

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**RETIREMENT SAVINGS ACCOUNTS (CONSEQUENTIAL AMENDMENTS)
BILL 1996**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Treasurer, Senator the Hon Rod Kemp)

79588 Cat. No. 96 5546 8 ISBN 0644 48019X

RETIREMENT SAVINGS ACCOUNTS (CONSEQUENTIAL AMENDMENTS) BILL 1996

GENERAL OUTLINE

This Bill, together with the Retirement Savings Accounts Bill 1996 and the Retirement Savings Accounts Supervisory Levy Bill 1996 implements the 1996-97 Budget initiative to allow banks, building societies, credit unions and life insurance companies to provide superannuation without a trust structure in the form of retirement savings accounts (RSAs). RSAs are effectively another superannuation product, and as such, this package of Bills makes regulation of RSAs consistent with the regulation of other superannuation products, where applicable.

This Bill makes a number of consequential amendments to the *Superannuation Entities (Taxation) Act 1987*, the *Superannuation (Resolution of Complaints) Act 1993*, the *Bankruptcy Act 1966*, the *Superannuation Industry (Supervision) Act 1993*, the *Insurance and Superannuation Commissioner Act 1987*, the *Superannuation (Productivity Benefit) Act 1988*, the *Superannuation Act 1976*, the *Parliamentary Contributory Superannuation Act 1948*, the *Banking Act 1959*, the *Insurance Contracts Act 1984*, the *Insurance Act 1973*, the *Life Insurance Act 1995*, the *Income Tax Assessment Act 1936*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee (Administration) Act 1992*, the *Small Superannuation Accounts Act 1995*, the *Fringe Benefits Tax Assessment Act 1986* and the *Income Tax Rates Act 1986*.

The amendments made by this Bill will create a similar environment for RSAs to that currently applying to existing superannuation products, such as superannuation funds and approved deposit funds, by:

- putting in place an equivalent taxation regime for RSAs to that currently applying to other superannuation products;
- allowing employers to make Superannuation Guarantee contributions to an RSA;
- allowing the Superannuation Complaints Tribunal to deal with complaints concerning RSAs;
- allowing RSAs to be used as a rollover vehicle for preserved superannuation benefits; and
- providing for a mechanism for the calculation and collection of the RSA supervisory levy.

These amendments are to commence at the same time as the *Retirement Savings Accounts Act 1996*.

FINANCIAL IMPACT STATEMENT

The financial impact of this Bill is negligible.

**EXPLANATORY NOTES ON THE RETIREMENT SAVINGS ACCOUNTS
(CONSEQUENTIAL AMENDMENTS) BILL 1996**

Overview

1. This Bill makes consequential amendments to eighteen Acts as a result of the 1996-97 Budget initiative to allow banks, building societies, credit unions and life insurance companies to provide superannuation without a trust structure in the form of retirement savings accounts (RSAs).
2. The Bill is structured in eighteen schedules, each dealing with amendments to a particular Act.

Clause 1 - Short title

3. This clause provides the mode of citation of the Act.

Clause 2 - Commencement

4. This clause provides that this Act comes into operation on the same day as the *Retirement Savings Accounts Act 1996* commences.

Clause 3 - Schedule(s)

5. This clause provides that each Act specified in a Schedule to this Act is amended or repealed as set out in the Schedule.

Schedule 1 of the Bill
Amendment of the Superannuation Entities (Taxation) Act 1987

Outline

6. The *Superannuation Entities (Taxation) Act 1987* (SETA) sets out requirements for the calculation and collection of a levy on the superannuation industry. The levy is imposed to recover the costs of supervision of the superannuation industry by the Insurance and Superannuation Commission (ISC). This schedule amends SETA to provide for the equivalent collection and calculation requirements in respect of the supervisory levy that is imposed on RSA providers through the *Retirement Savings Accounts Levy Act 1996*.

Item 1 - The Title

7. This item amends the long title of SETA to include a reference to RSAs.

Item 2 - Subsection 3(1) (definition of *reviewable decision*)

8. This item amends the definition of *reviewable decision* in subsection 3(1) to include a decision of the Commissioner to remit a levy or late payment penalty. [*refer section 13B in Item 3*]

Item 3 - Subsection 3(1)

9. This inserts a definition of *RSA provider* for the purposes of SETA, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 4 - Subsection 3(1)

10. This item inserts a definition of *year of income* in relation to an RSA provider.

Item 5 - After Part III

11. This item inserts Part IIIAAA into SETA. An RSA provider that lodges an annual return under the *Retirement Savings Accounts Act 1996*, is liable to pay a levy to cover the cost of supervising RSAs by the ISC. This Part sets out the requirements for the collection of that levy. This Part is equivalent to Part IIIAA of SETA which prescribes similar requirements for the superannuation supervisory levy. [*Section 11*]

12. This levy is referred to as the retirement savings accounts supervisory levy and is imposed by the *Retirement Savings Accounts Levy Act 1996*. The Part also provides for the calculation of the late payment penalty. This penalty is incurred if an RSA provider fails to pay the levy in the time provide by section 11. [*Section 12*]

Item 6 - Subsection 16(1)

13. This item inserts a reference to RSA providers into subsection 16(1) to allow RSA providers, which have been affected by a reviewable decision, 21 days to request a review of the decision by the Commissioner. Where the RSA provider is dissatisfied with this review they are eligible to take it to the Administrative Appeals Tribunal.

Item 7 - Subsection 16(1)

14. This item inserts a reference to RSA providers into subsection 16(1) to allow RSA providers, which have been affected by a reviewable decision, 21 days to request a review of the decision by the Commissioner. Where the RSA provider is dissatisfied with this review they are eligible to take it to the Administrative Appeals Tribunal.

Item 8 - Subsection 17(1)

15. This item inserts a reference to RSA provider into paragraph 17(1). This amendment has the effect of requiring the Commissioner to notify the RSA provider that they may apply to the Administrative Appeals Tribunal if dissatisfied with the outcome of the review.

Item 9 - Paragraph 17(1)(a)

16. This item inserts a reference to RSA provider into paragraph 17(1)(a). This amendment has the effect of requiring the Commissioner to notify the RSA provider that they may apply to the Administrative Appeals Tribunal if dissatisfied with the outcome of the review.

Item 10 - Paragraph 17(1)(b)

17. This item inserts a reference to RSA provider into paragraph 17(1)(b). This amendment has the effect of requiring the Commissioner to notify the RSA provider that they may apply to the Administrative Appeals Tribunal if dissatisfied with the outcome of the review.

Item 11 - Subsection 17(2)

18. This item inserts a reference to RSA provider into subsection 17(2). This amendment has the effect of requiring the Commissioner to notify the RSA provider that they may apply to the Administrative Appeals Tribunal if dissatisfied with the outcome of the review.

Item 12 - Subsection 17(2)

19. This item inserts a reference to RSA provider into subsection 17(2). This amendment has the effect of requiring the Commissioner to notify the RSA provider that they may apply to the Administrative Appeals Tribunal if dissatisfied with the outcome of the review.

Item 13 - After paragraph 22(2)(b)

20. This item includes in the definition of levy, for the purposes of section 22, a reference to the levy imposed by the *Retirement Savings Accounts Levy Act 1996*.

Schedule 2 of the Bill
Amendment of the Superannuation (Resolution of Complaints)
Act 1993

Outline

21. The *Superannuation (Resolution of Complaints) Act 1993* (the SRC Act) establishes the Superannuation Complaints Tribunal to provide a fair, low-cost, informal and quick alternative to the courts for resolution of disputes between members and their superannuation funds. To ensure consistency in the treatment of complaints relating to all superannuation products the SRC Act will be amended as set out in this Schedule to enable the SCT to deal with RSA complaints.

22. The Bill will make the following amendments to the SRC Act:

- enable the Tribunal to review and make determinations in respect of RSA providers' conduct in relation to the opening of RSAs;
- enable the Tribunal to review and make determinations in respect of decisions of RSA providers in relation to particular RSA holders;
- enable the Tribunal to review and make determinations in respect of insurers' conduct in relation to the sale of insurance benefits under a contract of insurance where the premiums are paid from an RSA;
- enable the Tribunal to review and make determinations in respect of decisions of insurers under a contract of insurance where the premiums are paid from an RSA;
- enable the Tribunal to provide appropriate remedies (eg, varying a decision, cancellation or variation of the terms of an RSA or insurance policy and repayment of moneys with interest) where it determines that the conduct or decision of the RSA provider or insurer is unfair or unreasonable;
- allow the Tribunal to review decisions as to whether and to what extent a person is totally and permanently disabled that are made by certain persons other than an RSA provider or insurer;
- exclude disability complaints where more than one year has elapsed since the decision to which the complaint relates, or where a person fails to lodge a claim for a disability benefit with the RSA provider or insurer within one year of permanently ceasing employment due to disability; and
- where a complaint has been made in relation to a death benefit payment, require other persons who have an interest in the outcome of a complaint to be notified and given the opportunity to become a party to the complaint.

Item 1 - The Title

23. This item extends the title of the SRC Act to reflect the extension of the Superannuation Complaints Tribunal's jurisdiction under the SRC Act to deal with certain complaints about the conduct of RSA providers and insurers under sections 15E and 15H of the SRC Act.

Item 2 - At the end of the Title

24. This item extends the title of the SRC Act to reflect the extension of the Superannuation Complaints Tribunal's jurisdiction under the SRC Act to deal with certain complaints about the decisions of RSA providers and insurers under sections 15F and 15J of the SRC Act.

Item 3 - Subsection 3(2) (definition of *complainant*)

25. This item amends the definition of *complainant* in subsection 3(2) of the SRC Act to include persons who make a complaint under proposed sections 15E, 15F, 15H and 15J (inserted by item 20).

Item 4 - Subsection 3(2) (definition of *complaint*)

26. This item amends the definition of *complaint* in subsection 3(2) of the SRC Act to include as complaints those that are made under proposed sections 15E, 15F, 15H and 15J (inserted by item 20).

Item 5 - Subsection 3(2) (at the end of the definition of *death benefit*)

27. This item amends the definition of *death benefit* in subsection 3(2) of the SRC Act to include a benefit payable by an RSA provider in respect of the holder of an RSA or a benefit paid by an insurer under a contract of insurance where the premiums are paid from an RSA that is payable on or after the death of the holder. The benefit must be provided in accordance with subsection 15(3) or paragraph 15(4)(c) of the *Retirement Savings Accounts Act 1996* (RSA Act) which requires that the benefit must be paid to the holder's legal personal representative, to any or all of the holder's dependants or to both.

Item 6 - Subsection 3(2) (definition of *disability benefit*)

28. This item omits the definition of 'disability benefit' in subsection 3(2) of the SRC Act and substitutes a new definition of 'disability benefit' which provides that a disability benefit is:

- a benefit provided by the trustee of a regulated superannuation fund in the event of a partially or totally disabling physical or mental condition that is provided in accordance with subparagraph 62(1)(b)(ii) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) or
- a benefit payable by an RSA provider in the event of a partially or totally disabling physical or mental condition that is provided in accordance with paragraph 15(4)(b) of the RSA Act; or
- a benefit payable by an insurer under a contract of insurance where the premiums are paid from an RSA in the event of a partially or totally disabling physical or mental condition that is provided in accordance with paragraph 15(4)(b) of the RSA Act.

Item 7 - Subsection 3(2) (definition of *excluded complaint*)

29. This item amends the definition of ‘excluded complaint’ in subsection 3(2) of the SRC Act to enable regulations to be made specifying an RSA provider to which the SRC Act does not apply.

Item 8 - Subsection 3(2) (definition of *insurer*)

30. This item inserts a new paragraph into the definition of ‘insurer’ in subsection 3(2) of the SRC Act to extend the definition to apply in relation to a complaint made under section 15E, 15F, 15H or 15J.

Item 9 - Subsection 3(2)

31. This item inserts a definition of ‘holder’ into subsection 3(2) of the SRC Act. The term ‘holder’ has the same meaning as in the RSA Act.

Item 10 - Subsection 3(2)

32. This item inserts a definition of ‘RSA’ into subsection 3(2) of the SRC Act. The term ‘RSA’ has the same meaning as in the RSA Act.

Item 11 - Subsection 3(2)

33. This item inserts a definition of ‘RSA provider’ into subsection 3(2) of the SRC Act. The term ‘RSA provider’ has the same meaning as in the RSA Act.

Item 12 - After paragraph 3(3)(b)

34. This item inserts a new paragraph into subsection 3(3) of the SRC Act to extend the definition of ‘representative of an insurer’ to apply in relation to a contract of insurance where the premiums are paid from an RSA.

Item 13 - Paragraph 3(3)(c)

35. This item ensures that the definition of ‘representative of an insurer’ is consistent with the amendment to paragraph 3(3)(b) at item 12 to extend the definition of ‘representative of an insurer’ to apply in relation to a contract of insurance where the premiums are paid from an RSA.

Item 14 - After subsection 3(3)

36. This item inserts a definition of ‘representative of an RSA provider’ after subsection 3(3) of the SRC Act. The definition covers an agent, employee or officer of the RSA provider and any person involved in conduct in relation to an RSA.

Item 15 - Section 4

37. This item amends section 4 of the SRC Act to include decisions of RSA providers. Section 4 explains the meaning of decision of a trustee, an insurer or another decision-maker for the purposes of the SRC Act. Subsection 4(1) provides that a decision by those persons includes a failure to make a decision. Subsection 4(2) provides that a decision includes conduct in relation to making a decision.

Item 16 - Section 4

38. This item amends section 4 of the SRC Act to include decisions of RSA providers. Section 4 explains the meaning of decision of a trustee, an insurer or another decision-maker for the purposes of the SRC Act. Subsection 4(1) provides that a decision by those persons includes a failure to make a decision. Subsection 4(2) provides that a decision includes conduct in relation to making a decision.

Item 17 - After paragraph 8(2)(b)

39. This item amends subsection 8(2) of the SRC Act. Subsection 8(2) of the SRC Act sets out persons who may be disqualified from being appointed as Tribunal Chairperson or Deputy Chairperson. This item inserts paragraphs 8(2)(c) and (d) to provide that a person who is a director or employee of an RSA provider or an insurer is not eligible to be appointed as Tribunal Chairperson or Deputy Chairperson.

Item 18 - After paragraph 10(1)(b)

40. This item amends subsection 10(1) of the SRC Act. Subsection 10(1) requires the disclosure of financial interests by the Tribunal Chairperson and Deputy Chairperson. This item requires the disclosure of all direct or indirect financial interests that he or she has or acquires in an RSA, RSA provider or insurer.

Item 19 - Subsection 13(2)

41. This item amends subsection 13(2) of the SRC Act to ensure that the Tribunal must make reasonably available to holders of RSAs and annuity policyholders a memorandum setting out the procedural matters specified in paragraphs 13(1)(a), (b) and (c) of the SRC Act including how complaints may be made to the Tribunal.

Item 20 - After section 15D

42. This item inserts after section 15D of the SRC Act new sections 15E, 15F, 15G, 15H, 15J and 15K.

43. Section 15E comprises four subsections.

44. Subsection 15E(1) enables a person who is a holder of an RSA to complain to the Tribunal that the conduct of the RSA provider or a representative of the RSA provider in relation to the opening of the RSA was unfair or unreasonable. The Tribunal may also join an insurer or any other person as a party to a complaint under this section and review any conduct of the person joined that may be relevant to the complaint.

45. Subsection 15E(2) provides that a complaint under this section is to be made by sending a written complaint to the office of the Tribunal.

46. Subsection 15E(3) sets out factors that the Tribunal must take into account, and subsection 15E(4) sets out the factors that the Tribunal may take into account, in assessing whether the conduct of the RSA provider was fair and reasonable.

47. Section 15F has ten subsections.

48. Subsection 15F(1) enables a person to complain to the Tribunal that a decision of an RSA provider in relation to a particular RSA holder is or was unfair or unreasonable. The Tribunal may also join an insurer or any other person as a party to a complaint under this section and review any decision of the person joined that may be relevant to the complaint.

49. Subsections 15F(2) and (3) set out notification procedures which can be used by RSA providers proposing to pay death benefits under an RSA to protect themselves from the risk of 'double payment' of the death benefit. The provisions are intended to enable RSA providers to become aware of potential complainants in respect of a proposed distribution of a death benefit, and withhold payment of the death benefit until after the complaint has been dealt with by the Tribunal.

50. Subsection 15F(4) provides that the Tribunal cannot deal with a complaint under this section if the decision relates to the management of an RSA provider, RSA provider's business or an RSA provider's investments. This is intended to exclude complaints about the overall investment strategy or fee structures applied by the RSA provider to a broad class of RSAs.

51. Subsection 15F(5) provides that the Tribunal can only deal with complaints about RSA provider decisions relating to the payment of disability benefits if the complaint is made within one year of the RSA provider's decision.

52. Subsection 15F(6) ensures that persons can only access the Tribunal with disability complaints if the original claim for disability benefits to which the complaint relates was lodged with the RSA provider within one year of the permanent cessation of employment due to disability. The reference to permanent cessation of employment is intended to ensure that time will not begin to run against persons who are on extended sick leave and, or, in receipt of some kind of salary continuance benefit and who retain a right to resume employment until they have permanently ceased employment.

53. Subsection 15F(7) ensures that the decision of the RSA provider referred to in subsections 15F(5) and (6) is the original decision which rejected the claim, either in

whole or in part, and not a subsequent reconsideration of that decision under the internal review mechanisms established by the RSA provider as required by section 47 of the RSA Act. (Enabling the 12 month time period to run under subsection (5) or (6) from the date of a decision on reconsideration of the original decision would defeat the object of the time limit).

54. Subsection 15F(8) provides that for the purposes of subsection (7) if a complaint is made about an original decision of an RSA provider under arrangements made under section 47 of RSA Act, and the original decision is confirmed, varied or another decision was substituted for the original decision, the confirmed, varied or substituted decision is taken to have been made at the time the original decision was made.

55. Subsection 15F(9) provides that a complaint under this section is to be made by sending a written complaint to the office of the Tribunal.

56. Subsection 15F(10) sets out the factors that the Tribunal must have regard to in determining whether the decision of the RSA provider is or was unfair or unreasonable.

57. Section 15G sets out who may make a section 15F complaint.

58. Subsection 15G(1) sets out the circumstances in which a person has an interest in the payment of a death benefit under an RSA for the purposes of making a complaint under section 15F to the Tribunal. Subsection 15G(2) provides that persons do not have an interest in the payment of such a death benefit if they have not objected to any notice provided by the RSA provider under paragraph (a) or otherwise fall within the requirements of paragraphs (b) to (d).

59. Section 15H comprises four subsections.

60. Subsection 15H(1) enables a person who is a holder of an RSA to complain to the Tribunal that the conduct of an insurer or a representative of an insurer in relation to the sale of insurance benefits in relation to a contract of insurance where the premiums are paid from an RSA was unfair or unreasonable. The Tribunal may also join an RSA provider or any other person as a party to a complaint under this section and review any conduct of the person joined that may be relevant to the complaint.

61. Subsection 15H(2) provides that a complaint under this section is to be made by sending a written complaint to the office of the Tribunal.

62. Subsection 15H(3) sets out factors that the Tribunal must take into account, and subsection 15H(4) sets out the factors that the Tribunal may take into account, in assessing whether the conduct of the insurer was fair and reasonable.

63. Section 15J has ten subsections.

64. Subsection 15J(1) enables a person to complain to the Tribunal that a decision of an insurer under a contract of insurance where the premiums are paid from an RSA is or was unfair or unreasonable. The Tribunal may also join an RSA provider or any

other person as a party to a complaint under this section and review any decision of the person joined that may be relevant to the complaint.

65. Subsections 15J(2) and (3) set out notification procedures which can be used by insurers proposing to pay death benefits under a contract of insurance to protect themselves from the risk of 'double payment' of the death benefit. The provisions are intended to enable insurers to become aware of potential complainants in respect of a proposed distribution of a death benefit, and withhold payment of the death benefit until after the complaint has been dealt with by the Tribunal.

66. Subsection 15J(4) provides that the Tribunal cannot deal with a complaint under this section if the decision relates to the management of an insurer, an insurer's business or an insurer's investments. This is intended to exclude complaints about the overall investment strategy or fee structures applied by the insurer to a broad class of policies.

67. Subsection 15J(5) provides that the Tribunal can only deal with complaints about insurer decisions relating to the payment of disability benefits if the complaint is made within one year of the insurer's decision.

68. Subsection 15J(6) ensures that persons can only access the Tribunal with disability complaints if the original claim for disability benefits to which the complaint relates was lodged with the insurer within one year of the permanent cessation of employment due to disability. The reference to permanent cessation of employment is intended to ensure that time will not begin to run against persons who are on extended sick leave and, or, in receipt of some kind of salary continuance benefit and who retain a right to resume employment until they have permanently ceased employment.

69. Subsection 15J(7) ensures that the decision of the insurer referred to in subsections 15J(5) and (6) is the original decision which rejected the claim, either in whole or in part, and not a subsequent reconsideration of that decision under any internal review mechanisms established by the insurer. (Enabling the 12 month time period to run under subsection (5) or (6) from the date of a decision on reconsideration of the original decision would defeat the object of the time limit).

70. Subsection 15J(8) provides that for the purposes of subsection (7) if a complaint is made about an original decision of an insurer under arrangements made for dealing with complaints, and the original decision is confirmed, varied or another decision was substituted for the original decision, the confirmed, varied or substituted decision is taken to be have been made at the time the original decision was made.

71. Subsection 15J(9) provides that a complaint under this section is to be made by sending a written complaint to the office of the Tribunal.

72. Subsection 15J(10) sets out the factors that the Tribunal must have regard to in determining whether the decision of the insurer is or was unfair or unreasonable.

73. Section 15K sets out who may make a section 15J complaint.

74. Subsection 15K(1) sets out the circumstances in which a person has an interest in the payment of a death benefit in relation to a contract of insurance entered into in connection with an RSA for the purposes of making a complaint under section 15J to the Tribunal. Subsection 15K(2) provides that persons do not have an interest in the payment of such a death benefit if they have not objected to any notice provided by the insurer under paragraph (a) or otherwise fall within the requirements of paragraphs (b) to (d).

Item 21 - At the end of section 17

75. This item amends section 17 of the SRC Act by inserting subsections 17(3) and 17(4). Subsection 17(3) provides that when the Tribunal receives a complaint under proposed sections 15E and 15F (inserted by item 20) it must write to the complainant acknowledging the complaint and to the RSA provider advising of the complaint and setting out the RSA provider's obligations under section 24 relating to the provision of relevant documents to the Tribunal.

76. Subsection 17(4) provides that when the Tribunal receives a complaint under proposed sections 15H and 15J (inserted by item 20) it must write to the complainant acknowledging the complaint and to the insurer advising of the complaint and setting out the insurer's obligations under section 24 relating to the provision of relevant documents to the Tribunal.

Item 22 - Paragraph 17A(3)(a)

77. This item amends section 17A of the SRC Act so that it applies in relation to complaints made under proposed sections 15E, 15F, 15H and 15J (inserted by item 20). Subsection 17A(3) prescribes the procedures that must be followed if the Tribunal decides under section 18 (as amended by item 26) that a person should be joined as a party to a complaint. Basically, the procedures are that the Tribunal must advise the new party that they are a party to a complaint and also advise of their obligations under section 24 relating to the provision of relevant documents to the Tribunal. The Tribunal must also inform existing parties that a new party exists.

Item 23 - Paragraph 17A(3)(b)

78. This item amends paragraph 17A(3)(b) to reflect amendments to section 18 (by item 26) which sets out the parties to a complaint under proposed sections 15E, 15F, 15H and 15J (inserted by item 20).

Item 24 - Paragraph 17A(4)(a)

79. This item amends paragraph 17A(4)(a) to ensure that the Tribunal must inform a party that has applied to be made a party to a complaint under 15E, 15F, 15H or 15J (inserted by item 20), and has had that application rejected, that the application has been rejected and the reasons why it was rejected.

Item 25 - Paragraph 17A(4)(c)

80. This item amends paragraph 17A(4)(c) to reflect amendments to section 18 (by item 26) which sets out the parties to a complaint under proposed sections 15E, 15F, 15H and 15J (inserted by item 20).

Item 26 - After subsection 18(3)

81. This item amends section 18 of the SRC Act to set out the parties to a section 15E, 15F, 15H and 15J complaint.

82. Paragraph 18(3A)(c) enables the Tribunal to join an insurer to a complaint against an RSA provider in relation to a death or disability benefit under a contract of insurance relating to an RSA. Paragraph 18(3A)(d) enables the Tribunal to join a person other than an RSA provider or insurer who has responsibility for determining the existence of total and permanent disablement. Paragraph 18(3A)(e) enables the Tribunal to join any other person who applies to be made a party to the complaint.

83. Paragraph 18(3B)(c) enables the Tribunal to join an RSA provider as a party to a complaint in relation to a death or disability benefit under a contract of insurance relating to an RSA. Paragraph 18(3B)(d) enables the Tribunal to join a person other than an RSA provider or insurer who has responsibility for determining the existence of total and permanent disablement. Paragraph 18(3B)(e) enables the Tribunal to join any other person who applies to be a party to the complaint.

Item 27 - At the end of section 19

84. This item inserts subsections 19(3) and (4) into the SRC Act. Subsection 19(3) provides that the Tribunal cannot deal with a complaint under section 15E or 15F that has not previously been made to the appropriate person under arrangements for dealing with such complaints under section 47 of the RSA Act and that the complaint was not settled to the complainant's satisfaction within 90 days. Subsection 19(4) provides that complainants who have a complaint under section 15H or 15J (inserted by item 20) must make reasonable attempts to have their complaint resolved by the insurer. It is intended that reasonable efforts should, at minimum, take the form of telephone enquires or written correspondence with the insurer concerned.

Item 28 - Paragraph 22(3)(a)

85. This item amends paragraph 22(3)(a) of the SRC Act. Paragraph 22(3)(a) of the SRC Act provides that the Tribunal can treat a complaint as withdrawn (other than one in relation to decisions of trustees as to total and permanent disablement) if it has been more than 12 months since the decision complained of was taken or the conduct complained of was undertaken. This item amends paragraph 22(3)(a) to ensure that a decision of an RSA provider, insurer or other decision-maker in relation to total and permanent disablement is also excluded from the operation of this paragraph.

86. Complaints relating to RSA providers, insurers or other decision-makers' decisions about total and permanent disablement are exempt from paragraph 22(3)(a) because of the time limits covering such complaints in subsections 15F(5) to (8) and subsections 15J(5) to (8) (item 20 refers).

Item 29 - Subsection 24(1)

87. This item amends subsection 24(1) of the SRC Act to ensure that where an RSA provider has been notified under section 17 of a section 15E or 15F complaint, the RSA provider must lodge a copy or summary of any relevant material documents relating to the complaint with the Tribunal. The RSA provider has 28 days or such longer period as the Tribunal allows.

Item 30 - Subsection 24(1)

88. This item amends subsection 24(1) to ensure that it applies to complaints against an RSA provider or insurer made under proposed sections 15E, 15F, 15H or 15J (inserted by item 20).

Item 31 - Subsections 24(2) and (3)

89. This item repeals subsections 24(2) and (3) of the SRC Act and substitutes new subsections 24(2) and (3).

90. Subsection 24(2) provides that where a 'relevant person' (as determined under subsection 24(3)) is notified under section 17A that the person has been joined under section 18 as a party to a complaint, the person must lodge a copy or summary of any relevant material documents relating to the complaint with the Tribunal within 28 days or such longer period as the Tribunal allows.

91. Subsection 24(3) sets out the persons who are relevant persons in relation to complaints under sections 14, 14A, 15E, 15F, 15H and 15J.

Items 32 - Subsection 24(4)

92. This item amends subsection 24(4) of the SRC Act to provide that the Tribunal may allow an RSA provider to lodge a summary of the documents to be given to the Tribunal under subsections 24(1) or (2).

Item 33 - Subsection 24(4)

93. This item amends subsection 24(4) of the SRC Act to provide that the Tribunal may allow an RSA provider to lodge a summary of the documents to be given to the Tribunal under subsections 24(1) or (2).

Item 34 - Paragraph 24(6)(c)

94. This item amends paragraph 24(6)(c) of the SRC Act to ensure that in relation to a complaint under proposed sections 15E, 15F, 15H or 15J where a person has been joined under section 17A(3) as a party to a complaint the Tribunal may require the person to provide copies of documents relevant to the complaint.

Item 35 - Subsection 24(7)

95. This item provides that the penalty provision applies to an RSA provider who intentionally or recklessly fails to comply with the section 24 requirements relating to the provision of relevant documents to the Tribunal.

Item 36 - After subsection 24A(2)

96. This item inserts subsections 24(2A) and (2B) into the SRC Act. Subsections 24(2A) and (2B) establish procedures in relation to a complaint under proposed sections 15F and 15J aimed at ensuring that all persons with an interest in the outcome of a particular complaint relating to the payment of a death benefit are informed of the complaint and given the opportunity to become a party to the complaint. This will enable the Tribunal to consider the interests of all such parties in making any decisions.

Item 37 - Subsections 24A(3) and (4)

97. This item amends subsections 24A(3) and (4) of the SRC Act to apply to proposed subsections 24(2A) and (2B) (see item 36). Subsection 24A(3) sets out the details that must be included in a notice to persons who may have an interest in the outcome of a particular complaint relating to the payment of a death benefit. Subsection 24A(4) requires trustees and insurers to inform the Tribunal of persons to whom a notice has been given.

Item 38 - Subsection 24A(4)

98. This item amends subsection 24A(4) to ensure that if an RSA provider is required to give a person notice relating to a complaint, the RSA provider must give the Tribunal details of the persons given such a notice.

Item 39 - Paragraph 24A(6)(a)

99. This item amends paragraph 24A(6)(a) to ensure it applies to complaints under proposed sections 15F and 15J. Paragraph 24A(6)(a) enables a person who considers that they are affected by a decision that is the subject of a complaint under section 14, 14A or 15B to request that they be joined under section 18 as a party to a complaint.

Item 40 - Paragraph 24A(6)(b)

100. This item amends paragraph 24A(6)(b) to ensure it applies to complaints under proposed sections 15E and 15H. Paragraph 24A(6)(b) enables a person who considers that they are affected by conduct that is the subject of a complaint under section 15A to request that they be joined under section 18 as a party to a complaint.

Item 41 - After subsection 26(1A)

101. This item inserts subsections 26(1B) and (1C) into the SRC Act. Subsection 26(1B) provides that the making of a complaint under section 15F to the Tribunal concerning a decision of an RSA provider does not affect the operation of the decision or prevent the taking of action to implement the decision. Subsection 26(1C) covers complaints under section 15J about decisions of insurers under a contract of insurance entered in connection with an RSA.

Item 42 - After subsection 26(2A)

102. This item inserts subsections 26(2B) and (2C) into the SRC Act. Subsection 26(2B) allows the Tribunal to make such order or orders staying or otherwise affecting the operation or implementation of the whole or part of the decision of the RSA provider to which the complaint relates. Subsection 26(2C) applies to a decision of an insurer under a contract of insurance entered in connection with an RSA.

Item 43 - Subsection 26(3)

103. This item amends subsection 26(3) to ensure that it is applicable to subsections 26(2B) and (2C). Subsection 26(3) provides that the Tribunal may make an order varying or revoking an order in force under subsections 26(2) or (2A) to stay the operation or implementation of a decision to which a complaint relates or is relevant to the subject matter of the complaint.

Item 44 - Subsection 26(4)

104. This item amends subsection 26(4) to ensure that it is applicable to subsections (2B) and (2C). Subsection 26(4) sets out the requirements on the Tribunal for making an order under subsections 26(2) or (2A).

Item 45 - Subsection 26(5)

105. This item amends subsection 26(5) to ensure that it is applicable to subsections 26(2B) and (2C). Subsection 26(5) provides that an order in force under subsection 26(2) and (2A) is subject to conditions as are specified in the order and sets out the period of effect of the order.

Item 46 - Paragraph 36(b)

106. This item omits paragraph 36(b) of the SRC Act and substitutes a new paragraph as a result of the fact that complaints can be made to the Tribunal other than in relation to a superannuation fund, for example, RSAs. Therefore, in reviewing a decision or conduct, the Tribunal only has to have regard to the interests of all the members of the fund where the complaint relates to a fund.

Item 47 - Subsection 37C(3)

107. This item amends subsection 37C(3) by inserting a comma between ‘insurer’ and ‘that’.

Item 48 - Subsection 37C(5)(b)(ii)

108. This item amends subparagraph 37C(5)(b)(ii) by inserting a comma between ‘be’ and ‘or’.

Item 49 - After 37C

109. This item inserts new sections 37D, 37E, 37F and 37G.

110. Section 37D sets out the Tribunal powers in relation to a section 15E complaint concerning the conduct of an RSA provider in opening an RSA. Subsection 37D(3) provides that the Tribunal must make a determination either doing any or all of the things set out in relation to a section 15E complaint. Subsection 37D(4) states that the Tribunal must not take action under paragraph (3)(a) if the conduct is fair and reasonable in the circumstances. If an insurer has been joined as a party to a complaint under section 15E, subsection 37D(5) provides that Tribunal must make a determination either doing any or all of the things set out.

111. Section 37E sets out the Tribunal’s powers in respect of a section 15F complaint concerning the decision of an RSA provider. Subsection 37E(3) provides that the Tribunal must make a determination doing one of the things set out in relation to a section 15F complaint. Subsection 37E(6) provides that the Tribunal must affirm a decision referred to in subsection (3) if the decision is fair and reasonable in the circumstances.

112. Section 37F sets out the Tribunal powers in respect of a section 15H complaint concerning the conduct of an insurer in relation to the entry into a contract of insurance in connection with an RSA. Subsection 37F(3) provides that the Tribunal must make a determination either doing any or all of the things set out in relation to a section 15H complaint about an insurer. Subsection 37F(4) provides that the Tribunal must not take action under paragraph 3(a) if the conduct of the insurer was fair and reasonable. If an RSA provider has been joined as a party to a complaint under section 15H, subsection 37F(5) provides that the Tribunal must make a determination either doing any or all of the things set out.

113. Section 37G sets out the Tribunal powers in respect of section 15J complaint concerning a decision of an insurer under a contract of insurance entered in connection with an RSA. Subsection 37G(3) provides that the Tribunal must make a determination doing one of the things set out in relation to a section 15J complaint. Subsection 37G(5) provides that the Tribunal must affirm a decision referred to in subsection 37G(3) if the decision is fair and reasonable.

Item 50 - Subsection 41(3)

114. This item amends subsection 41(3) of the SRC Act to ensure that a decision of an RSA provider as varied by the Tribunal, or a decision made by the Tribunal in substitution for a such decision is taken to be a decision of the RSA provider.

Item 51 - After subsection 44(2)

115. This item inserts subsections 44(2A) and (2B) into the SRC Act. Subsection 44(2A) allows the Tribunal to direct an RSA provider to notify certain parties of a Tribunal's determination. Subsection 44(2B) allows the Tribunal to direct an insurer to notify certain parties of a Tribunal's determination.

Item 52 - Subsection 44(3)

116. This item provides that the penalty provision applies to an RSA provider who intentionally or recklessly fails to comply with section 44.

Item 53 - Paragraph 47(2A)(b)

117. This item amends paragraph 47(2A)(b) to ensure that it applies to a determination made as a result of a complaint under proposed sections 15E and 15H. Paragraph 47(2A)(b) provides that where an appeal is brought to the Federal Court from a determination of the Tribunal the Court may make such order or orders staying or otherwise affecting the operation or implementation of the determination.

Item 54 - Subsection 47(2A)

118. This item amends a typographical error.

Item 55 - Paragraph 47(2B)(b)

119. This item amends paragraph 47(2B)(b) to ensure that it applies to a determination made as a result of a complaint under proposed sections 15F and 15J. Paragraph 47(2B)(b) provides that if an appeal is brought to the Federal Court from a determination of the Tribunal the Court may make such order or orders staying or otherwise affecting the operation or implementation of the determination.

Item 56 - Paragraph 47(2B)(d)

120. This item amends paragraph 47(2B)(d) so that it applies to a decision of an RSA provider.

Item 57 - After paragraph 53(2)(c)

121. This item amends paragraph 53(2)(c) to provide that the appointment of the Tribunal Chairperson or Deputy Chairperson must be terminated by the Governor-General if the Chair or Deputy becomes a director or employee of an RSA provider or an insurer.

Item 58 - Subsection 59(1)

122. This item amends subsection 59(1) to reflect the amendments to section 18 inserted by item 26.

Item 59 - Paragraph 59(2)(a)

123. This item amends paragraph 59(2)(a) to reflect the amendments to section 26 inserted by item 42.

Item 60 - After section 64

124. This item inserts a new section into the SRC Act to provide for the notification to the Insurance and Superannuation Commissioner of any breach in the terms and conditions relating to an annuity policy, life policy or an RSA of which a member of the Tribunal may become aware.

***Schedule 3 of the Bill
Amendment of the Bankruptcy Act 1966***

Outline

125. The *Bankruptcy Act 1996* (the Bankruptcy Act) sets out the treatment of superannuation moneys in the event of the bankruptcy of a person, or the death of a bankrupt. Generally, any money that the bankrupt has in superannuation up to the pension RBL is not available to creditors. This schedule amends the Bankruptcy Act to ensure money held in RSAs is treated in a similar fashion to money held in a superannuation fund.

Note: The pension RBL is prescribed by section 140ZD of the Income Tax Assessment Act 1936

Item 1 - Subsection 5(1)

126. This inserts a definition of *provider* for the purposes of the Bankruptcy Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 2 - Subsection 5(1)

127. This inserts a definition of *RSA* for the purposes of the Bankruptcy Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 3 - Subsection 5(1)

128. This inserts a definition of *RSA holder* for the purpose of the Bankruptcy Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 4 - At the end of paragraph 116(2)(d)

129. This item inserts subparagraphs (v) and (vi) which refer to money held in an RSA and payments from an RSA which are not pensions or annuities. Amongst other things, paragraph 116(2)(d) provides that interests in certain super funds are not available to creditors. This amendment applies the same treatment to RSAs as applies to superannuation funds.

Item 5 - After subsection 116(8)

130. This item inserts subsection 116(8A) into the Bankruptcy Act. This subsection allows the regulations to provide for the RSA provider to provide a written evidentiary certificate as evidence of the amount of money a bankrupt holds in an RSA. The certificate will be prima facie evidence of the amount held by the bankrupt in the RSA.

Item 6 - Section 139L (definition of *income*)

131. This item inserts subparagraph 139L(a)(ia), to include as income of the bankrupt an annuity or pension paid from an RSA.

Item 7 - After sub-subparagraph 249(6)(a)(ii)(B)

132. This item inserts a new sub-subparagraph into the Bankruptcy Act that provides that where the administration of the estate of a deceased person commenced before the death of the person, the divisible property does not include so much of the proceeds of RSAs that would not have been divisible among the creditors if the person had not died, the sequestration order had been made before death and the amount concerned had been paid immediately before the person's death.

Item 8 - After sub-subparagraph 249(7)(a)(ii)(B)

133. This item inserts a new sub-subparagraph into the Bankruptcy Act that provides that where the administration of the estate of a deceased person commenced at the time of the death of the person, the divisible property does not include so much of the proceeds of RSAs that would not have been divisible among the creditors if the person had not died, the sequestration order had been made before death and the amount concerned had been paid immediately before the person's death.

Item 9 - After sub-subparagraph 249(8)(a)(ii)(B)

134. This item inserts a new sub-subparagraph into the Bankruptcy Act that provides that where the administration of the estate of a deceased person commenced after the death of the person, the divisible property does not include so much of the proceeds of RSAs that would not have been divisible among the creditors if the person had not died, the sequestration order had been made before death and the amount concerned had been paid immediately before the person's death.

Item 10 - After section 302A

135. This item inserts section 302AB into the Bankruptcy Act. This section acts to void any provision in the terms and conditions of an RSA where the effect of the term or condition is to cancel, forfeit, reduce or qualify the amount a person has in an RSA or to allow another person to exercise a discretion relating to the amount, if the RSA holder has become bankrupt, commits an act of bankruptcy or executes a deed of assignment or arrangement under the Bankruptcy Act.

Schedule 4 of the Bill
Amendment of the Superannuation Industry (Supervision) Act 1993

Outline

136. The *Superannuation Industry (Supervision) Act 1993* (SIS) regulates, inter alia, the conduct of trustees of superannuation entities to ensure the prudent management of superannuation fund moneys. The schedule amends SIS to allow for trustees of approved deposit funds to pay money to an RSA, place requirements on eligible rollover funds accepting money from an RSA, and to allow trustees of eligible superannuation entities or regulated exempt public sector schemes, to transfer tax file numbers to an RSA provider where a beneficiary transfers money to an RSA.

Item 1 - Subsection 10(1)

137. This item inserts a definition of *RSA* into SIS, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 2 - Subsection 10(1)

138. This item inserts a definition of *RSA provider* into SIS, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 3 - Paragraph 15(1)(b)

139. This item amends paragraph 15(1)(b) of SIS to treat money paid to an RSA, from an approved deposit fund, on a beneficiary's behalf as being paid to the beneficiary. This is to clarify the meaning of 'paid to a beneficiary' for the purposes of paragraph (c) of the definition of 'approved purposes' in section 10 and for the purposes of section 53 of SIS.

Item 4 - After paragraph 153(1)(c)

140. This item inserts paragraph 153(1)(ca). This paragraph prescribes that the trustee of an eligible rollover fund must not issue a superannuation interest pursuant to an application made under Part 9 of the *Retirement Savings Accounts Act 1996*, except under an eligible application. This does not apply if the RSA provider has previously made such an application.

Item 5 - At the end of subsection 157(4)

141. This item exempts the provision of information required by section 157 to an applicant, where the application is made under Part 9 of the *Retirement Savings Accounts Act 1996*.

Item 6 - Subsection 157A(1)

142. This item inserts a reference to Part 9 of the *Retirement Savings Accounts Act 1996*. This section applies to applications made to rollover money to an eligible rollover fund. This amendment is to ensure that where an RSA provider uses an eligible rollover fund, then the trustee of the eligible rollover fund must provide to the RSA provider certain information.

Item 7 - Subsection 157A(1)

143. This item amends the reference to ‘that Part’ in subsection 157A(1), to ‘those Parts’, because of the amendment made by item 6.

Item 8 - Subsection 157A(1)

144. This item amends the definition of ‘applicant’ for the purposes of section 157A to include an RSA provider. This section applies to applications made to rollover money to an eligible rollover fund. This amendment is to ensure that where an RSA provider uses an eligible rollover fund, then the trustee of the eligible rollover fund must provide to the RSA provider certain information. It also amends the heading to section 157A to include a reference to Part 9 of the *Retirement Savings Accounts 1996*.

Item 9 - At the end of subsection 157A(1)

145. This item amends the definition of ‘applicant’ for the purposes of section 157A to include a reference to section 87 of the *Retirement Savings Accounts Act 1996*. This section applies to applications made to rollover money to an eligible rollover fund. This amendment is to ensure that where an RSA provider uses an eligible rollover fund, then the trustee of the eligible rollover fund must provide to the RSA provider certain information.

Item 10 - At the end of subsection 248(1)

146. This item inserts a reference to section 87 of the *Retirement Savings Accounts Act 1996* into subsection 248(1). This section outlines the process for the claiming of benefits in an eligible rollover fund. The amendment is to ensure that the benefits transferred from an RSA are treated in the same way as if the money was transferred from another fund.

Item 11 - Subsection 299M(2)

147. This item amends subsection 299M(2) to allow the trustee of an eligible superannuation entity to transfer a person’s tax file number to an RSA provider, where the person transfers money to an RSA offered by that provider. The item also amends the heading to section 299M and subsection 299M(2) to include a reference to RSAs.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 12 - Subsection 299M(2)

148. This item amends subsection 299M(2) to allow the trustee of an eligible superannuation entity to transfer a person's tax file number to an RSA provider, where the person transfers money to an RSA offered by that provider.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 13 - Subsection 299M(3)

149. This item amends subsection 299M(3) to enable a member of an eligible superannuation entity to prevent the trustee of an eligible superannuation entity from transferring the tax file number to an RSA provider where the person has requested the trustee not to do so.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 14 - Subsection 299M(3)

150. This item amends subsection 299M(3) to enable a member of an eligible superannuation entity to prevent the trustee of an eligible superannuation entity from transferring the tax file number to an RSA provider where the person has requested the trustee not to do so.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 15 - Subsection 299N(2)

151. This item amends subsection 299N(2) to allow the trustee of a regulated exempt public sector superannuation scheme to transfer a person's tax file number to an RSA provider, where the person transfers money to an RSA offered by that provider. The item also amends the heading to section 299N and subsection 299N(2) to include a reference to RSAs.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 16 - Subsection 299N(2)

152. This item amends subsection 299N(2) to allow the trustee of a regulated exempt public sector superannuation scheme to transfer a person's tax file number to an RSA provider, where the person transfers money to an RSA offered by that provider.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 17 - Subsection 299N(3)

153. This item amends subsection 299N(3) to enable a member of a regulated exempt public sector superannuation scheme to prevent the trustee of a regulated exempt public sector superannuation scheme from transferring the tax file number to an RSA provider where the person has requested the trustee not to do so.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 18 - Subsection 299N(3)

154. This item amends subsection 299N(3) to enable a member of a regulated exempt public sector superannuation scheme to prevent the trustee of a regulated exempt public sector superannuation scheme from transferring the tax file number to an RSA provider where the person has requested the trustee not to do so.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 19 - Paragraph 299N(4)(a)

155. This item inserts a reference to an RSA provider into paragraph 299N(4)(a). Subsection 299N(4) places a penalty on the trustee of a regulated exempt public sector superannuation scheme, that breaches the requirement of subsection 299N(3) not to transfer a person's tax file number.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 20 - Paragraph 299N(4)(b)

156. This item inserts a reference to an RSA provider into paragraph 299N(4)(b). Subsection 299N(4) places a penalty on the trustee of a regulated exempt public sector superannuation scheme, that breaches the requirement of subsection 299N(3) not to transfer a person's tax file number.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 21 - Subsection 299R(1)

157. This item amends subsection 299R(1) to deem a person as having provided their tax file number to an RSA provider where the trustee of an eligible superannuation entity transfers benefits and the tax file number of that person to the RSA provider. This item also amends the heading to section 299R to refer to RSA providers.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 22 - Paragraphs 299R(1)(a)

158. This item amends paragraphs 299R(1)(a) to deem a person as having provided their tax file number to an RSA provider where the trustee of an eligible superannuation entity transfers benefits and the tax file number of that person to the RSA provider.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 23 - Paragraph 299R(1)(a)

159. This item inserts a reference to the *Retirement Savings Accounts Act 1996* into paragraph 299R(1)(a). This amendment provides that when the trustee of an eligible superannuation entity transfers a person's tax file number to an RSA provider, then that person is deemed to have given their tax file number to the RSA provider for the purposes of the *Retirement Savings Accounts Act 1996*.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 24 - Paragraph 299R(1)(b)

160. This item amends paragraphs 299R(1)(b) to deem a person as having provided their tax file number to an RSA provider where the trustee of an eligible superannuation entity transfers benefits and the tax file number of that person to the RSA provider.

Note: Eligible superannuation entity is defined by section 299W to mean a regulated superannuation fund or approved deposit fund.

Item 25 - Subsection 299R(2)

161. This item amends subsection 299R(2) to deem a person as having provided their tax file number to an RSA provider where the trustee of an exempt public sector superannuation scheme transfers benefits and the tax file number of that person to the RSA provider.

Note: Exempt public sector superannuation scheme is defined section 299W.

Item 26 - Paragraphs 299R(2)(a)

162. This item amends paragraphs 299R(2)(a) to deem a person as having provided their tax file number to an RSA provider where the trustee of an exempt public sector superannuation scheme transfers benefits and the tax file number of that person to the RSA provider.

Note: Exempt public sector superannuation scheme is defined section 299W.

Item 27 - Paragraph 299R(2)(a)

163. This item inserts a reference to the *Retirement Savings Accounts Act 1996* into paragraph 299R(2)(a). This amendment provides that when the trustee of a regulated exempt public sector superannuation scheme transfers a person's tax file number to an RSA provider, then that person is deemed to have given their tax file number to the RSA provider for the purposes of the *Retirement Savings Accounts Act 1996*.

Note: Regulated exempt public sector superannuation scheme is defined by section 299W.

Item 28 - Paragraph 299R(2)(b)

164. This item amends paragraphs 299R(2)(b) to deem a person as having provided their tax file number to an RSA provider where the trustee of an exempt public sector superannuation scheme transfers benefits and the tax file number of that person to the RSA provider.

Note: Exempt public sector superannuation scheme is defined section 299W.

Schedule 5 of the Bill ***Amendment of the Insurance and Superannuation Commissioner Act 1987***

Outline

165. The *Insurance and Superannuation Commissioner Act 1987* (the ISC Act) establishes the office of Insurance and Superannuation Commissioner (the Commissioner). The ISC Act prescribes the functions, entitlements, and duties of the Commissioner. The schedule amends the ISC Act to require the Commissioner to disclose any direct or indirect interests in an RSA or RSA provider.

Item 1 - Section 3

166. This item inserts a definition of *RSA* for the purposes of the ISC Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 2 - Section 3

167. This item inserts a definition of *RSA provider* for the purposes of the ISC Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 3 - After paragraph 4(3)(c)

168. This item inserts paragraph 4(3)(d) into the ISC Act. This paragraph excludes from appointment to the position of Commissioner anyone who is a director or employee of an RSA provider, or body corporate that is related to an RSA provider. This is to ensure the independence of the Commissioner.

Item 4 - After paragraph 8(aa)

169. This item inserts paragraph 8(ab). This paragraph requires the Commissioner to inform the Minister of all direct or indirect interests he or she has in an RSA or an RSA provider.

Item 5 - Subparagraph 11(2)(c)(i)

170. This item inserts a cross reference to paragraph 4(3)(d) (inserted by Item 3). This amendment allows for the Governor-General to terminate the appointment of the Commissioner if he or she becomes a director or employee of an RSA provider, or body corporate that is related to an RSA provider.

Schedule 6 of the Bill
Amendment of the Superannuation (Productivity Benefit) Act 1988

Outline

171. The *Superannuation (Productivity Benefit) Act 1988* (the Productivity Benefit Act) makes provision for superannuation benefits for certain persons who are generally employed by the Commonwealth. The schedule amends the Productivity Benefit Act by allowing preserved money to be paid to an RSA.

Item 1 - Subsection 3(1)

172. This item inserts a definition of *RSA* for the purposes of the Productivity Benefit Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 2 - At the end of subparagraph 6(7)(a)(i)

173. This item inserts an ‘or’ at the end of subparagraph 6(7)(a)(i).

Item 3 - After subparagraph 6(7)(a)(ii)

174. This item inserts subparagraph 6(7)(a)(iia) into the Productivity Benefit Act. This subparagraph allows for an interim benefit that is required to be preserved to be paid into an RSA. Currently, preserved money can be paid to a superannuation fund, approved deposit fund or deferred annuity nominated by a person.

Item 4 - Paragraph 6(7)(b)

175. This item includes a reference to RSAs in paragraph 6(7)(b). This allows for a person’s employer to nominate an RSA into which a benefit will be paid where the person has not nominated a superannuation fund, approved deposit fund, or RSA within 2 months of the benefit becoming payable.

Schedule 7 of the Bill
Amendment of the Superannuation Act 1976

Outline

176. The *Superannuation Act 1976* (the Superannuation Act) governs the operation of the Commonwealth Superannuation Scheme. The schedule amends the Superannuation Act by allowing preserved money to be transferred to an RSA.

Item 1 - At the end of section 3B

177. This item inserts subsection 3B(2) into the Superannuation Act. Subsection 3B(2) deems an RSA to be a preservation fund for the purposes of the Superannuation Act. This allows for preserved money to be transferred to an RSA. Currently, preserved money can be paid to a fund that preserves money in accordance with the standards prescribed by the *Superannuation Industry (Supervision) Act 1993*.

Schedule 8 of the Bill ***Amendment of the Parliamentary Contributory Superannuation Act 1948***

Outline

178. The *Parliamentary Contributory Superannuation Act 1948* (the Parliamentary Superannuation Act) makes provision for contributory superannuation for persons who have served as Members of the Parliament. The schedule amends the Parliamentary Superannuation Act by allowing preserved benefits to be paid to an RSA nominated by a person.

Item 1 - After paragraph 26B(4)(b)

179. This item inserts paragraph 26B(4)(ba) into the Parliamentary Superannuation Act. This paragraph allows for preserved benefits to be paid into an RSA nominated by the person. Currently, preserved money can be paid to a regulated superannuation fund, an approved deposit fund or a deferred annuity, nominated by the person. This item also amends the subsection heading to include a reference to RSAs.

Item 2 - Subsection 26B(6)

180. This item inserts a definition of *RSA* into subsection 26B(6) for the purpose of section 26B, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Schedule 9 of the Bill
Amendment of the Banking Act 1959

Outline

181. The *Banking Act 1959* (the Banking Act) regulates the conduct of banking in Australia. One of these requirements relates to the treatment of unclaimed monies. The schedule amends the unclaimed money provision in the Banking Act to exempt money held in RSAs.

Item 1 - Subsection 69(3)

182. This item amends subsection 69(3) to exempt money held in RSAs by banks from the unclaimed money provisions in the Banking Act. Currently, the unclaimed money provision in the Banking Act deems money to be unclaimed if the account has been inactive for 7 years. This is inconsistent with the unclaimed money provisions which apply to superannuation products. As RSAs are another kind of superannuation product then similar provisions should apply. The unclaimed money provisions for RSAs are prescribed in Part 8 of the *Retirement Savings Accounts Act 1996*. The unclaimed money provisions for RSAs will be administered by the Australian Taxation Office or by a relevant State or Territory authority.

Schedule 10 of the Bill
Amendment of the Insurance Contracts Act 1984

Outline

183. The *Insurance Contracts Act 1984* (the Contracts Act) prescribes certain requirements for contracts of insurance. These include certain provisions to be included in such contracts, and the conduct of insurers in relation to such contracts. The schedule amends the Contracts Act to:

- provide for an RSA holder to recover a benefit from a life insurance company, if they are named under a ‘group’ life insurance contract; and
- exempt contracts of life insurance which are RSAs, from the cooling off provision of the Contracts Act.

Item 1 - Subsection 11(1)

184. This item inserts a definition of *holder* for the purposes of the Contracts Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 2 - Subsection 11(1)

185. This item inserts a definition of *RSA* for the purposes of the Contracts Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 3 - Subsection 11(1)

186. This item inserts a definition of *RSA provider* for the purposes of the Contracts Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 4 - Subsection 26(3)

187. This item repeals subsection 26(3) and substitutes a new subsection 26(3). The new subsection 26(3) extends section 26 to include a person who is an RSA holder or applying to become an RSA holder. Section 26 provides that certain statements are not to be taken a misinterpretation.

Item 5 - After section 32

188. This item inserts section 32A into the Contracts Act. This item extends the provisions of Division 3 of the Contracts Act (Remedies for Non-Disclosure and Misrepresentation) to an RSA holder. The section applies to an RSA holder who has insurance cover under a 'group' insurance policy and provides for them to be treated as if the insurance cover was in fact individual insurance cover.

Item 6 - After section 48

189. This item inserts section 48AA into the Contracts Act. Section 48AA relates to a situation where an RSA provider takes out a contract of life insurance for the benefit of RSA holders. This is commonly referred to as 'group insurance'. This section provides an RSA holder, who is specified in the contract, the right to recover a benefit from the insurer in accordance with the contract even though they are not a party to that contract.

190. The RSA holder has the same obligations to the insurer as if he or she was the insured and may discharge the insured's obligations in relation to the payment of a benefit. The insurer has the defences to an action under this section as he or she would have in an action by the insured.

Item 7 - Subsection 64(1)

191. This item amends section 64 of the Contracts Act to exempt RSAs from the cooling off provision provided by that Act.

Schedule 11 of the Bill
Amendment of the Insurance Act 1973

192. The Bill amends to the *Insurance Act 1973* (the Insurance Act) to require general insurance companies to comply with determinations of the Tribunal made under new complaints sections inserted into the *Superannuation (Resolution of Complaints) Act 1993* (the SRC Act) by this Bill. In particular, under sections 15H and 15J of the SRC Act, inserted by item 20 of Schedule 2 of this Bill, a complaint may be made against a general insurer about the sale of insurance benefits under a contract of insurance where the premiums are paid from an RSA and also about a decision of a general insurer under a contract of insurance where the premiums are paid from an RSA. In addition, a general insurer may be joined to a complaint against a RSA provider under proposed sections 15E or 15F. The Commissioner may apply to the Federal Court for an injunction under section 129D of the Insurance Act in the event of non-compliance with such a determination.

Item 1 - Subsection 3(1)

193. This item inserts a definition of *RSA* for the purposes of the Insurance Act, which has the same meaning as in the *Retirement Savings Accounts Act 1996*.

Item 2 - After subsection 129C(1)

194. This item inserts a new subsection 129C(1A) into the Insurance Act. Subsection 129C(1A) has been inserted as a consequence of amendments to the SRC Act which enable the conduct and decisions of bodies corporate authorised to carry on insurance business under the Insurance Act ('general insurance companies') relating to contracts of insurance, where the premiums are paid from an RSA, to be subject to review by the Superannuation Complaints Tribunal (the 'Tribunal') and for the Tribunal to impose certain remedies in respect of such general insurer conduct and decisions.

195. Subsection 129C(1A) requires general insurance companies who are a party to a complaint under proposed sections 15H or 15J of the SRC Act, to comply with a determination of the Tribunal made in respect of that company. In addition, subsection 129C(1A) requires general insurers who have been joined as a party to a complaint under proposed sections 15E or 15F to comply with a determination of the Tribunal made in respect of that company.

196. If a general insurer contravenes section 129C, then the Insurance and Superannuation Commissioner can apply to the Federal Court under section 129D of the Insurance Act for an injunction. Section 129D of the Act effectively empowers the Federal Court to grant an injunction either restraining the general insurer from contravening section 129C or requiring the general insurer to do a particular act.

Schedule 12 of the Bill
Amendment of the Life Insurance Act 1995

Outline

197. The Bill amends the *Life Insurance Act 1995* (the Life Insurance Act) to require life offices to comply with determinations of the Superannuation Complaints Tribunal (the Tribunal) made under new complaints sections inserted into the *Superannuation (Resolution of Complaints) Act 1993* (the SRC Act) by this Bill. In particular, under sections 15H and 15J of the SRC Act, inserted by item 20 of Schedule 5 of this Bill, a complaint may be made against a life insurer about the sale of insurance benefits under a contract of insurance, where the premiums are paid from an RSA, and about a decision of a life insurer under a contract of insurance where the premiums are paid from an RSA. In addition, a life insurer may be joined to a complaint against a RSA provider under proposed sections 15E or 15F. The Commissioner may apply to the Federal Court for an injunction under section 235 of the Life Insurance Act, in the event of non-compliance with such a determination. The schedule also amends the unclaimed money provision in the Life Insurance Act to exempt money held in RSAs.

Item 1 - Subsection 151A(1)

198. This item amends subsection 151A(1) of the Life Insurance Act by inserting paragraphs (d) and (e). Paragraph 151(1)(d) has been inserted as a consequence of amendments to the SRC Act which enable the conduct and decisions of life companies relating to contracts of insurance, where the premiums are paid from an RSA, to be subject to review by the Tribunal and for the Tribunal to issue certain remedies in respect of such life insurer conduct and decisions.

199. Paragraph 151A(1)(d) requires life companies who have been joined as a party to a complaint under section 15E or 15F to comply with any determination of the Tribunal made in respect of that company. Paragraph 151A(1)(e) requires life companies who are a party to a complaint under proposed sections 15H or 15J of the SRC Act, to comply with a determination of the Tribunal made in respect of that company.

200. If a life company contravenes section 151A, then the Insurance and Superannuation Commissioner can apply to the Federal Court under section 235 of the Life Insurance Act for an injunction. Section 235 of the Act effectively empowers the Federal Court to grant an injunction either restraining the life company from contravening section 151A or requiring the life company to do a particular act.

Item 2 - Subsection 216(1)

201. This item amends subsection 216(1) of the Life Insurance Act to exempt money held in RSAs that are life insurance policies from the unclaimed money provisions in that Act. Currently, the unclaimed money provision in the Life Insurance Act, administered by the Insurance and Superannuation Commission, deems moneys under life policies to be unclaimed if the benefits under the policy have not been claimed 7 years after the maturity of the policy. This is inconsistent with the unclaimed money provisions which apply to superannuation products. As RSAs are another kind of superannuation product then similar provisions should apply. The unclaimed money provision for RSAs are prescribed in Part 8 of the *Retirement Savings Accounts Act 1996*. The unclaimed money provisions for RSAs will be administered by the Australian Taxation Office or by a relevant State or Territory authority.

Schedules 13 - 18 of the Bill
Taxation of Retirement Savings Accounts and Recognition of Retirement Savings Accounts for Superannuation Guarantee Purposes

Outline

202. Schedule 13 of the Bill makes amendments to the *Income Tax Assessment Act 1936* to implement appropriate income tax treatment in relation to Retirement Savings Accounts (RSAs) (see paragraphs 213 to 334).

203. Schedule 14 of the Bill makes an amendment to the *Superannuation Guarantee Charge Act 1992* to recognise RSAs (see paragraph 335).

204. Schedule 15 makes amendments to the *Superannuation Guarantee (Administration) Act 1992* to recognise RSAs for Superannuation Guarantee purposes (see paragraphs 336 to 341).

205. Schedule 16 makes amendments to the *Small Superannuation Accounts Act 1995* to allow amounts to be transferred from the Superannuation Holding Accounts Reserve to RSAs (see paragraphs 342 and 343).

206. Schedule 17 makes an amendment to the *Fringe Benefits Tax Assessment Act 1986* to ensure that employer contributions to RSAs are not fringe benefits (see paragraph 344).

207. Schedule 18 makes amendments to the *Income Tax Rates Act 1986* to apply appropriate rates of tax in relation to RSAs (see paragraphs 345 to 348).

Purpose of the amendments

208. To ensure that income derived in relation to RSAs is taxed in broadly the same way as complying superannuation funds and that contributions to and benefits from RSAs are treated in the same way as contributions to and benefits from complying superannuation funds.

209. The amendments also ensure that RSAs are treated in the same way as complying superannuation funds for Superannuation Guarantee purposes.

Date of effect

210. The amendments will operate from 1 July 1997 when RSAs come into existence.

Background to the legislation

211. The Government announced in the Budget that it has decided to allow banks, building societies, credit unions and life insurance companies to provide superannuation directly without the need for a separate trust structure. The new superannuation products are called RSAs.

212. The RSA business of RSA providers is to be taxed in broadly the same way as a complying superannuation fund. Differences in the tax treatment of the RSA business and complying superannuation funds are caused by the relatively simple nature of RSAs and arise because RSA business is part of the total business of an RSA provider whereas a complying superannuation fund is a separate taxable entity.

Explanation of the amendments

Schedule 13 - Amendments to the Income Tax Assessment Act

213. Schedule 13 of the Bill makes amendments to the Income Tax Assessment Act (ITAA) to appropriately recognise RSAs. The Explanatory Memorandum explains the changes to the ITAA as follows:

- Definitions (paragraphs 214 and 215);
- RSAs operated by financial institutions (paragraphs 216 to 240);
- Life assurance companies (paragraphs 241 to 285);
- Taxable contributions (paragraphs 286 to 291);
- Concessions for contributions to RSAs (paragraphs 292 to 307);
- Payments from RSAs (paragraphs 308 to 317);
- Reasonable benefit limits (paragraphs 318 and 319);
- Dividend imputation (paragraphs 320 to 329);
- Capital gains (paragraph 330); and
- Tax file numbers (paragraphs 331 to 334).

Definitions

214. Definitions of *RSA*, *RSA provider*, *provider*, *hold* and *holder* are being inserted into subsection 6(1) [**Items 1 to 5**]. Each of the terms have the same meaning as in the *Retirement Savings Accounts Act 1996*.

215. An RSA, or retirement savings account, is defined in section 8 of the Retirement Savings Accounts Bill to mean an account or policy that meets specified conditions and is provided by an RSA institution. Section 9 provides that a person holds an RSA, and is the holder of an RSA, if the account or policy is opened in the person's name. Section 12 specifies that an RSA provider is a person who is the provider of one or more RSAs. A person provides an RSA, and is the provider of an RSA, if the person accepts deposits to an RSA or issues RSA policies (section 10).

RSAs operated by financial institutions

216. The Bill amends Part IX of the ITAA, which deals with the taxation of superannuation business and related business, to specify the taxation treatment of an RSA provider that is a financial institution (that is, a bank, building society or credit union).

217. *Item 125* inserts *new Division 7A* into Part IX to outline the taxation treatment of an RSA provider that is not a life assurance company. *New Division 7A* contains *new sections 299A to 299G*.

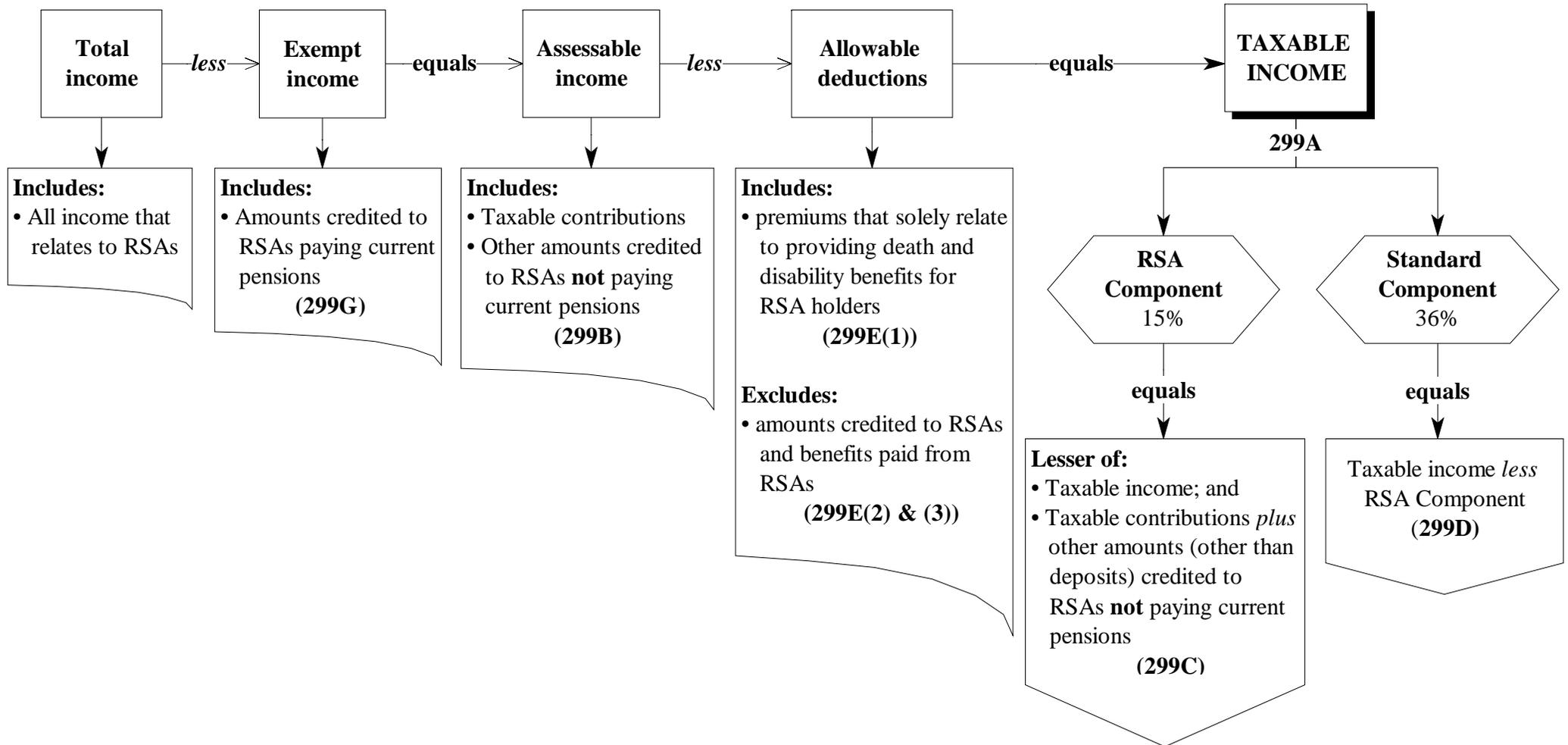
218. Broadly the amendments identify the taxable income of the RSA provider recognising:

- specific amounts which are exempt from tax;
- specific amounts which are included in assessable income; and
- specific deductions that are available to an RSA provider.

219. Once the taxable income of the RSA provider is established (including income from all other business activity), it is divided into an RSA component (which is taxed at a rate of 15%) and a standard component (which is taxed at a rate of 36%).

220. Chart 1 illustrates the operation of *new Division 7A* of Part IX.

Chart 1: Taxation treatment of an RSA provider that is a financial institution



Exempt income

221. *New section 299G* exempts an RSA provider that is a financial institution from tax on any amounts that, but for the operation of *new subsection 299C(3)*, would have been taken into account under *new paragraph 299C(2)(b)* in calculating the RSA component of taxable income. The RSA component of taxable income is explained in paragraphs 233 to 235.

222. *New subsection 299C(3)* excludes from the RSA component of taxable income interest or any other amounts credited by an RSA provider to an RSA that is paying out a current pension. The amount which is excluded from the RSA component, and which is exempt from tax under *new section 299G*, is worked out under *new subsections 299C(4) and (5)*.

223. If an RSA is paying out a pension in respect of the whole of the year of income that the RSA was in existence, then the whole amount credited to the RSA will be exempt from tax. [*New subsection 299C(4)*]

224. If an RSA is paying out a pension for only part of the year of income that the RSA was in existence, then the amount that is exempt from tax is the amount calculated using the formula:

$$\text{Amount credited to RSA} \times \frac{\text{No. of days in part of year in respect of which pension was paid}}{\text{Number of days in year on which RSA existed}}$$

[*New subsection 299C(5)*]

225. In this regard, the number of days in the part of the year in respect of which the pension was paid is the number of days in the period from the first day of the period to which the pension relates until either the end of the year of income or the day on which the RSA ceased to exist, whichever is earlier.

Example

226. Assume that Nicholas holds an RSA provided by Megabank for the whole of a year of income. He commences to receive a pension from the RSA with effect from 1 February 1998 but does not receive the first pension payment until 20 June 1998. \$6 000 interest was credited to Nicholas's RSA on 31 December 1997. An additional \$8 000 interest was credited on 30 June 1998. *New section 299G* will apply to exempt Megabank from tax on the following amount:

$$\$14\,000 \times \frac{150}{365} = \$5\,753$$

227. The remaining amount of interest credited (that is, \$8 247) will be included in Megabank's assessable income under *new paragraph 299B(b)*.

Assessable income

228. The assessable income of an RSA provider that is a financial institution will specifically include:

- all taxable contributions made during the year of income to RSAs (see paragraph 286 to 291); and
- any amounts (other than contributions) credited during the year of income to RSAs that are not exempt from tax under *new section 299G*. That is, assessable income includes interest or any other return on investment that is credited to an RSA provided by the RSA provider that is not paying out a current pension. Assessable income, of course, includes any other investment income derived by the financial institution.

[New section 299B]

229. In addition, the assessable income of an RSA provider will specifically include any rebate or refund of a life assurance premium received by an RSA provider that has been allowed as a deduction under *new subsection 299E(1)*. *[New section 299F]*

Allowable deductions

230. *New section 299E* contains some specific provisions relating to deductions available to RSA providers:

- *new subsection 299E(1)* allows a specific deduction for premiums paid for an insurance policy that wholly provides death and disability benefits under RSAs provided by the RSA provider;
- *new subsection 299E(2)* ensures that an RSA provider is not entitled to a deduction for amounts withdrawn, or benefits paid, from RSAs;
- *new subsection 299E(3)* ensures that an RSA provider is not entitled to a deduction for amounts credited to RSAs.

231. In addition, consistent with complying superannuation funds, an RSA provider that is a financial institution is able to treat all contributions (whether or not deductible to the contributor) that are paid into RSAs as assessable income for the purpose of claiming deductions. *[Item 124 - new section 277AA]*

Taxable income

232. *New section 299A* provides that the taxable income of an RSA provider that is a financial institution will be divided into:

- the RSA component; and
- the standard component.

RSA component of taxable income

233. Subsection 267(1) will be amended to insert a definition of *RSA component* to have the meaning given by ***new section 299C***. [***Item 116 - new definition of RSA component***]

234. ***New section 299C*** sets out the method for calculating the RSA component of an RSA provider's taxable income. [***New subsection 299C(1)***]

235. The RSA component of an RSA provider's taxable income is the lesser of the RSA provider's taxable income and the sum of:

- all taxable contributions made during the year of income to RSAs [***new paragraph 299C(2)(a)***];
- plus all amounts (other than contributions) credited during the year of income to RSAs reduced by amounts credited to RSAs that are paying out current pensions (see paragraphs 221 to 227) [***new paragraph 299C(2)(b) and subsections 299C(3) - (5)***];
- less any amounts paid or withdrawn from RSAs other than benefits paid to, or in respect of, the holders of RSAs [***new subsection 299C(2)***].

Standard component of taxable income

236. The definition of *standard component* in subsection 267(1) will be amended so that, in relation to an RSA, the standard component has the meaning given by ***new section 299D***. [***Item 118***]

237. The standard component of an RSA provider's taxable income is the RSA provider's taxable income less the RSA component of taxable income. [***New section 299D***]

Example

238. Assume Megabank's total taxable income is \$250 million. This amount includes taxable contributions deposited to RSAs of \$10 million and total interest credited to RSAs of \$12 million (\$1.5 million was credited to RSAs paying out current pensions).

239. The RSA component of Megabank's taxable income will be \$20.5 million. This amount is the sum of taxable contributions (\$10 million) and amounts credited to RSAs (\$12 million) reduced by the amount credited to RSAs that are paying out current pensions (\$1.5 million).

240. The standard component of Megabank's taxable income will be \$229.5 million. This amount is Megabank's total taxable income (\$250 million) reduced by the RSA component of taxable income (\$20.5 million).

Life assurance companies

241. Division 8 of Part III deals with the tax treatment of life assurance companies.

242. Section 116CA recognises four classes of assessable income for life assurance companies. The purpose of identifying different classes of assessable income of a life assurance company is primarily to enable the application of different rates of tax to different parts of the life insurer's business. The four classes of assessable income are:

- the non-complying superannuation (NCS) class - which is taxed at a rate of 47%;
- the complying superannuation/roll-over annuity (CS/RA) class - which is taxed at a rate of 15%;
- the non-fund class - which is taxed at a rate of 36% in the case of a non-mutual life assurance company and 39% in the case of a mutual life assurance company;
- the accident and disability/residual life assurance (AD/RLA) class - which is taxed at a rate of 39%.

243. RSAs will form part of the non-fund component of taxable income. However, as RSAs provided by life assurance companies are life assurance policies, the non-fund component will now include assessable income derived from assets held in *the insurance funds* as defined in subsection 110(1). Therefore, the name of the non-fund component of taxable income is to be changed to the general fund component of the taxable income.

244. A number of amendments are necessary to Division 8 of Part III to ensure that the general fund component of taxable income is properly determined and to identify the RSA component and standard component of the general fund component of taxable income.

245. In addition, amendments are required to the ITAA to recognise the change in name from the non-fund component to the general fund component.

246. Several definitions in subsection 110(1) will be amended and new definitions inserted in relation to the amendments to Division 8:

- *AD/RLA policy* - this definition is being amended to ensure that an RSA is not an AD/RLA policy. **[Item 33]**
- *annuity* - this definition is being amended to ensure that a pension, within the meaning of the *Retirement Savings Accounts Act 1996*, paid from an RSA is an annuity for the purposes of Division 8. **[Item 34]**
- *exempt policy* - the current annuity exemption that relates to RSAs is contained in **new subsection 116DAF**. Therefore, paragraph (a) of the definition of *exempt policy* is being amended so that, in relation to ordinary life assurance companies, RSAs will not be exempt policies which are subject to subsection 112A(1). **[Item 35]** However, an RSA that is paying out an immediate annuity will be an *eligible policy* as defined in subsection 110(1) and will need to satisfy the *approved annuity conditions* as defined in subsection 110(1).

Paragraph (b) of the definition of *exempt policy* is also being amended so that, in relation to an SGIO, RSAs are not exempt policies. **[Item 36]** An SGIO is defined

in subsection 6(1) to mean, broadly, a State or Territory body that carries on life assurance business.

- *general fund assessable income* - general fund assessable income is the sum of assessable income that is not *fund assessable income* (as defined in subsection 110(1)) together with fund assessable income that relates to RSAs reduced by AD premiums, specified roll-over amounts (other than those paid into RSAs) and amounts transferred from superannuation funds under section 275 **[Item 37]**. Fund assessable income that relates to RSAs consists of the amount included in assessable income under **new section 116DAB**. The definition of *general fund assessable income* replaces the previous definition of *non-fund assessable income* **[Item 40]**.
- *general fund component* - this definition replaces the previous definition of *non-fund component* and means the component of taxable income determined under section 116CJ for the general fund class. **[Items 38 and 41]**
- *life assurance policy* - this definition is amended to ensure that, for the purposes of Division 8, an RSA provided by a life assurance company is a life assurance policy. **[Item 39]**
- *RSA component* - the RSA component is the component of the general fund component of taxable income worked out under **new section 116DAC**. **[Item 42]**
- *standard component* - the standard component is the component of the general fund component of taxable income worked out under **new section 116DAD**. **[Item 43]**
- *taxable contribution* - the definition of *taxable contribution* is relevant for working out the assessable income of an RSA provider under **new section 116DAB** and the RSA component of the general fund component of taxable income under **new section 116DAC**. The amount of taxable contributions is worked out under Part IX (see paragraphs 286 to 291). **[Item 44]**

247. Subsection 111(1) provides that premiums received in respect of life assurance policies are exempt income of a life assurance company. **New subsection 111(1B)** ensures that taxable contributions made to RSAs are not exempt from tax under subsection 111(1). **[Item 45]**

248. Section 111AC allows a deduction for expenditure incurred in gaining superannuation premiums. Section 111AC is being amended to allow a deduction for certain expenses incurred in relation to collecting all contributions that are paid into RSAs. **[Items 46 - 50]**

249. Section 111AD, which allows a deduction for expenditure incurred in obtaining the investment component of relevant life assurance premiums, will be amended so that RSA contributions are not relevant life assurance premiums. **[Item 51]**

250. Section 111C provides that deductions of a life assurance company, other than deductions allowable under certain specified provisions (including section 111AC), are to be reduced to the extent that they do not relate exclusively to producing assessable income. The definition of *Assessable income* in subsection 111C(4) will be amended to ensure that RSA contributions are assessable income for the purposes of section 111C. **[Item 52]**

251. Section 112 denies deductions for expenditure exclusively incurred in gaining certain premiums that are exempt under section 111. However, a deduction is allowed for expenditure incurred in gaining superannuation premiums to which section 111AC applies (subparagraph 112(1)(a)(i)). Subparagraph 112(1)(a)(i) will be amended so that section 112 will not deny a deduction in relation to expenditure incurred in gaining RSA contributions to which section 111AC applies. **[Item 53]**

252. Subsection 112A(1A) will be amended to include taxable contributions made to RSAs in the assessable income of SGIOs. **[Item 54 - new paragraph 112(1A)(aa)]**

253. Section 113 broadly allows life assurance companies a deduction for general management expenses that are not exclusively incurred in gaining or producing assessable income in the same proportion that the proportion of assessable income of the company bears to the total income of the company. Subsection 113(5) will be amended to ensure that RSA contributions are assessable income for the purposes of section 113. **[Item 55]**

254. Section 113A allows deductions for general management expenses incurred by life assurance companies which are exclusively incurred in gaining or producing assessable income. Such expenditure is deductible to the extent that it is incurred in gaining or producing superannuation premiums to which section 111AC applies or the investment component of relevant life assurance premiums to which section 111AD applies. Paragraph 113A(1)(c), paragraph 113A(2)(b) and the definition of *relevant life assurance premiums* in subsection 113A(5) will be amended so that section 113A applies to RSA contributions in the same way that it applies to superannuation premiums. **[Items 56 and 57; Item 58 - new paragraph 113A(5)(aa)]**

255. Section 116CA identifies the classes of assessable income and policies of life assurance companies. The Table in subsection 116CA(1), which relates to ordinary life assurance companies, and the Table in subsection 116CA(2), which relates to SGIOs, will be amended to identify the general fund class of assessable income and to identify RSAs as belonging to the general fund class. **[Items 59 and 60]**

256. Section 116CB provides for the allocation between the classes of assessable income of gains and losses arising from the disposal of fund assets of a life assurance company. A *fund asset* is defined in subsection 110(1) to be an asset that was included in the insurance funds immediately before disposal. Assets supporting RSAs will be included in the insurance funds and, consequently, will be fund assets. The formula for allocating gains and losses between the classes is based on the calculated liabilities that relate to each class of assessable income (subsection 116CB(2)) and will apply appropriately to RSAs.

257. Section 116CC will be amended so that it allocates amounts received on the disposal of non-fund assets to the general fund class of assessable income. The

definition of *non-fund asset* in subsection 110(1) will remain unchanged as it relates to assets held outside the insurance funds. **[Item 61]**

258. Subsections 116CD(5) and (6) set out the order for applying prior year capital losses in reducing the residual overall 160Z gain to the classes of assessable income. The *residual overall 160Z gain* is defined in subsection 110(1). Subsection 116CD(5), which relates to ordinary life assurance companies, will be amended to replace the reference to the non-fund class of assessable income with a reference to the general fund class of assessable income. Subsection 116CD(6), which relates to SGIOs, will be amended to recognise the general fund class of assessable income. **[Item 62; Item 63 - new paragraph 116CD(6)(aa)]**

259. Section 116CE allocates assessable income of a life assurance company between the classes of assessable income. Subsection 116CE(2) will be amended so that it refers to the general fund class of assessable income rather than the non-fund class of assessable income **[Item 64]**. Subsection 116CE(2) will also be amended so that the assessable income of the general fund class will include:

- amounts received on the sale of fund assets allocated to that class under subsections 116CB(3) or 116CC(2) or section 116CD **[Item 65]**;
- any assessable income allocated to that class under subsection 116CE(5) **[Item 66 - new paragraph 116CE(2)(aa)]**; and
- any amounts included in assessable income under **new section 116DAB [Item 66 - new paragraph 116CE(2)(ab)]**. That is, taxable contributions made to RSAs and other amounts credited to RSAs will be included in the general fund class of assessable income.

260. Subsection 116CE(5) allocates residual assessable income derived from assets included in a particular one of the insurance funds between the classes of assessable income based on the calculated liabilities that relate to each class of assessable income and will apply appropriately to RSAs.

261. Section 116CF allocates deductions between the classes of assessable income. Subsection 116CF(1) provides that deductions which relate exclusively to a particular class of assessable income shall be allocated to that class of assessable income. Subsection 116CF(2) provides a formula for allocating residual deductions between the classes of assessable income based on amount of assessable income in each class.

262. Subsection 116CF(4) will be amended to ensure that RSA contributions are taken to be assessable income for the purposes of the definition of *Total income* in subsection 116CF(2). **[Item 67]**

263. In addition, for the purposes of the application of subsection 116CF(2) to the general fund class of assessable income, RSA contributions to which section 111AC applies will be assessable income of the general fund class for the purposes of the definition of *Income of class* in subsection 116CF(2).

[Item 68 - new subsection 116CF(8)]

264. Section 116CH sets out the order for applying prior year loss deductions to the classes of assessable income. Subsection 116CH(1), which relates to ordinary life assurance companies, will be amended to change the reference to the non-fund class of assessable income to a reference to the general fund class of assessable income. Subsection 116CH(2), which relates to SGIOs, will be amended to recognise the general fund class of assessable income. **[Item 69; Item 70 - new paragraph 116CH(2)(aa)]**

RSA business of life assurance companies

265. **Item 71** inserts **new Subdivision AA** into Division 8 of Part III to outline the taxation treatment of an RSA provider that is a life assurance company. **New Subdivision AA** of Division 8 contains **new sections 116DAA to 116DAF**.

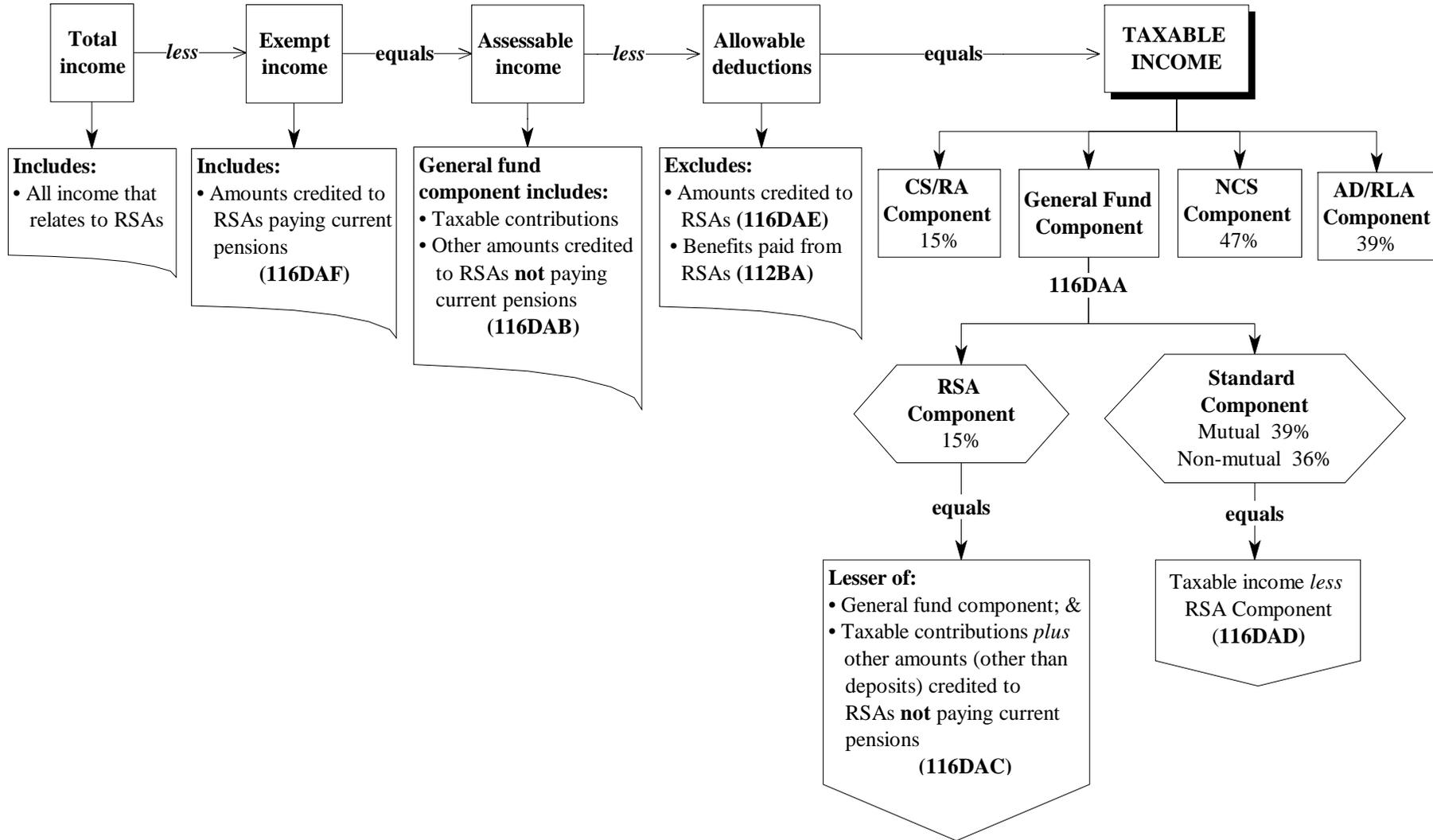
266. Broadly the amendments identify the taxable income of the RSA provider recognising:

- specific amounts which are exempt from tax;
- specific amounts which are included in the general fund component of assessable income of the RSA provider; and
- specific deductions that are available to an RSA provider.

267. Once the general fund component of taxable income of a life assurance company that is an RSA provider is established, it is divided into an RSA component (which is taxed at a rate of 15%) and a standard component (which is taxed at a rate of 36% in the case of a non-mutual life assurance company and 39% in the case of a mutual life assurance company).

268. Chart 2 illustrates the operation of **new Subdivision AA** of Division 8 of Part III.

Chart 2: Taxation treatment of an RSA provider that is a life assurance company



Exempt income

269. ***New section 116DAF*** exempts an RSA provider that is a life assurance company from tax on any amounts that, but for the operation of ***new subsection 116DAC(3)***, would have been taken into account under ***new paragraph 116DAC(2)(b)*** in calculating the RSA component of the general fund component of taxable income. The RSA component of the general fund component of taxable income is explained at paragraphs 280 to 282.

270. ***New subsection 116DAC(3)*** excludes from the RSA component of the general fund component of taxable income interest or any other amounts credited by an RSA provider to an RSA that is paying out an immediate annuity. The amount which is excluded from the RSA component of the general fund component, and which is exempt from tax under ***new section 116DAF***, is worked out under ***new subsections 116DAC(4) and (5)***.

271. If an RSA is paying out an annuity in respect of the whole of the year of income that the RSA was in existence, then the whole amount credited to the RSA will be exempt from tax. [***New subsection 116DAC(4)***]

272. If an RSA is paying out an annuity for only part of the year of income that the RSA was in existence, then the amount that is exempt from tax is the amount calculated using the formula:

$$\text{Amount credited to RSA} \times \frac{\text{No. of days in part of year in respect of which annuity was paid}}{\text{Number of days in year on which RSA existed}}$$

[***New subsection 116DAC(5)***]

273. In this regard, the number of days in the part of the year in respect of which the annuity was paid is the number of days in the period from the first day of the period to which the annuity relates until either the end of the year of income or the day on which the RSA ceased to exist, whichever is earlier. The application of the formula is illustrated by the example at paragraphs 226 and 227.

Assessable income

274. The assessable income of an RSA provider that is a life assurance company will specifically include:

- all taxable contributions made during the year of income to RSAs (see paragraphs 286 to 291). *Taxable contributions* are defined to have the same meaning as in Part IX [***Item 44 - new definition of taxable contribution in subsection 110(1)***]; and
- any amounts (other than contributions) credited during the year of income to RSAs that are not exempt from tax under ***new section 116DAF***. That is, assessable income includes interest, bonuses or any other return on investment that is credited to an RSA provided by the RSA provider that is not paying out an immediate annuity. Assessable income, of course, includes any other investment income derived by the life assurance company.

[***New section 116DAB***]

275. The amount included in assessable income under ***new section 116DAB*** will be specifically included in the general fund class of assessable income. [***Item 66 - new paragraph 116CE(2)(ab)***]

Allowable deductions

276. *New section 116DAE* ensures that an RSA provider is not entitled to a deduction for amounts credited to RSAs.

277. Section 112BA operates to deny a deduction for benefits paid from RSAs operated by life assurance companies.

278. Similarly, section 111AC will operate to allow a deduction for certain expenses incurred in relation to collecting all contributions that are paid into RSAs.

[Items 46 to 50 - amended section 111AC]

Taxable income

279. *New section 116DAA* provides that the general fund component of the taxable income of an RSA provider that is a life assurance company will be divided into:

- the RSA component; and
- the standard component.

RSA component of the general fund component of taxable income

280. Subsection 110(1) will be amended to insert a definition of *RSA component* to mean the component of the general fund component of taxable income worked out under *new section 116DAC*. *[Item 42 - new definition of RSA component]*

281. *New section 116DAC* sets out the method for calculating the RSA component of the general fund component of a life assurance company's taxable income. *[New subsection 116DAC(1)]*

282. The RSA component of the general fund component of a life assurance company's taxable income is the lesser of the RSA provider's general fund component of taxable income and the sum of:

- all taxable contributions made during the year of income to RSAs *[new paragraph 116DAC(2)(a)]*;
- plus all amounts (other than contributions) credited during the year of income to RSAs reduced by amounts credited to RSAs that are paying out immediate annuities (see paragraphs 269 to 273) *[new paragraph 116DAC(2)(b) and subsections 116DAC(3) - (5)]*;
- less any amounts paid from RSAs other than benefits paid to, or in respect of, the holders of RSAs *[new subsection 116DAC(2)]*.

Standard component of the general fund component of taxable income

283. Subsection 110(1) will be amended to insert a definition of *standard component* to mean the component of the general fund component of taxable income worked out under *new section 116DAD*. *[Item 43 - new definition of standard component]*

284. The standard component of the general fund component of a life assurance company's taxable income is the company's general fund component of taxable income less the RSA component. *[New section 116DAD]*

Change in name from the non-fund component to the general fund component

285. A number of amendments are necessary to change references in the ITAA to the non-fund class of assessable income and non-fund component of taxable income to references to the general fund class of assessable income and general fund component of taxable income:

- sections 46 and 46A - which relate to the inter-corporate dividend rebate. *[Items 17 to 24]*
- sections 116DC, 116DE and 116DF - which relate to the life insurance policy holders' protection levy. *[Items 72, 73 and 74]*
- sections 160APA, 160APHB, 160APVA, 160APVBA, 160APVBB, 160APVC, 160APVD, 160AQCCA, 160AQCD, 160AQCE, 160AQCJ, 160AQCK and 160AQCL - which relate to the dividend imputation provisions. *[Items 78 and 79, 83 to 105]*
- sections 221AK, 221AL, 221AZB and 221AZE - which relate to the collection of company tax. *[Items 109 to 113]*

Taxable contributions

286. Taxable contributions made to an RSA provider are included in the RSA provider's assessable income and allocated to the RSA component of taxable income:

- if the RSA provider is a financial institution - taxable contributions are included in the RSA provider's assessable income under ***new section 299B*** and allocated to the RSA component of the RSA provider's taxable income under ***new paragraph 299C(2)(a)***;
- if the RSA provider is a life assurance company - taxable contributions are included in the RSA provider's assessable income under ***new section 116DAB*** and allocated to the RSA component of the general fund component of the RSA provider's taxable income under ***new paragraph 116DAC(2)(a)***.

287. Taxable contributions are defined in section 274. Subsection 274(1) will be amended to include appropriate contributions made to RSAs as taxable contributions. *[Items 119 and 120]*

288. Contributions made to RSAs will be taxable contributions if:

- the contributions are made to the RSA by a person other than the RSA holder, such as the RSA holder's employer [*new subparagraph 274(1)(ba)(i)*];
- the contributions are specified roll-over amounts. That is, the contributions are the post-June 1983 component - untaxed element of a rolled-over eligible termination payment (ETP) [*new subparagraph 274(1)(ba)(ii)*]. In this regard the definition of *specified roll-over amount* in subsection 267(1) has been amended to recognise that such amounts can be paid to an RSA provider [*Item 117*];
- the contributions are made to the RSA by the RSA holder and the RSA holder is entitled to a deduction for those contributions and has satisfied the notice provisions under new subsection 82AAT(1CB) [*new subparagraph 274(1)(ba)(iii)*];
- the contributions are made under section 65 of the Superannuation Guarantee (Administration) Act [*new subparagraph 274(1)(ba)(iv)*].

289. Personal contributions to RSAs form part of the taxable contributions of an RSA provider only if the RSA holder is entitled to a deduction for those contributions and has given an appropriate notice to the RSA provider. If such a notice is received before the RSA provider has lodged its income tax return for the year in which the contributions were made, the RSA provider must include those contributions in its taxable contributions in the year in which those contributions were made [*new sub-subparagraph 274(1)(ba)(iii)(A)*]. If the notice is received after the RSA provider has lodged its income tax return for the year in which the contributions were made, then the contributions will be included in the RSA provider's taxable contributions in the year that the notice is received [*Item 121 - new subsection 274(3)*].

290. If an amount has been included as taxable contributions of an RSA provider and the RSA holder subsequently gives the provider a notice under *new subsection 82AAT(1CD)* reducing the amount previously included in the RSA provider's taxable income, the RSA provider will be entitled to a deduction for the amount covered in the notice in the year the notice is received. [*Item 122 - new subsection 276(2)*]

291. If the Commissioner is satisfied that the RSA provider is unable to appropriately use the deduction available under *new subsection 276(2)*, the amount covered by the *new subsection 82AAT(1CD)* notice will be excluded from the assessable income of the RSA provider in the year in which the contributions was made. [*Item 123 - amended subsections 276(3) and (4)*]

Concessions for contributions to RSAs

Employer contributions

292. An employer is entitled to a deduction up to specified limits for contributions made on behalf of an employee to a complying superannuation fund under section 82AAC. *New section 82AADA* ensures that a contribution made by an employer to an RSA is treated as a contribution to a complying superannuation fund for the purposes of section 82AAC. [*Item 25*]

293. *New section 82AAQB* includes in a taxpayer's assessable income any amount received by the taxpayer as a refund of a contribution where the taxpayer has been allowed a

deduction for the contribution under section 82AAC [*Item 26*]. *New section 82AAQB* is similar to sections 82AAQ and 82AAQA which ensure that the assessable income of a taxpayer includes amounts refunded from a superannuation fund or deposits refunded under the Small Superannuation Accounts Act respectively.

294. Section 82AAR ensures that superannuation contributions paid for the benefit of an employee, including contributions made to RSAs, are deductible only under the provisions of Subdivision AA of Division 3 of Part III. [*Item 27 - new subsection 82AAR(4)*]

Personal superannuation contributions

Deductions for personal superannuation contributions

295. A taxpayer who is an *eligible person* (as defined in subsection 82AAS(2)) is entitled to a deduction up to specified limits for personal superannuation contributions made to a complying superannuation fund under subsection 82AAT(1) provided that the taxpayer complies with certain notice requirements.

296. *Item 28* inserts provisions to allow a deduction in identical circumstances for personal superannuation contributions made to an RSA. That is, *new subsection 82AAT(1CA)* allows a deduction for personal contributions made by a person provided that:

- the person is an eligible person in the year the contribution is made;
- the person has made the contribution in order to obtain superannuation benefits; and
- the person has given a notice to the RSA provider under *new subsection 82AAT(1CB)* and has received an acknowledgment of that notice from the RSA provider.

297. The amount of the deduction cannot be more than the amount covered by the *new subsection 82AAT(1CB)* notice and is also subject to the deduction limits in subsection 82AAT(2).

298. *New subsection 82AAT(1CB)* allows a taxpayer who has made a contribution to an RSA to notify the RSA provider that he or she is intending to claim a deduction for the whole of or part of the contribution. The RSA provider must acknowledge the notice without delay. Generally, the acknowledgment will be considered to have been given without delay if it is given by the later of:

- 30 June of the financial year in which the contribution to which the notice relates is made;
- or
- within 30 days of receipt of the notice.

299. Failure by the RSA provider to give a notice will be a breach of section 8C of the *Taxation Administration Act 1953*.

300. *New subsection 82AAT(1CC)* imposes some restrictions on *new subsection 82AAT(1CB)* notices. That is:

- a person cannot give a notice that covers the whole or any part of an amount covered by a previous notice;
- a person cannot give a notice to an RSA provider once he or she has ceased to hold the RSA; and
- a person cannot revoke or withdraw a notice (but can vary it under *new subsection 82AAT(1CD)*).

301. *New subsection 82AAT(1CD)* allows a person to give notice to the RSA provider reducing the amount covered by the *new subsection 82AAT(1CB)* notice. However, the amount cannot be reduced below the amount that has been allowed as a deduction.

302. Subsection 82AAT(1D) provides that section 82AAT notices must be given in a form and manner approved by the Commissioner. The requirements of section 82AAT notices are outlined in Taxation Determination TD 93/24.

303. Subsection 82AAT(1E) will be amended to ensure that a person is not entitled to a deduction for personal superannuation contributions to an RSA until they receive an acknowledgment from the RSA provider in accordance with *new subsection 82AAT(1CB)*. **[Item 29]**

304. Subsection 82AAT(1F) denies a deduction for personal superannuation contributions made to a complying superannuation fund by a taxpayer who has opted out of the Superannuation Guarantee arrangements because he or she has superannuation benefits in excess of his or her reasonable benefit limit. The subsection will be amended to ensure that a deduction will also be denied for contributions to an RSA. **[Item 30]**

305. Subsection 82AAT(2A) specifies the deduction limit that applies for contributions to complying superannuation funds. Some technical amendments are being made to the subsection to ensure that it applies in the same way to RSAs. **[Item 31]**

306. Subsection 82AAT(3) ensures that a deduction is not allowed for an ETP that has been rolled-over to a complying superannuation fund and will be amended so that it also applies to RSAs. **[Item 32]**

Rebates for personal superannuation contributions

307. Subsection 159SZ(1) allows a rebate for *eligible personal superannuation contributions* for a taxpayer who is not entitled to a deduction for personal superannuation contributions and has assessable income less than \$31 000. The definition of *eligible personal superannuation contributions* in subsection 159SZ(2) will be replaced so that a rebate will be available for contributions to a complying superannuation fund or an RSA. **[Item 77]**

Payments from RSAs

308. Lump sum payments from RSAs will be taxed as ETPs. This will be achieved by amending the definition of *superannuation fund* in subsection 27A(1) to include RSAs. Consequently, for the purposes of Subdivision AA of Division 2 of Part III (the ETP Subdivision), an RSA will be a superannuation fund. Therefore, a lump sum payment from an RSA will be taxed in the same way as a lump sum payment from a complying superannuation fund. ***[Item 10 - new paragraph (c) of the definition of superannuation fund in subsection 27A(1)]***

309. RSA providers are liable to tax in relation to RSAs. Therefore, to ensure that the post-June 83 component of ETPs paid from RSAs are taxed as ETPs from a taxed source under section 27AB, the definition of *taxed superannuation fund* in subsection 27A(1) will be amended so that RSAs will be taxed superannuation funds. ***[Items 11 and 12 - new paragraph (a) and amended paragraph (c) of the definition of taxed superannuation fund in subsection 27A(1)]***

310. ***New subsection 27A(22)*** will be inserted so that, for the purposes of the ETP Subdivision, an RSA is taken to be a fund and that the holder of an RSA is taken to be a member of that fund. This will ensure that the provisions of the ETP Subdivision which apply to superannuation funds will apply appropriately to RSAs. ***[Item 15]***

311. To allow ETPs to be rolled-over to RSAs, amendments will also be made to subsection 27A(12), paragraph 27A(13)(a) and subparagraph 27D(1)(b)(i). ***[Item 13 - new paragraph 27A(12)(d); Items 14 and 16]***

312. To ensure that pensions paid from RSAs and lump sum payments received on the commutation of a pension entitlement or which represent the residual capital value of a pension entitlement are taxed appropriately under the ETP Subdivision, the definition of *pension* in subsection 27A(1) will be amended to include a pension within the meaning of the *Retirement Savings Accounts Act 1996*. ***[Item 9 - new definition of pension in subsection 27A(1)]***

313. Similar amendments will be made to the definition of *pension* in section 140C, subsection 221A(1) and subsection 267(1). ***[Items 75, 114 and 115]***

314. In addition, the definition of *rebatable superannuation pension* in subsection 159SJ(1) will be amended to ensure that pensions paid from RSAs qualify for the rebate that applies to superannuation pensions and ETP annuities. ***[Item 76 - amended definition of rebatable superannuation pension in subsection 159SJ(1)]***

315. Section 26AFB includes in assessable income the whole of an amount paid from a fund that is, or has been, a complying superannuation fund where the benefit is paid out in breach of the *Superannuation Industry (Supervision) Act 1993*. If an amount is included in assessable income under section 26AFB, it is not an ETP (see subparagraph (b)(iii) of the definition of *eligible termination payment* in subsection 27A(1)). ***New subsection 26AFB(4A)*** will ensure that a benefit paid out of an RSA in breach of the *Retirement Savings Accounts Act 1996* will be taxed as ordinary income rather than as an ETP. The Commissioner will have a discretion not to apply ***new subsection 26AFB(4A)*** if, having regard to the whole of the circumstances, he considers that it would be unreasonable to apply the subsection. ***[Item 6 - new subsections 26AFB(4A) and (4B)]***

316. Section 26AH includes in assessable income bonuses received on short-term life assurance policies. Subsection 26AH(7) will be amended to ensure that benefits paid from RSAs provided by life assurance companies are not assessable under section 26AH. ***[Item 7 - new paragraph 26AH(7)(aa)]***

317. ***New section 26E*** will:

- deem that benefits paid from RSAs have an Australian source ***[new subsection 26E(1)]***; and
- deem that any amounts paid under an insurance policy that relates to an RSA are benefits paid from the RSA by the RSA provider ***[new subsection 26E(2)]***.

[Item 8]

Reasonable benefit limits

318. The reasonable benefit limit (RBL) provisions in Division 14 of Part III will apply to RSAs and RSA providers in the same way that they apply to complying superannuation funds and the trustees of complying superannuation funds as a result of the amendment to the definition of *superannuation fund* in subsection 27A(1).

319. That is:

- payments from RSAs will have to be notified to the Commissioner by the payer (section 140M);
- the Commissioner will be required to make an RBL determination (section 140R);
- the benefit will be counted for RBL purposes (section 140ZC);
- the appropriate RBL amount will be determined (section 140ZH, section 140ZK and section 140ZL) - in this regard the manager of an RSA is considered to be a trustee for the purposes of section 140ZH. The definition of *trustee* in section 140C includes a person who is a trustee for the purposes of Part IX. Section 268 in Part IX provides that, if applying ordinary principles a fund does not have a trustee, the person who is managing the fund is deemed to be a trustee of the fund. Therefore, the manager of an RSA will be a trustee for the purposes of section 140ZH.

Dividend imputation

320. Under the dividend imputation provisions contained in Part IIIAA, the amount of franking credits or debits arising from the payment or refund of tax is equal to the *adjusted amount* of the tax paid or refunded (which includes reductions of tax and crediting or applying tax refunds against other liabilities).

321. Under section 160APA, the *adjusted amount* is determined by the formula:

$$\text{Basic amount} \times \frac{1 - \text{applicable general company tax rate}}{\text{applicable general company tax rate}}$$

322. In relation to franking credits and debits arising from the payment and refund of tax, the *basic amount* is the amount of tax paid or refunded.

323. To exclude franking credits or debits arising from the payment or refund of tax where those amounts are attributable to the RSA business of a company, the basic amount will be reduced by the *reduction amount*. [**Items 80 and 81 - new subsection 160APAAA(2A) and amended subsection 160APAAA(3)**]

324. The operation of the amendments is demonstrated in the following example:

Example - Ordinary company (tax paid)

325. A company pays a company tax instalment of \$10 000 in the 1995-96 income year, \$1 000 of which is attributable to the RSA business of the company.

326. The franking credit resulting from the payment of the instalment would be calculated as follows:

$$\begin{aligned} \text{Class C franking credit} &= \text{adjusted amount of the tax paid} \\ & \text{(section 160APM)} \\ & ((\text{basic amount} - \text{reduction amount}) \times 64/36) \\ & = (\$10\,000 - \$1\,000) \times 64/36 \\ & = \$16\,000. \end{aligned}$$

327. The Income Tax Regulations will provide for the determination of the amount that is attributable to the RSA business of a company. [**Item 82 - new subsection 160APAAA(3A)**]

328. However, sometimes it may not be possible to determine exactly the amount of a tax payment that is attributable to an RSA amount. This is because an instalment of tax is based on either an earlier year's tax amount or a company's own estimate of the tax payable. As a result, the regulations will provide that, where necessary, a balancing franking credit or debit will arise at the end of the company's franking year. [**Item 82 - new subsection 160APAAA(3C)**]

329. Where a company uses an estimate to establish the amount that is attributable to the RSA business of a company, the Income Tax Regulations may also provide that a franking debit arises where the estimate used by the company is incorrect. **[Item 82 - new subsection 160APAAA(3B)]**

Capital gains

330. Section 160ZZJ exempts from capital gains tax payments made to members of superannuation funds and ADFs. **New section 160ZZJA** will apply in the same way to payments from RSAs. **[Item 106]**

Tax file numbers

331. Parts 8 and 11 of the Retirement Savings Accounts Bill 1996 propose to allow RSA providers to be able to use tax file numbers (TFNs) in the same way as other superannuation entities.

332. **New paragraph 202(k)** will allow TFNs to be used to facilitate:

- the administration of Parts 8 and 11 of the *Retirement Savings Account Act 1996* in relation to individuals; and
- the administration of that Act in relation to RSA providers.

333. The use of TFNs is strictly controlled under taxation law. There are penalties of up to \$10 000 or 2 years imprisonment for unauthorised requesting, recording, use or communication of a person's TFN (sections 8WA and 8WB of the *Taxation Administration Act 1953*). In recognition of the TFN privacy considerations, the wording of **new paragraph 202(k)** indicates that the use of TFNs for superannuation purposes by RSA providers is restricted to Parts 8 and 11 of the Retirement Savings Accounts Act. **[Item 107]**

334. **New subsection 202DI** will ensure that where an RSA holder has quoted his or her TFN to the RSA provider, the TFN will also be taken to have been quoted for the purpose of calculating the tax to be deducted from an ETP. Consequently, if the RSA holder has quoted his or her TFN, the RSA provider will deduct tax from the RSA holder's ETP at the normal concessional rates of tax. Where appropriate the TFN will also be disclosed on the holder's group certificate and to the ATO for RBL purposes. **[Item 108]**

Schedule 14 - Amendments to the Superannuation Guarantee Charge Act

335. Schedule 14 of the Bill amends the Superannuation Guarantee Charge Act to insert RSAs in the Title to the Act. The amendment recognises that the Act applies to RSAs in the same way that it applies to superannuation funds. **[Item 1]**

Schedule 15 - Amendments to the Superannuation Guarantee (Administration) Act

336. Schedule 15 of the Bill makes amendments to the Superannuation Guarantee (Administration) Act.

337. Definitions of *RSA* and *RSA provider* will be inserted in subsection 6(1) of the Act so that they have the same meaning as in the *Retirement Savings Accounts Act 1996* (see paragraph 215). **[Items 1 and 2]**

338. Section 14 determines the notional earnings base in relation to an employee for Superannuation Guarantee purposes in most circumstances where an employer was not contributing under an award, occupational superannuation arrangement or superannuation scheme immediately before 21 August 1991. The amendments to section 14 ensure that the notional earnings base in relation to an employee for contributions made to an RSA will also be determined under section 14 and will be calculated in the same way that the notional earnings base for contributions made to a superannuation fund is calculated. **[Items 3 to 6]**

339. Section 15A provides for the determination of the entitlement amount of the superannuation benefits of an employee. The entitlement amount is relevant to subsections 19(4) and 19(7), which effectively exempts an employer from the Superannuation Guarantee charge in respect of an employee who makes an election because his or her accumulated superannuation entitlements exceeds the pension RBL. The amendments to section 15A ensure that benefits in RSAs will be taken into account when determining the total of the employee's accumulated superannuation entitlements for the purposes of section 15A. **[Items 7, 8 and 9].**

340. Section 23 relates to the measurement of employer support for Superannuation Guarantee purposes in superannuation funds other than defined benefit superannuation schemes. If an employer is providing superannuation support in a complying superannuation fund that is not a defined benefit superannuation scheme, the percentage level of the employer's support will be the proportion of the employer's contribution to the fund over the employee's notional earnings base in respect of that fund. The amendments to section 23 ensure that this section applies to RSAs in the same way that it applies to complying superannuation funds. **[Items 10 to 34].**

341. Subsection 65(1) allows the Commissioner to pay the Superannuation Guarantee shortfall component to a complying superannuation fund or to a complying ADF nominated by the employee. The amendment to paragraph 65(1)(a) will allow the Commissioner to pay a Superannuation Guarantee shortfall component to an RSA nominated by the employee. **[Item 35]**

Schedule 16 - Amendments to the Small Superannuation Accounts Act

342. Schedule 16 of the Bill amends the Small Superannuation Accounts Act. The Small Superannuation Accounts Act provides a legislative framework for employers to make payments to the Superannuation Holding Accounts Reserve (SHAR) instead of making small superannuation contributions to a superannuation fund. An amount in SHAR can be withdrawn by being transferred to a superannuation fund. The amendments in Schedule 16 will allow an amount which is held in SHAR to be transferred to an RSA.

343. The amendments:

- insert and amend appropriate definitions in section 4 [*Items 1 to 5*];
- amend the outline of debits to accounts in section 14 [*Items 6 and 7*];
- amend the simplified outline in section 56 describing the types of withdrawals from accounts [*Item 8*];
- change the Heading to Division 4 of Part 7 [*Item 9*]; and
- make appropriate changes to section 61 to allow an amount which is held in SHAR to be transferred to an RSA [*Items 10 to 13*].

Schedule 17 - Amendments to the Fringe Benefits Tax Assessment Act

344. Schedule 17 of the Bill amends the Fringe Benefits Tax Assessment Act to ensure that, like an employer contribution to a complying superannuation fund, an employer contribution to an RSA is not a fringe benefit. [*Item 1 - new subparagraph (j)(iii) of the definition of fringe benefit in subsection 136(1)*]

Schedule 18 - Amendments to the Income Tax Rates Act

345. Schedule 18 of the Bill amends the Income Tax Rates Act.

346. Subsection 3(1) will be amended to:

- change the name of the *non-fund component* of taxable income of a life assurance company to the *general fund component* [*Items 1 and 2*]; and
- insert a definition of *RSA component* and replace the definition of *standard component* [*Items 3 and 4*]

347. Subsection 23(4A) specifies the rates of tax payable by a life assurance company. The amendments to section 23(4A) ensure that:

- the RSA component of the general fund component of the taxable income of a life assurance company is taxed at a rate of 15% [*Item 6 - new paragraph 23(4A)(ba)*];
- the standard component of the general fund component of the taxable income of a life assurance company (which is equivalent to the current non-fund component) continues to be taxed at a rate of 36% in the case of a non-mutual life assurance company and 39% in the case of a mutual life assurance company [*Item 7 - amended paragraph 23(4A)(c)*].

348. *New subsection 23(4BA)* specifies the rates of tax payable by a company, other than a life assurance company, which is an RSA provider to be:

- in respect of the RSA component of taxable income - 15%;
- the respect of the standard component of taxable income - 36%.

[*Item 5 - new paragraph 23(2)(ca); Item 8 - new subsection 23(4BA)*]