by the payment factor in Column 3 of the Table that corresponds to the remaining term of the annuity or pension expressed in whole years in Column 2.

Clause 5 will contain a rounding rule for determining the number of whole years remaining on the term of an annuity or pension. Under this rule, the remaining term of an annuity or pension on each 1 July will be rounded to a whole number of years according to whether the annuity or pension commenced before 1 January, or on or after 1 January in a financial year.

- For annuities or pensions commencing before 1 January, the remaining term on each 1 July will be rounded down to the nearest whole number of years. Where the remaining term rounds to zero, a payment factor of 1 will be used to calculate the final payment from the annuity or pension.

- For annuities or pensions commencing on or after 1 January, the remaining term on each 1 July will be rounded up to the nearest whole number of years.

The effect of this rule is shown in the following example.

Monica commences a market linked pension on 1 April 2005 with a term of 23 years. On 1 July 2005 (the next occurring 1 July), the remaining term of the pension is 22 years and 9 months. Because the pension commenced after 1 January in the financial year, the remaining term for purposes of Column 2 is rounded up to 23 years. For each subsequent 1 July, the remaining term of the pension is also rounded up to the nearest whole number of years.

Under clause 4, the annual payment amount calculated under clause 1 will be rounded to the nearest ten dollars. Where the calculation results in a figure divisible by five, the normal mathematical convention of rounding up will apply.

For example, the account balance of the pension on 1 July 2005 in the preceding example is $200,000. The payment factor corresponding to the remaining term (in whole years) of 23 years is 15.62. (This is the same payment factor that will have been used to calculate the pro rata payment for the first year of the pension.) The required annual payment for the financial year 2005-06 is therefore $200,000 ÷ 15.62 = $12,800.

In cases where a market linked annuity or pension commences on a day other than 1 July, clause 6 will require the annual payment amount for the first year of the annuity or pension to be applied proportionately to the number of days remaining in the financial year that include and follow the commencement day.

For annuities or pensions commencing on a day other than 1 July, the rules in clause 7 will provide some payment flexibility towards the end of the term of an annuity or pension to avoid any lumpiness in payments that will otherwise arise. These rules will apply where a payment factor of 1 is required to be used for the first time in the annual payment calculation, and the actual remaining term of the annuity or pension on 1 July of that year is a period other than one year. In these cases, the payment rules in clause 1 can be varied to allow the remaining account balance to be paid out over a period of either:

- the remaining term of the annuity or pension (where that is greater than 12 months); or

- 12 months.

If a period under clause 7 is chosen, there will be no requirement to calculate a payment on 1 July of the subsequent financial year.

Example 1: A pension commences on 1 October 2004 with a term of 17 years. On 1 July 2020, the remaining term of the pension in whole years will be 1 year, and the actual remaining term will be 15 months. This will mean that a payment factor of 1 will be applied for the payment calculation on that date, requiring the full account balance to be paid out over the following 12 months, notwithstanding that the pension will run for a further 3 months after the account had been exhausted. The first of the above options will allow payment of the account balance on 1 July 2020 to be spread over the next 15 months. The second option will allow the account balance to be paid out fully in the 12 months to 30 June 2021, effectively shortening the term of the pension by 3 months. Under both options, there will be no requirement to calculate a payment on 1 July 2021.

Example 2: A pension commences on 1 April 2005 with a term of 17 years. On 1 July 2021, the remaining term of the pension in whole years will be 1 year, and the actual remaining term will be 9 months. This will mean that a payment factor of 1 will be applied for the payment calculation on that date, requiring the full account balance of the pension to be paid out over the following 9 months. The second of the above options will allow payment of the account balance to be spread over the 12 month period to 30 June 2022, effectively extending the term of the pension by 3 months.

A period chosen under clause 7 will not cause a breach of the requirement to pay a market linked annuity or pension over a term of a whole number of years in accordance with subregulations 1.05(10) and 1.06(8).

Because annual payments from a market linked annuity or pension will be based on the account balance at the start of the financial year, some flexibility is also needed in the final year to allow investment earnings accruing after the start of the year to be fully paid out of the account. For this purpose, clause 3 will provide for an additional income payment in the final year of a market linked annuity or pension (up to 28 days after the end of the term or the end of a period chosen under clause 7) in order to exhaust the account balance.

Similar flexibility is needed in situations where, due to negative investment returns, the account balance at any time during the year is insufficient to meet the remaining required payment in that year (this will typically only arise in the final year of an annuity or pension). In these situations, clause 2 will allow the remaining account balance to be paid out in satisfaction of the annual payment requirement.

ATTACHMENT C

Details of the *Income Tax Amendment Regulations 2004 (No. 4)*

Regulation 1 specifies the name of the regulations as the *Income Tax Amendment Regulations 2004 (No. 4)*.

Regulation 2 provides that the regulations commence on 20 September 2004.

Regulation 3 provides that Schedule 1 amends the *Income Tax Regulations 1936.*

Schedule 1 - Amendments

The Government is introducing a new class of market linked income stream with effect from 20 September 2004. The Regulations will ensure that the new market linked income stream product meets the pension and annuity standards for the purposes of the *Income Tax Assessment Act 1936*. This will mean that market linked pensions and annuities will be eligible to be assessed for tax purposes against the higher pension reasonable benefit limit.

Item 1

The Regulations will insert a reference to new subregulation 1.05(10) of the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to specify that a market linked annuity meets the annuity standards.

Item 2

The Regulations will insert references to new subregulation 1.06(8) of the SIS Regulations and new subregulation 1.07(3A) of the *Retirement Savings Accounts 1997* to specify that a market linked pension (paid from either a superannuation fund or an RSA provider) meets the pension standards (*the SIS and RSA pension standards*).

Item 3

The Regulations will replace "SIS pension standards" with "SIS and RSA pension standards", as a consequence of amendments made by item 2, above.

ATTACHMENT D

Details of the *Corporations Amendment Regulations 2004 (No. 5)*

Regulation 1 specifies that the name of the regulations is the *Corporations Amendment Regulations 2004 (No. 5).*

Regulation 2 provides that regulations 1 to 3 and Schedule 1 commence on 1 July 2004, and that regulation 4 and Schedule 2 commence on 1 October 2004.

Regulation 3 provides that Schedules 1 and 2 amend the *Corporations Regulations 2001*.

Regulation 4 provides transitional provisions which apply to child accounts issued before 1 October 2004, contributions made into a child account before 1 October 2004 and the right of return in relation to a child account issued before 1 October 2004.

Schedule 1 - Amendments commencing on 1 July 2004

Item 1

The Regulations will insert a new definition of 'child contributions' in subregulation 7.9.01(1). The existing definition refers to the definition of 'child contributions' in the SIS Regulations and the RSA Regulations.

The removal of the work test from the *Superannuation Industry (Supervision) Regulations 1994* and the *Retirement Savings Account Regulations 1997* means that it is no longer necessary to specifically allow for child superannuation accounts as anyone under the age of 65 will be able to contribute to a superannuation fund or RSA. Regulations will remove the provisions in the SIS Regulations and RSA Regulations which give effect to child superannuation accounts. As such these Regulations will insert the definition of 'child contributions' in the Corporations Regulations for the transitional period.

Item 2

The Regulations will insert a definition of an 'RSA institution' into subregulation 7.9.01(1) as it is referred to in the newly inserted definition of 'child contributions'.

Items 3 and 4

The Regulations will amend subregulation 7.9.12A(1) to provide that an eligible application for a child account must be made before 31 July 2004 and the issue or sale of a child account must be made prior to 31 August 2004.

The Regulations will allow for a period of time in which RSA institutions and superannuation funds can issue new child accounts before they are superseded by the removal of the work test for superannuation contributions before age 65. People who are in the process of opening a child account would still be able to apply for an account until 31 July 2004. A child would also be able to open an account in his/her name during this time.

Item 5

The Regulations will insert a new subregulation 7.9.68A(4A) to provide a transitional timeframe stipulating that the right of return in relation to a product and any money paid to the product must be exercised on or before 30 September 2004.

Schedule 2 - Amendments commencing on 1 October 2004

Items 1, 2, 3, 4, 5

The Regulations will omit the provisions in the *Corporations Regulations 2001* which relate to child superannuation accounts.

Subregulation 7.9.01(1) provides definitions specific to child accounts.

Subparagraph 7.9.04(1)(a)(i) and Subdivision 2.6 require the provision of product disclosure statements in relation to child superannuation accounts.

Regulation 7.9.12A and subregulation 7.9.74(3) provide for applications to be made by a third party for a child superannuation account.

Regulation 7.9.68A provides for the right of return in respect of a child superannuation account.