

Retirement Savings Accounts Tax File Number approval No. 1 of 2017

Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2017

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Retirement Savings Accounts Act 1997, sections 134, 135, 136, 138, 139 and 142

Superannuation Industry (Supervision) Act 1993, sections 299D, subsections 299E, 299G, 299M, 299N, 299P and 299S

Acts Interpretation Act 1901, section 33

Under section 134 and subsections 135(1), 136(1), 138(2) and 142(1) and paragraph 139(a) of the *Retirement Savings Accounts Act 1997* (RSA Act), APRA has the power to approve the manner in which tax file numbers (TFNs) are requested and quoted by RSA providers, RSA holders and applicants to become RSA holders. APRA has corresponding powers regarding TFNs and superannuation under section 299D and subsections 299E(1), 299G(1), 299M(2) and 299N(2) and paragraphs 299P(a) and 299S(1)(b) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Subsection 33(3) of the *Acts Interpretation Act 1901* confers power to revoke an instrument made under an enactment.

On 20 September 2017, APRA made the following approvals (the instruments):

- (1) *Retirement Savings Accounts Tax File Number approval No. 1 of 2017* (2017 RSA Approval) which revokes Retirement Savings Accounts Tax File Number approval No. 1 of 2007 (2007 RSA Approval) and makes the approvals set out in the Schedule; and
- (2) *Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2017* (2017 SIS Approval) which revokes Superannuation Industry (Supervision) Tax File Number Approval No. 1 of 2007 (2007 SIS Approval) and makes the approvals set out in the Schedule.

The instruments commence on 1 October 2017.

1. Background

The rules regarding the use of TFNs by RSA providers, trustees of eligible superannuation entities and of regulated exempt public sector superannuation schemes (superannuation providers) are contained in Part 11 of the RSA Act and Part 25A of the SIS Act respectively. APRA shares administration of Part 11 of the RSA Act with the Commissioner of Taxation. The 2017 RSA Approval is made under provisions of Divisions 3 and 4 of Part 11 of the RSA Act, which are administered by APRA.

APRA shares administration of Part 25A of the SIS Act with the Commissioner of Taxation. The 2017 SIS Approval is made under Divisions 2 and 3 of Part 25A of the SIS Act, which are administered by APRA except to the extent that they relate to self managed superannuation funds (SMSFs), in which case the Divisions are

administered by the Commissioner of Taxation.¹ The approvals made by the 2017 SIS Approval under subsections 299E(1), 299G(1), 299M(2) and 299N(2) and paragraph 299P(a) therefore do not apply to SMSFs. However, subsection 299S(1)(b) confers the power to approve on APRA, as opposed to the 'Regulator'.² The power to approve excludes the Commissioner of Taxation and therefore the approval made by the 2017 SIS Approval under subsection 299S(1)(b) of the SIS Act applies to an eligible superannuation entity (including an SMSF).

The 2007 RSA Approval made the following approvals:

- (a) under subsection 135(1) of the RSA Act, approved the manner of an RSA provider requesting that a holder, or a person applying to be a holder, of an RSA quote their TFN in connection with the operation or the possible future operation of the RSA Act and the other Superannuation Acts;
- (b) under subsection 136(1) of the RSA Act, approved the manner of an RSA provider requesting that a person becoming a holder of an RSA quoting their TFN in connection with the operation or the possible future operation of the Acts referred to in that subsection;
- (c) under subsection 138(2) of the RSA Act, approved the manner of an RSA provider informing another superannuation provider (within the meaning of the Schedule) of a TFN of a beneficiary of the first fund;
- (d) under paragraph 139(a) of the RSA Act, for the purposes only of section 134, of the RSA Act, approved the manner for an RSA holder, or applicant to become an RSA holder, to quote their TFN to an RSA in connection with the operation or possible future operation of the RSA Act and the other Superannuation Acts; and
- (e) under subsection 142(1) of the RSA Act, approved the manner of a person setting out their TFN in an application to the RSA provider for payment of a benefit.

The 2007 SIS Approval made the following approvals:

- (a) under subsection 299E(1) of the SIS Act, approved the manner of a trustee of an eligible superannuation entity (other than an SMSF) or of a regulated exempt public sector superannuation scheme requesting that a beneficiary or applicant to become a beneficiary of the entity or scheme quote their TFN in connection with the operation or the possible future operation of the SIS Act and the other Superannuation Acts;
- (b) under subsection 299G(1) of the SIS Act, approved the manner of a trustee of an eligible superannuation entity (other than an SMSF) requesting that a beneficiary of the entity or scheme quote their TFN in connection with the operation or the possible future operation of the Acts referred to in that subsection;

¹ Refer to subparagraphs 6(1)(a)(xii) and 6(1)(e)(viii) of the SIS Act.

² Refer to subsection 10(1) of the SIS Act for the definition of Regulator.

- (c) under paragraph 299P(a) of the SIS Act, for the purposes only of section 299D of the SIS Act, approved the manner for a beneficiary, or applicant to become a beneficiary, of an eligible superannuation entity (other than an SMSF) or of a regulated exempt public sector superannuation scheme, to quote their TFN to a trustee of the entity or scheme in connection with the operation or possible future operation of the SIS Act and the other Superannuation Acts;
- (d) under paragraph 299S(1)(b) of the SIS Act, approved the manner of a person setting out their TFN in an application to the trustee of an eligible superannuation entity (including an SMSF) or regulated exempt public sector superannuation scheme for payment of a benefit;
- (e) under subsection 299M(2) of the SIS Act, approved the manner of a trustee of an eligible superannuation entity (other than an SMSF) (the first fund) informing another superannuation provider (within the meaning of the Schedule) of a TFN of a beneficiary of the first fund; and
- (f) under subsection 299N(2) of the SIS Act, approved the manner of a trustee of a regulated exempt public sector superannuation scheme (the first fund) informing another superannuation provider of a TFN of a beneficiary of the first fund.

The 2007 RSA Approval will sunset on 1 October 2017 by operation of subsection 50(1) of the *Legislation Act 2003*. Under subsection 50(1) of the *Legislation Act 2003*, a legislative instrument registered after 1 January 2005 will sunset on the earlier of 1 April or 1 October, 10 years after the instrument was registered on the Federal Register of Legislation

2. Purpose and operation of the instruments

Part 11 of the RSA Act and Part 25A of the SIS Act provide for the obligations of RSA providers and superannuation providers in relation to TFNs. The 2007 RSA Approval and 2007 SIS Approval facilitate the operation of Part 11 of the RSA Act and Part 25A of the SIS Act respectively.

The purpose of the 2017 RSA Approval is to allow the approvals in the 2007 RSA Approval to continue with only minor changes to wording to improve clarity.

The 2007 SIS Approval is exempt from sunset under regulation 11 of *Legislation (Exemptions and Other Matters) Regulation 2015* as it is an instrument relating to superannuation. The 2017 SIS Approval remakes the 2007 SIS Approval, despite the exemption from sunset, to ensure consistency with the 2017 RSA Approval and improve clarity.

The 2017 RSA Approval and 2017 SIS Approval also reflect the current *Privacy (Tax File Number) Rule 2015* (2015 TFN Rule) issued by the Privacy Commissioner under section 17 of the *Privacy Act 1988* (Privacy Act), which replaces the requirements previously set out in the Tax File Number Guidelines 2011. The 2015 TFN Rule regulates the collection, storage, use, disclosure, security and disposal of individuals' TFN information and is legally binding on superannuation and RSA providers. The 2015 TFN Rule is incorporated as in force from time to time.

3. Consultation

In reviewing these instruments, APRA consulted with the key superannuation industry bodies and the Australian Taxation Office (ATO) on whether the instruments were still required and whether the 'approved manner' for requesting and quoting a TFN should be reviewed.³ Feedback from this consultation confirmed that the instruments are still required and it was recommended that the instruments be modified chiefly to achieve a more plain English form of communication and, where appropriate, to take account of technology changes since the instruments were made in 2007. In addition, feedback also raised the need for the instruments to comply with the 2015 TFN Rule.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that neither a Regulation Impact Statement, nor a certification letter regarding sunseting legislative instruments, is required for Retirement Savings Accounts Tax File Number approval No. 1 of 2017 and Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2017.

5. Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

³ The industry bodies that were consulted with regarding the operation of these instruments included the Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST), the Corporate Superannuation Association, the Financial Services Council (FSC) and Industry Super Australia (ISA).

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011

Retirement Savings Accounts Tax File Number approval No. 1 of 2017

Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2017

These Legislative Instruments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instruments

Retirement Savings Accounts Tax File Number approval No. 1 of 2017 and Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2017 set out the approved manner for an RSA provider, trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme (superannuation providers) requesting that a person provide their tax file number (TFN), and for quoting a TFN, including when informing another superannuation provider of a TFN. The instruments are being remade without substantive change.

Human rights implications

APRA has assessed the instruments against the international instruments listed in section 3 of the HRPS Act and determined that only Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is potentially of relevance to the instruments.

Article 17 of the ICCPR prohibits the arbitrary or unlawful interference with a person's privacy, family, home and correspondence, and attacks on reputation.

TFNs constitute personal information as defined under section 3 of the *Privacy Act 1988*. While Retirement Savings Accounts Tax File Number approval No. 1 of 2017 and Superannuation Industry (Supervision) Tax File Number approval No. 1 of 2017 are concerned with the disclosure of TFNs of individuals, these instruments do not themselves interfere with the privacy of individuals. Rather, they prescribe *the manner* in which information as to an individual's TFN may be requested by persons or disclosed by the individual for the purposes of certain provisions of the *Retirement Savings Accounts Act 1997* and the *Superannuation Industry (Supervision) Act 1993* or disclosed by the individual. The instruments do not create an obligation to disclose or requirement to obtain TFNs.

Accordingly, in APRA's assessment, the instruments are compatible with human rights.

Conclusion

The instruments are compatible with human rights as they do not raise any human rights issues.