



Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 1)¹

Select Legislative Instrument 2007 No. 74

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Superannuation Industry (Supervision) Act 1993*.

Dated 29 March 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

PETER CRAIG DUTTON
Minister for Revenue and Assistant Treasurer

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1 Name of Regulations

These Regulations are the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1, 2 and 3 and Schedule 1;
- (b) on 5 April 2007 — regulation 4 and Schedule 2;
- (c) on 1 July 2007 — regulation 5 and Schedule 3.

3 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994*.

4 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 2 amends the *Superannuation Industry (Supervision) Regulations 1994*.

5 Amendment of *Superannuation Industry (Supervision) Regulations 1994*

Schedule 3 amends the *Superannuation Industry (Supervision) Regulations 1994*.

Schedule 1 Amendments commencing on day after registration

(regulation 3)

[1] Subparagraph 1.05 (2) (f) (v)

omit

payment split; and

insert

payment split; or

[2] After subparagraph 1.05 (2) (f) (v)

insert

(vi) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the primary beneficiary; and

[3] Subparagraph 1.05 (9) (h) (vii)

omit

payment split; and

insert

payment split; or

[4] After subparagraph 1.05 (9) (h) (vii)

insert

(viii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the primary beneficiary; and

[5] Subparagraph 1.05 (10) (d) (vi)

omit

payment split; and

insert

payment split; or

[6] After subparagraph 1.05 (10) (d) (vi)

insert

(vii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the primary beneficiary; and

[7] Subparagraph 1.06 (2) (e) (v)

omit

payment split; and

insert

payment split; or

[8] After subparagraph 1.06 (2) (e) (v)

insert

(vi) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the primary beneficiary; and

[9] Subparagraph 1.06 (7) (g) (vii)

omit

payment split; and

insert

payment split; or

[10] After subparagraph 1.06 (7) (g) (vii)

insert

(viii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the primary beneficiary; and

[11] Subparagraph 1.06 (8) (d) (vi)

omit

payment split; and

insert

payment split; or

[12] After subparagraph 1.06 (8) (d) (vi)

insert

(vii) for the purpose of paying an amount to give effect to a release authority under:

(A) section 292-415 of the *Income Tax Assessment Act 1997*; or

(B) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the primary beneficiary; and

[13] Subregulation 6.01 (2), definition of *non-commutable allocated annuity*, after sub-subparagraph (c) (i) (C)

insert

(D) to ensure that a payment may be made for the purpose of giving effect to a release authority under:

(I) section 292-415 of the *Income Tax Assessment Act 1997*; or

(II) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;
or

[14] Subregulation 6.01 (2), definition of *non-commutable allocated pension*, after sub-subparagraph (b) (i) (C)

insert

(D) to ensure that a payment may be made for the purpose of giving effect to a release authority under:

(I) section 292-415 of the *Income Tax Assessment Act 1997*; or

(II) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*; or

[15] After regulation 6.17B

insert

6.17C Payment and commutation of pension in breach of standards

If a regulated superannuation fund provides a pension under rules which meet the standards of subregulation 1.06 (2), (7) or (8), the trustee must not:

- (a) pay the pension in a way that does not meet the standards of the relevant subregulation; or
- (b) allow the pension to be commuted except in accordance with the relevant subregulation.

[16] Regulation 6.27

substitute

6.27 Limitation on cashing benefits in approved deposit funds of less than \$500

The trustee of an approved deposit fund must not cash an amount of a member's benefits in the fund that is less than \$500 unless the purpose of cashing the amount is:

- (a) to close the member's account; or

(b) to cash the amount to give effect to a release authority under:

(i) section 292-415 of the *Income Tax Assessment Act 1997*; or

(ii) section 292-80C of the *Income Tax (Transitional Provisions) Act 1997*;

in respect of the member.

[17] Subregulation 7.01 (3)

omit

has worked

insert

was gainfully employed for

[18] After subregulation 7.01 (3)

insert

Note **Gainfully employed** is defined in regulation 1.03.

[19] Subregulation 7.04 (1B)

omit

subregulation (2)

insert

subregulations (1E) and (2)

[20] Subregulation 7.04 (1C)

omit

Subject to subregulation (2)

insert

Subject to subregulations (1E) and (2)

[21] Subregulation 7.04 (1D)

omit

Subject to subregulation (2)

insert

Subject to subregulations (1E) and (2)

[22] After subregulation 7.04 (1D)

insert

- (1E) A regulated superannuation fund may accept contributions that are made by a member in respect of the member:
- (a) in accordance with an item in the following table; and
 - (b) during the period specified in the item.

Item	If the member ...	the fund may accept contributions that are made by the member in respect of the member if ...
1	was 64 at any time between 10 May 2006 and 5 September 2006 (inclusive)	the contributions are made in the period 10 May 2006 to 30 June 2007 (inclusive), whether or not the member has been gainfully employed on at least a part-time basis
2	was 74 at any time between 10 May 2006 and 5 September 2006 (inclusive)	<ul style="list-style-type: none"> (a) the contributions are made in the period 10 May 2006 to 30 June 2007 (inclusive); and (b) the member was gainfully employed on at least a part-time basis in either the 2005–06 or 2006–07 financial year

[23] Schedule 1, Part 1, items 109A and 110

substitute

- | | | |
|-----|---|--|
| 110 | Attaining preservation age | One or more of the following:
(a) a non-commutable allocated annuity;
(b) a non-commutable allocated pension;
(c) a non-commutable annuity;
(d) a non-commutable pension |
| 112 | Either:
(a) a person gives a release authority to a superannuation provider under subsection 292-410 (1) of the <i>Income Tax Assessment Act 1997</i> ;
or
(b) the Commissioner of Taxation gives a release authority to a superannuation provider under subsection 292-410 (4) of the <i>Income Tax Assessment Act 1997</i> | Restrictions contained in subsections 292-415 (1) and (2) of the <i>Income Tax Assessment Act 1997</i> |
| 113 | A person gives a transitional release authority to a superannuation provider under section 292-80B of the <i>Income Tax (Transitional Provisions) Act 1997</i> | Restrictions contained in subsections 292-80C (1) and (2) of the <i>Income Tax (Transitional Provisions) Act 1997</i> |
| 114 | Any other condition, if expressed to be a condition of release, in an approval under subparagraph 62 (1) (b) (v) of the Act | Restrictions expressed in the approval to be cashing restrictions applying to the condition of release |

[24] Schedule 1, Part 2, after item 208

insert

209

Either:

- (a) a person gives a release authority to a superannuation provider under subsection 292-410 (1) of the *Income Tax Assessment Act 1997*;
- or

- (b) the Commissioner of Taxation gives a release authority to a superannuation provider under subsection 292-410 (4) of the *Income Tax Assessment Act 1997*

Restrictions contained in subsections 292-415 (1) and (2) of the *Income Tax Assessment Act 1997*

210

A person gives a transitional release authority to a superannuation provider under section 292-80B of the *Income Tax (Transitional Provisions) Act 1997*

Restrictions contained in subsections 292-80C (1) and (2) of the *Income Tax (Transitional Provisions) Act 1997*

Schedule 2 Amendment commencing on 5 April 2007

(regulation 4)

[1] Subregulation 6.41 (3)

substitute

- (3) Subject to subregulation (4), an *untaxed splittable contribution*:
- (a) is a contribution made by a fund member or by another person to a regulated superannuation fund; but
 - (b) does not include a contribution of that kind that:
 - (i) is made after 5 April 2007; and
 - (ii) will not be included in the assessable income of an entity as:
 - (A) a taxable contribution for section 274 of the Tax Act; or
 - (B) a contribution under Subdivision 295-C of the 1997 Tax Act.

Schedule 3 Amendments commencing on 1 July 2007

(regulation 5)

[1] **Subregulation 1.03 (1), after definition of 1997 Tax Act**

insert

account-based pension means a pension that is provided in accordance with the rules of a fund that:

- (a) are described in paragraph 1.06 (9A) (a); and
- (b) meet the standards of subregulation 1.06 (9A).

[2] **Subregulation 1.03 (1), definition of capital gains tax exempt component**

substitute

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

[3] **Subregulation 1.03 (1), definition of eligible spouse contribution**

substitute

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

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

- (ii) cannot deduct the contribution under Subdivision 290-B of the 1997 Tax Act in the 2007–08 income year or a later year.

[4] Subregulation 1.03 (1), after definition of Superannuation Holding Accounts Special Account

insert

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

[5] Subparagraph 1.03A (1) (b) (ii)

omit

2 years

insert

5 years

[6] Subregulation 1.04 (4)

omit

must be either

insert

must be

[7] Paragraph 1.04 (4) (b)

substitute

- (b) a fund that was established on or after 1 July 1994 using eligible termination payments (within the meaning of the Tax Act as in force when the fund was established) of the fund's beneficiary that had an initial value of at least \$400 000; or
- (c) a fund that is established after 1 July 2007 using a superannuation lump sum or an employment termination payment (within the meaning of the 1997 Tax Act) of the

fund's beneficiary that had an initial value of at least \$400 000.

[8] Subregulation 1.05 (1)

substitute

- (1) A benefit that is provided by a life insurance company or a registered organisation is taken to be an annuity for the purposes of the Act if:
- (a) it arises under a contract that:
 - (i) meets the standards of subregulation (11A); and
 - (ii) does not permit the capital supporting the annuity to be added to by way of contribution or rollover after the annuity has commenced; and
 - (b) for a benefit purchased on or after 3 August 1993 and before 1 July 2007 — it is purchased with the whole or part of a rolled over amount within the meaning given to that term by section 27A of the Tax Act; and
 - (c) for a benefit purchased on or after 1 July 2007 — it is purchased with the whole or part of:
 - (i) a roll-over superannuation benefit within the meaning of the 1997 Tax Act; or
 - (ii) a directed termination payment within the meaning of the *Income Tax (Transitional Provisions) Act 1997*; and
 - (d) in the case of a contract to which paragraph (11A) (a) applies — the contract also meets the standards of regulation 1.07D; and
 - (e) in the case of a contract to which paragraph (11A) (b) applies — the contract also meets the standards of regulation 1.07B.
- (1A) A benefit that is provided by a life insurance company or a registered organisation that commenced to be paid before 20 September 2007 is taken to be an annuity for the purposes of the Act if:
- (a) it arises under a contract that meets the standards of subregulation (2), (4), (6), (7), (8), (9) or (10); and

- (b) for a benefit purchased on or after 3 August 1993 and before 1 July 2007 — it is purchased with the whole or part of a rolled over amount within the meaning given to that term by section 27A of the Tax Act; and
- (c) for a benefit purchased on or after 1 July 2007 and before 20 September 2007 — it is purchased with the whole or part of:
 - (i) a roll-over superannuation benefit within the meaning of the 1997 Tax Act; or
 - (ii) a directed termination payment within the meaning of the *Income Tax (Transitional Provisions) Act 1997*; and
- (d) for a benefit that arises under a contract that meets the standards of subregulation (9) and is purchased by the primary beneficiary on or after 20 September 1998 — the commencement day under the contract is the day when the benefit was purchased; and
- (e) for a benefit that arises under a contract that meets the standards of subregulation (4) — the contract also meets the standards of regulation 1.07A; and
- (f) for a benefit that arises under a contract that meets the standards of subregulation (2), (6), (7) or (9) — the contract also meets the standards of regulation 1.07B; and
- (g) for a benefit that arises under a contract that meets the standards of subregulation (8):
 - (i) the benefit can be taken to consist of two benefits:
 - (A) an annuity that arises from that part of the contract that provides for payments whose size is not fixed; and
 - (B) an annuity that arises from that part of the contract that provides for payments whose size in a year is fixed; and
 - (ii) the contract meets the standards of regulation 1.07A in relation to the annuity mentioned in sub-subparagraph (i) (A); and
 - (iii) the contract meets the standards of regulation 1.07B in relation to the annuity mentioned in sub-subparagraph (i) (B); and

-
- (h) for a benefit that arises under a contract that meets the standards of subregulation (10), and has a commencement day on or after 20 September 2004 — the contract also meets the standards of regulation 1.07C.
- (1B) A benefit provided by a life insurance company or registered organisation that commenced to be paid on or after 20 September 2007 is taken to be an annuity for the purposes of the Act if:
- (a) the benefit arises under a contract that meets the standards of:
 - (i) subregulation 1.05 (9) or (10); and
 - (ii) subregulation 1.05 (11A); and
 - (b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:
 - (i) an annuity provided under a contract that meets the standards of subregulation 1.05 (2), (9) or (10); or
 - (ii) a pension provided under rules that meet the standards of subregulation 1.06 (2), (7) or (8); or
 - (iii) a pension provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; and
 - (c) for a benefit that arises under a contract that meet the standards of subregulation (9) — the contract also meets the standards of regulation 1.07B; and
 - (d) for a benefit that arises under a contract that meet the standards of subregulation (10) — the contract also meets the standards of regulation 1.07C.

[9] Subparagraph 1.05 (2) (f) (iii)

omit

eligible termination payment

insert

superannuation lump sum

[10] Subparagraph 1.05 (9) (h) (v)

omit

eligible termination payment

insert

superannuation lump sum

[11] Subparagraph 1.05 (10) (d) (iv)

omit

eligible termination payment

insert

superannuation lump sum

[12] After subregulation 1.05 (11)

insert

(11A) A contract for the provision of a benefit (the ***annuity***) meets the standards of this subregulation if the contract ensures that payment of the annuity is made at least annually, and also ensures that:

- (a) for an annuity in relation to which there is an account balance attributable to the annuitant— the total of payments in any year (including under a payment split) is at least the amount calculated under clause 1 of Schedule 7; and
- (b) for an annuity that is not described in paragraph (a):
 - (i) both of the following apply:
 - (A) the contract does not provide for a residual capital value, commutation value or withdrawal benefit greater than 100% of the purchase price of the annuity;
 - (B) the total of payments in any year (including under a splitting order) is at least the amount calculated under clause 2 of Schedule 7; or

-
- (ii) each of the following applies:
- (A) the annuity is payable throughout the life of the beneficiary (primary or reversionary), or for a fixed term of years that is no greater than the difference between the primary beneficiary's age on the commencement day and age 100;
 - (B) the amount paid as the purchase price is wholly converted into annuity payments;
 - (C) there is no arrangement for an amount (or a percentage of the purchase price) prescribed by the contract to be returned to the recipient when the annuity ends;
 - (D) the total of payments from the annuity in the first year (including under a payment split) is at least the amount calculated under clause 2 of Schedule 7;
 - (E) the total of payments from the annuity in a subsequent year cannot vary from the total of payments in the previous year unless the variation is as a result of an indexation arrangement or the transfer of the annuity to another person;
 - (F) if the annuity is commuted, the commutation amount cannot exceed the benefit that was payable immediately before the commutation; or
- (iii) the standards of subregulation (2) are met; and
- (c) the annuity is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and
 - (d) the capital value of the annuity and the income from it cannot be used as a security for a borrowing.
- (11B) A contract for the provision of a benefit does not meet the standards of any of subregulations (2) to (11A) if, in relation to the death of the annuity recipient on or after 1 July 2007, the annuity is transferred to a person who would not be eligible to be paid a benefit in the form of an annuity under subregulation 6.21 (2A).

[13] After subregulation 1.05 (12)

insert

(13) In this regulation:

indexation arrangement, in relation to an annuity, means an arrangement specified in the contract for the provision of the annuity that:

(a) either:

(i) results in the total amount of annuity payments in each year increasing by the same percentage factor; or

(ii) results in the total amount of annuity payments in each year being adjusted in line with movements in:

(A) the Consumer Price Index; or

(B) an index of average weekly earnings published by the Australian Statistician; and

(b) ensures that, unless APRA otherwise approves, an adjustment is made at least annually to the amount of the annuity payments.

[14] Subregulation 1.06 (1)

substitute

(1) A benefit is taken to be a pension for the purposes of the Act if:

(a) it is provided under rules of a superannuation fund that:

(i) meet the standards of subregulation (9A); and

(ii) do not permit the capital supporting the pension to be added to by way of contribution or rollover after the pension has commenced; and

(b) in the case of rules to which paragraph (9A) (a) applies — the rules also meet the standards of regulation 1.07D; and

(c) in the case of rules to which paragraph (9A) (b) applies — the rules also meet the standards of regulation 1.07B.

-
- (1A) A benefit that commenced to be paid before 20 September 2007 is taken to be a pension for the purposes of the Act if:
- (a) it is provided under rules of a superannuation fund that meet the standards of subregulation (2), (4), (6), (7) or (8); and
 - (b) where the primary beneficiary became entitled to the benefit on or after 20 September 1998 under rules of a superannuation fund that meet the standards of subregulation (7) — those rules provide that the commencement day is the day when the primary beneficiary became entitled to the pension; and
 - (c) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (4) — the rules also meet the standards of regulation 1.07A; and
 - (d) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (2), (6) or (7) — the rules also meet the standards of regulation 1.07B; and
 - (e) for a benefit that is provided under rules of a superannuation fund that meet the standards of subregulation (8), and has a commencement day on or after 20 September 2004 — the rules also meet the standards of regulation 1.07C.
- (1B) A benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if:
- (a) the benefit arises under rules of a superannuation fund that meet the standards of:
 - (i) subregulation 1.06 (7) or (8); and
 - (ii) subregulation 1.06 (9A); and
 - (b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:
 - (i) an annuity provided under a contract that meets the standards of subregulation 1.05 (2), (9) or (10); or
 - (ii) a pension provided under rules that meet the standards of subregulation 1.06 (2), (7) or (8); or

- (iii) a pension provided under terms and conditions that meet the standards of subregulation 1.07 (3A) of the RSA Regulations; and
- (c) for a benefit that arises under rules that meet the standards of subregulation (7) — the rules also meet the standards of regulation 1.07B; and
- (d) for a benefit that arises under rules that meet the standards of subregulation (8) — the rules also meet the standards of regulation 1.07C.

[15] Subparagraph 1.06 (2) (e) (iii)

omit

eligible termination payment

insert

superannuation lump sum

[16] Subparagraph 1.06 (7) (g) (v)

omit

eligible termination payment

insert

superannuation lump sum

[17] Subparagraph 1.06 (8) (d) (iv)

omit

eligible termination payment

insert

superannuation lump sum

[18] After subregulation 1.06 (9)

insert

- (9A) Rules for the provision of a benefit (the *pension*) meet the standards of this subregulation if the rules ensure that payment of the pension is made at least annually, and also ensure that:
- (a) for a pension in relation to which there is an account balance attributable to the beneficiary — the total of payments in any year (including under a payment split) is at least the amount calculated under clause 1 of Schedule 7; and
 - (b) for a pension that is not described in paragraph (a):
 - (i) both of the following apply:
 - (A) the rules do not provide for a residual capital value, commutation value or withdrawal benefit greater than 100% of the purchase price of the pension;
 - (B) the total of payments in any year (including under a splitting order) is at least the amount calculated under clause 2 of Schedule 7; or
 - (ii) each of the following applies:
 - (A) the pension is payable throughout the life of the beneficiary (primary or reversionary), or for a fixed term of years that is no greater than the difference between the primary beneficiary's age on the commencement day and age 100;
 - (B) there is no arrangement for an amount (or a percentage of the purchase price) prescribed by the rules to be returned to the recipient when the pension ends;
 - (C) the total of payments from the pension in the first year (including under a payment split) is at least the amount calculated under clause 2 of Schedule 7;
 - (D) the total of payments from the pension in a subsequent year cannot vary from the total of payments in the previous year unless the variation is as a result of an indexation

- arrangement or the transfer of the pension to another person;
- (E) if the pension is commuted, the commutation amount cannot exceed the benefit that was payable immediately before the commutation; or
- (iii) the standards of subregulation (2) are met; and
- (c) the pension is transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be); and
- (d) the capital value of the pension and the income from it cannot be used as a security for a borrowing.
- (9B) Rules for the provision of a benefit do not meet the standards of any of subregulations (2) to (9A) if, in relation to the death of the beneficiary on or after 1 July 2007, the pension is transferred to a person who would not be eligible to be paid a benefit in the form of a pension under subregulation 6.21 (2A).

[19] After subregulation 1.06 (10)

insert

- (11) In this regulation:

indexation arrangement, in relation to a pension, means an arrangement specified in the rules for the provision of the pension that:

- (a) either:
- (i) results in the total amount of pension payments in each year increasing by the same percentage factor; or
- (ii) results in the total amount of pension payments in each year being adjusted in line with movements in:
- (A) the Consumer Price Index; or
- (B) an index of average weekly earnings published by the Australian Statistician; and
- (b) ensures that, unless APRA otherwise approves, an adjustment is made at least annually to the amount of the pension payments.

[20] Paragraph 1.07A (2) (ba)

omit

the amount of income payments already made

insert

the amount of payments to the annuitant or pensioner already made

[21] Subregulation 1.07B (1)

substitute

- (1) This regulation applies in relation to the following:
- (a) a contract mentioned in paragraph 1.05 (1) (e) or paragraph 1.05 (1A) (f) for a benefit (the ***annuity***);
 - (b) a contract mentioned in paragraph 1.05 (1A) (g) for a benefit that is an annuity under sub-subparagraph 1.05 (1A) (g) (i) (B) (the ***annuity***);
 - (c) rules of a superannuation fund mentioned in paragraph 1.06 (1) (c) or paragraph 1.06 (1A) (d) for a benefit (the ***pension***).

[22] Paragraph 1.07C (2) (ba)

omit

the amount of income payments already made

insert

the amount of payments to the annuitant or pensioner already made

[23] After regulation 1.07C

insert

1.07D Commutation of superannuation income stream

- (1) For paragraphs 1.05 (1) (d) and 1.06 (1) (b), a benefit meets the standards of this regulation if, under the applicable contract or rules, the annuity or pension cannot be commuted, in whole or in part, except in the following circumstances:
 - (a) the commutation results from the death of the annuitant or pensioner or a reversionary annuitant or reversionary pensioner; or
 - (b) the sole purpose of the commutation is:
 - (i) to pay a superannuation contributions surcharge; or
 - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
 - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*; or
 - (c) for a commutation in part — the account balance of the annuity or pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated in accordance with Schedule 7, as reduced by the amount of payments to the annuitant or pensioner already made in the financial year in which the commutation occurs; or
 - (d) the annuity or pension has paid, in the financial year in which the commutation takes place, at least the minimum amount prescribed by subregulation (2).
- (2) For paragraph (1) (d), the minimum amount is the amount calculated using the formula:

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

where:

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

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

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

minimum annual amount means the minimum amount payable under the annuity or pension, in the financial year, calculated in accordance with Schedule 7.

[24] Subregulation 1.08 (3)

substitute

- (3) In this regulation, ***prescribed pension***:
 - (a) means a pension (including a benefit that is taken, under these regulations, to be a pension for the purposes of the Act), other than a benefit that is taken, under subregulation 1.06 (1), to be a pension by reason only that it is provided under rules of a superannuation fund that meet the standards of subregulation 1.06 (2); but
 - (b) does not include any of the following:
 - (i) an account-based pension;
 - (ii) an allocated pension;
 - (iii) a market linked pension.

[25] Subregulation 5.01 (1), definition of *deferred annuity*

substitute

deferred annuity means an annuity that is not payable on purchase, and the terms of which ensure:

- (a) that payment of benefits under the annuity:
 - (i) is not commenced earlier than the time at which Part 6 permits or requires the benefits to be paid from an approved deposit fund; and
 - (ii) is to commence as soon as practicable after the annuitant:
 - (A) dies; or
 - (B) if the annuitant dies before attaining the age of 65 — would have attained that age; and
- (b) that, except as permitted in relation to approved deposit funds by the Act or these Regulations, the provider of the annuity is not taken to recognise, or in any way encourage or sanction:
 - (i) an assignment of an interest under the annuity; or
 - (ii) the giving of a charge over, or in relation to, the annuity.

[26] Subregulation 5.01 (1), definition of *rolled over*

substitute

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

[27] Subregulation 6.01 (2), before definition of *changeover day*

insert

cashing restriction, in relation to a condition of release, means a cashing restriction specified in column 3 of the item in Schedule 1 that mentions the condition of release.

[28] Subregulation 6.01 (2), definition of *indexed*

after

section 159SG of the Tax Act

insert

(as in force before 1 July 2007),

[29] Subregulation 6.01 (2), definition of *non-commutable allocated annuity*, paragraph (c)

omit

eligible termination payment

insert

superannuation lump sum

[30] Subregulation 6.01 (2), definition of *non-commutable allocated pension*, paragraph (b)

omit

eligible termination payment

insert

superannuation lump sum

[31] Subregulation 6.01 (2), definition of *non-commutable annuity*, paragraph (c)

omit

eligible termination payment

insert

superannuation lump sum

[32] Subregulation 6.01 (2), definition of *non-commutable pension*

omit

[33] Subregulation 6.01 (2), after definition of *non-commutable income stream*

insert

non-commutable pension means a pension provided under rules of a superannuation fund that:

- (a) meet the standards of subregulation 1.06 (2), (7) or (8); and
- (b) ensure that, if the pension is commuted under subparagraph 1.06 (2) (e) (i), (7) (g) (i) or (8) (d) (i), the resulting superannuation lump sum cannot be cashed unless:
 - (i) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
 - (ii) before commutation, the pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'Nil'.

[34] Subregulation 6.01 (2), definition of *permanent incapacity*

substitute

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

[35] **Subregulation 6.01 (2), after definition of *temporary incapacity***

insert

transition to retirement income stream means:

- (a) an annuity provided under a contract that:
 - (i) is a contract:
 - (A) to which paragraph 1.05 (11A) (a) applies; and
 - (B) that meets the standards of subregulation 1.05 (11A); and
 - (ii) allows total payments (including under a payment split) made in a financial year to amount to no more than 10% of the annuity account balance:
 - (A) on 1 July in the financial year in which the payment is made; or
 - (B) if that year is the year in which the annuity commences — on the commencement day; and
 - (iii) complies with paragraphs (b) and (c) of the definition of ***non-commutable allocated annuity***, as if it were such an annuity; or
- (b) a pension provided from a superannuation fund, the rules of which:
 - (i) are rules:
 - (A) to which paragraph 1.06 (9A) (a) applies; and
 - (B) that meet the standards of subregulation 1.06 (9A); and
 - (ii) allow total payments (including under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:
 - (A) on 1 July in the financial year in which the payment is made; or
 - (B) if that year is the year in which the pension commences — on the commencement day; and

- (iii) comply with paragraph (b) of the definition of *non-commutable allocated pension*, as if it were such a pension.

[36] Subregulation 6.01 (6)

substitute

- (6) Amounts to the credit of a member (except eligible spouse contributions) in a fund are undeducted contributions if:
 - (a) the amounts are undeducted contributions within the meaning that was given, before 1 July 2007, by subsection 27A (1) of the Tax Act; or
 - (b) for any other amounts — the amounts comprise member contributions:
 - (i) made after 30 June 1983 in order to obtain superannuation benefits (within the meaning of the Tax Act); and
 - (ii) in respect of which no deduction is allowable or has been allowed to the member under the former section 82AAT of the Tax Act.

[37] Paragraph 6.01 (7) (b)

substitute

- (b) in the case of a person who has attained the age of 60 — an arrangement under which the member was gainfully employed has come to an end, and either of the following circumstances apply:
 - (i) the person attained that age on or before the ending of the employment; or
 - (ii) the trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis.

[38] Paragraph 6.08 (2) (a)

omit

section 82AAT

insert

the former section 82AAT

[39] Paragraph 6.10 (2) (a)

after

section 27D of the Tax Act

insert

, as in force before 1 July 2007,

[40] Paragraph 6.10 (3) (a)

omit

section 82AAT

insert

the former section 82AAT

[41] Paragraph 6.11 (2) (a)

after

section 27D of the Tax Act

insert

, as in force before 1 July 2007,

[42] Subregulation 6.18 (3)

substitute

- (3) Subject to subregulation (4), the form in which preserved benefits may be cashed under this regulation is, unless the satisfied condition of release is the death of the member:
- (a) a form (if any) specified in Schedule 1 as a cashing restriction relating to the condition of release; or
 - (b) if the specified cashing restriction is 'Nil' — any 1 or more of the following forms:
 - (i) 1 or more lump sums;

- (ii) 1 or more pensions;
- (iii) the purchase of 1 or more annuities.

Note For the cashing requirement applying on the death of the member, see regulation 6.21.

[43] Subregulation 6.19 (3)

substitute

- (3) Subject to subregulation (4), the form in which restricted non-preserved benefits may be cashed under this regulation is, unless the satisfied condition of release is the death of the member:
 - (a) a form (if any) specified in Schedule 1 as a cashing restriction relating to the condition of release; or
 - (b) if the specified cashing restriction is 'Nil' — any 1 or more of the following forms:
 - (i) 1 or more lump sums;
 - (ii) 1 or more pensions;
 - (iii) the purchase of 1 or more annuities.

Note For the cashing requirement applying on the death of the member, see regulation 6.21.

[44] Subregulation 6.20 (3)

substitute

- (3) Subject to subregulation (4), the form in which unrestricted non-preserved benefits may be cashed under this regulation is, unless the cashing occurs in consequence of the death of the member, any one or more of the following forms:
 - (a) one or more lump sums;
 - (b) one or more pensions;
 - (c) the purchase of one or more annuities.

Note For the cashing requirement applying on the death of the member, see regulation 6.21.

[45] Subregulation 6.20A (5), note

substitute

Note A payment made under this regulation is a 'departing Australia superannuation payment' within the meaning of subsection 995-1 (1) of the 1997 Tax Act.

[46] Subregulation 6.20B (4), note

substitute

Note A payment made under this regulation is a 'departing Australia superannuation payment' within the meaning of subsection 995-1 (1) of the 1997 Tax Act.

[47] Subregulation 6.21 (1)

substitute

- (1) Subject to subregulation (3), a member's benefits in a regulated superannuation fund must be cashed as soon as practicable after the member dies.

[48] Subregulation 6.21 (1A)

omit

[49] Subparagraph 6.21 (2) (a) (ii)

substitute

- (ii) an interim lump sum (not exceeding the amount of the benefits ascertained at the date of the event mentioned in subregulation (1)) and a final lump sum (not exceeding the balance of the benefits as finally ascertained in relation to the event);

[50] Paragraphs 6.21 (2) (b) and (c)

substitute

- (b) subject to subregulations (2A) and (2B):
 - (i) 1 or more pensions;

- (ii) the purchase of 1 or more annuities.

[51] After subregulation 6.21 (2)

insert

- (2A) If a member dies on or after 1 July 2007, subparagraphs (2) (b) (i) and (ii) apply to an entitled recipient only if, at the time of the member's death, the entitled recipient:
 - (a) is a dependant of the member; and
 - (b) in the case of a child of the member:
 - (i) is less than 18 years of age; or
 - (ii) being 18 or more years of age:
 - (A) is financially dependent on the member and less than 25 years of age; or
 - (B) has a disability of the kind described in subsection 8 (1) of the *Disability Services Act 1986*.
- (2B) If benefits in relation to a deceased member are being paid to a child of the deceased member in the form of a pension or an annuity in accordance with subregulation (2A), the benefits must be cashed as a lump sum on the earlier of:
 - (a) the day on which the annuity or pension is commuted, or the term of the annuity or pension expires (unless the benefit is rolled over to commence a new annuity or pension); and
 - (b) the day on which the child attains age 25;unless the child has a disability of the kind described in subsection 8 (1) of the *Disability Services Act 1986* on the day that would otherwise be applicable under paragraph (2B) (a) or (b).

[52] Subregulation 6.21 (3)

omit

subregulations (1) and (1A)

insert

subregulation (1)

[53] Subregulations 6.21 (3A) to (6)

omit

[54] Subregulation 6.22 (1)

substitute

- (1) Subject to regulations 6.22B, 7A.13, 7A.17 and 7A.18, a member's benefits in a regulated superannuation fund must not be cashed in favour of a person other than the member or the member's legal personal representative:
- (a) unless:
 - (i) the member has died; and
 - (ii) the conditions of subregulation (2) or (3) are satisfied; or
 - (b) unless the conditions of subregulation (4) are satisfied.

[55] After subregulation 6.22 (3)

insert

- (4) The conditions of this subregulation are satisfied if:
- (a) the trustee has received a release authority under section 292-410 of the *Income Tax Assessment Act 1997* in respect of the member; and
 - (b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.

[56] Subregulation 6.24A (5), note

substitute

Note A payment made under this regulation is a 'departing Australia superannuation payment' within the meaning of subsection 995-1 (1) of the 1997 Tax Act.

[57] Subregulation 6.25 (1)

substitute

- (1) Subject to subregulation (3), a member's benefits in an approved deposit fund must be cashed as soon as practicable after the member dies.

[58] Subregulation 6.25 (3)

substitute

- (3) Subregulation (1) is satisfied if, instead of being cashed, the benefits are rolled over as soon as practicable for immediate cashing.

[59] Regulation 6.26

omit

Subject to regulations 7A.13, 7A.17 and 7A.18,

insert

- (1) Subject to regulations 7A.13, 7A.17 and 7A.18,

[60] Regulation 6.26

insert

- (2) In addition to subregulation (1), a member's benefits in an approved deposit fund may be cashed if:
 - (a) the trustee has received a release authority under section 292-410 of the *Income Tax Assessment Act 1997* in respect of the member; and
 - (b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.

[61] Before subregulation 6.31 (1)

insert

Defined benefit component

[62] After subregulation 6.31 (2)

insert

Illiquid investment

- (3) An investment is an *illiquid investment* in relation to a member's interest in a superannuation fund if it is of a nature that produces either of the following outcomes:
- (a) it cannot be converted to cash in less than the time required to rollover or transfer a withdrawal benefit under subregulation 6.34 (5);
 - (b) converting it to cash within the time period specified in subregulation 6.34 (5) would be likely to have a significant adverse impact on the realisable value of the investment.

[63] Subregulation 6.33 (2)

substitute

- (2) If the trustee of the fund requires further information that is mandatory information in the form in Schedule 2A (whether or not the request is made using the form):
- (a) the trustee must, within 10 working days after receiving the request, ask the member for the information; and
 - (b) if the trustee has not received the information within 10 working days after making the request, the trustee must make reasonable further inquiries of the member to obtain the information.

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

- (3) If the trustee of the fund requires further information in relation to a request for a partial transfer:
 - (a) the trustee must, within 10 working days after receiving the request, ask the member for the information; and
 - (b) if the trustee has not received the information within 10 working days after making the request, the trustee must make reasonable further inquiries of the member to obtain the information.
- (4) If the trustee of the fund requires the information under subregulation 6.34 (3):
 - (a) the trustee must, within 10 working days after receiving the request, ask the member for the information; and
 - (b) if the trustee has not received the information within 10 working days after making the request, the trustee must make reasonable further inquiries of the member to obtain the information.

[64] Regulation 6.34, including the note

substitute

6.34 Rollover or transfer of withdrawal benefit

General

- (1) Subject to regulations 6.35 and 6.38, if a trustee of a regulated superannuation fund or an approved deposit fund receives a request under regulation 6.33, the trustee must roll over or transfer the amount in accordance with the request.
- (2) Subject to subregulation (3):
 - (a) a request to roll over or transfer an amount that is the whole of the member's withdrawal benefit may be made:
 - (i) using the form specified in Schedule 2A; or
 - (ii) in another manner; and

-
- (b) a request to roll over or transfer an amount that is part of the member's withdrawal benefit may include:
- (i) the information that would be required by the form specified in Schedule 2A; and
 - (ii) any other information that the trustee of the transferring superannuation fund advises the member to be necessary to process the request.

Note The form in Schedule 2A deals with information about tax file numbers that is required in accordance with Part 25A of the Act, and approvals under that Part.

It is recommended that applicants use the form of request in Schedule 2A to allow trustees to roll over or transfer whole balance amounts as quickly and efficiently as possible. Making the request in another way may require a trustee to seek further information from the member under subregulation 6.33 (2).

If subregulation (3) applies, the form of request may need to be supplemented by the documentation mentioned in the applicable subregulation.

- (3) In addition to the information that is, or would be, required in accordance with subregulation (2), if:
- (a) a request is made by a member (*member 1*) to roll over or transfer an amount that is the whole or part of the member's withdrawal benefit to a self managed superannuation fund; and
 - (b) the trustee of the transferring superannuation fund is aware that:
 - (i) another request has been made to roll over or transfer an amount to the same self managed superannuation fund; and
 - (ii) the other request was made by another member who is not a relative of member 1, within the meaning of subsection 17A (9) of the Act; and
 - (iii) the other request:
 - (A) has been processed; or
 - (B) is currently with the trustee of the transferring superannuation fund to be processed;

the trustee may also require member 1 to provide with the request a copy of documentation, complying with the

requirements of certification in the form in schedule 2A, that shows that member 1 is a member or trustee of the self managed superannuation fund before the trustee processes member 1's request.

Examples of documents showing that a member is a member or trustee of a self managed superannuation fund

- 1 A trust deed.
- 2 The member's contribution statement.
- 3 The annual return of the self managed superannuation fund.

- (4) Before the trustee rolls over or transfers an amount, the trustee must be satisfied that the member:
- (a) is aware that the member may ask the trustee for information that the member reasonably requires for the purpose of understanding any benefit entitlements that the member may have, including:
 - (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
 - (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the member may have; and
 - (b) does not require such information.

Note Under section 1017C of the *Corporations Act 2001*, a trustee of a fund must, on request by a member of the fund, give the member the information and documents mentioned in subsections 1017C (3) and (5). See also regulations 7.9.02, 7.9.45, 7.9.46 and 7.9.83 of the *Corporations Regulations 2001*.

- (5) Subject to subregulations (6) and (7), the trustee must roll over or transfer the amount (or the part of the amount requested to be transferred) as soon as practicable, and in any case within 30 days, after:
- (a) the trustee receives a request made under subregulation 6.33 (1); or
 - (b) if the trustee requires further information — the time when the trustee receives all of the information that would be required in accordance with subregulations 6.33 (2), (3) and (4); or
 - (c) if there is a suspension under regulation 6.36 or 6.37 — the end of the period of the suspension.

Illiquid investment before 1 July 2007

- (6) For an investment that was made before 1 July 2007, a trustee is not required to rollover or transfer the whole amount of a member's interest in the fund (or the part of the amount requested to be transferred) within the 30 day period mentioned in subregulation (5) if:
- (a) any part of the member's interest was an illiquid investment immediately before 1 July 2007; and
 - (b) either:
 - (i) the trustee informs the member, before 1 July 2008, of the nature of the illiquid investment, the impact of the investment on the portability of the member's interest, and the period within which the investment can be rolled over to another fund; or
 - (ii) if the member makes a request under regulation 6.33 before the trustee has complied with subparagraph (i) — the trustee informs the member, within 30 days after receiving the request, of the nature of the illiquid investment, the impact of the investment on the portability of the member's interest, and the period within which the investment can be rolled over to the other fund.

Illiquid investment on or after 1 July 2007

- (7) If, on or after 1 July 2007, a member makes an investment choice under regulation 4.02, and the investment strategy chosen is an illiquid investment, the trustee is not required to rollover or transfer the whole of the member's withdrawal benefit (or a partial amount requested to be transferred) within the 30 day period mentioned in subregulation (5) if the trustee:
- (a) informs the member of:
 - (i) the effect of this subregulation before the member makes the investment choice; and
 - (ii) the reasons why the investment is illiquid; and
 - (iii) the maximum period in which a transfer must be effected; and
 - (b) obtains written consent that the member understands and accepts that a period longer than the 30 days mentioned in

subregulation (5) is required (in respect of the whole or part of the requested transfer amount) because of the illiquid nature of the investment.

Note The trustee may effect a rollover or transfer in more than 1 transaction to ensure that only the illiquid investment is rolled over or transferred outside the 30 day period.

[65] Regulation 6.40, after definition of *applicant*

insert

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

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

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

contributions-splitting superannuation benefit means a payment made in accordance subregulation 6.45 (2).

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

[66] Regulation 6.40, definition of *eligible non-resident non-complying superannuation fund*

substitute

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

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

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

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

[67] Regulation 6.40, definition of *maximum splittable amount*, paragraph (a)

substitute

- (a) for taxed splittable contributions — the lesser of:
- (i) 85% of the concessional contributions for that financial year; and
 - (ii) the concessional contributions cap for that financial year; and

[68] Regulation 6.40, definition of *maximum splittable amount*, paragraph (c)

substitute

- (c) for untaxed splittable employer contributions — 100% of the concessional contributions cap for that financial year.

[69] Regulation 6.40, definition of *post-June 83 component*

omit

[70] Regulation 6.40, after definition of *splittable contribution*

insert

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

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

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

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

[71] Regulation 6.40, definition of *undeducted contributions*

omit

[72] Paragraph 6.41 (1) (a)

substitute

- (a) a contribution that will be included in the assessable income of an entity as:
- (i) a taxable contribution for section 274 of the Tax Act; or
 - (ii) a contribution under Subdivision 295-C of the 1997 Tax Act; or

[73] Subregulation 6.41 (2)

substitute

- (2) Each of the following is not a ***taxed splittable contribution***:
- (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
 - (b) an amount allotted under this Division;
 - (c) a superannuation lump sum that is paid from a foreign superannuation fund.

[74] Subregulations 6.41 (4), (5) and (6)

substitute

- (4) Each of the following is not an ***untaxed splittable contribution***:
- (a) a payment made to a superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer;
 - (b) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;

-
- (c) an amount allotted under this Division;
 - (d) superannuation lump sum that is paid from a foreign superannuation fund.
- (5) Subject to subregulation (6), an untaxed splittable employer contribution:
- (a) is a contribution made by the Commonwealth, a State or a Territory to a public sector superannuation scheme; but
 - (b) does not include a contribution of that kind that will not be included in the assessable income of an entity as:
 - (i) a taxable contribution for section 274 of the Tax Act; or
 - (ii) a contribution under Subdivision 295-C of the 1997 Tax Act.
- (6) Each of the following is not an untaxed splittable employer contribution:
- (a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;
 - (b) an amount allotted under this Division;
 - (c) a superannuation lump sum that is paid from a foreign superannuation fund.

[75] Subregulation 6.42 (2)

substitute

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

[76] Subregulation 6.44 (4), note

substitute

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

[77] Subregulation 6.45 (3)

omit

undeducted contributions that would form part of the ETP

insert

crystallised segment that would form part of the superannuation interest

[78] Subregulation 6.45 (4)

omit

taxed element of the post-June 83 component that would form part of the ETP

insert

element taxed in the fund of the taxable component that would form part of the superannuation benefit

[79] Subregulation 6.45 (5)

omit

untaxed element of the post-June 83 component that would form part of the ETP

insert

element untaxed in the fund of the taxable component that would form part of the superannuation benefit

[80] Regulations 7.04 and 7.05*substitute***7.04 Acceptance of contributions — regulated superannuation funds**

- (1) A regulated superannuation fund may accept contributions only in accordance with the following table and subregulations (2), (3), (4) and (6).

Item	If the member ...	the fund may accept ...
1	is under 65	contributions that are made in respect of the member
2	is not under 65, but is under 70	contributions that are made in respect of the member that are: <ul style="list-style-type: none"> (a) mandated employer contributions; or (b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made: <ul style="list-style-type: none"> (i) employer contributions (except mandated employer contributions); or (ii) member contributions

Item	If the member ...	the fund may accept ...
3	is not under 70, but is under 75	contributions that are made in respect of the member that are: <ul style="list-style-type: none"> (a) mandated employer contributions; or (b) if the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made — contributions received on or before the day that is 28 days after the end of the month in which the member turns 75 that are: <ul style="list-style-type: none"> (i) employer contributions (except mandated employer contributions); or (ii) member contributions made by the member
4	is not under 75	mandated employer contributions

- (2) In addition to subregulation (1), the regulated superannuation fund must not accept any member contributions if the member's tax file number has not been quoted (for superannuation purposes) to the trustee of the fund.
- (3) In addition to subregulation (1), the regulated superannuation fund must not accept any fund-capped contributions in a financial year in respect of a member that exceed:
- (a) if the member is 64 or less on 1 July of the financial year — three times the amount of the non-concessional contributions cap; or
 - (b) if the member is 65 but less than 75 on 1 July of the financial year — the non-concessional contributions cap.
- (4) If a regulated superannuation fund receives an amount in a manner that is inconsistent with subregulation (1), (2) or (3):

- (a) the fund must return the amount to the member within 30 days of becoming aware that the amount was received in a manner that is inconsistent with subregulation (1), (2) or (3), unless:
- (i) for an amount received in a manner that is inconsistent with subregulation (2) — the member's tax file number is quoted (for superannuation purposes) within 30 days of this amount being received by the trustee of the fund; or
 - (ii) for an amount received in a manner that is inconsistent with subregulation (3) — a valid notice under section 290-170 of the *Income Tax Assessment Act 1997* is received by the trustee of the fund within 30 days of this amount being received by the trustee of the fund; and
- (b) the fund is also authorised to take any of the following action to the extent that the rules of the fund allow:
- (i) if the price at which the interest could have been acquired on the day on which the amount is returned is less than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the member may be reduced by the amount of the difference between the prices;
 - (ii) if the price at which the interest could have been acquired on the day of return of the amount is greater than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the member may be increased by the amount of the difference between the prices;
 - (iii) if the price at which the interest could be acquired cannot be determined in accordance with the contract or legal relationship on the day on which the amount is returned, the price is to be determined:
 - (A) on the basis of the most recent day on which a price was calculated in accordance with the contract or legal relationship; or

- (B) if there is no day of that kind — as soon as practicable after the decision is made to return the amount;
- (iv) in addition to subparagraph (i), the amount that would, but for this subparagraph, be returned to the member may be reduced to account for reasonable administration costs and transaction costs, incurred by the fund, that:
 - (A) are reasonably related to the acquisition of the interest and the return of the amount; and
 - (B) do not exceed the true cost of an arms' length transaction;
other than costs related to commissions or similar benefits;
- (v) if:
 - (A) the interest is a risk insurance interest, or the part of an interest that is a risk insurance interest; and
 - (B) the interest has been issued for a specific period, or the premium for the interest has been paid in relation to cover for a specific period; and
 - (C) a proportion of the specific period has already passed when the decision is made to return the amount to the member;the amount that would otherwise be returned to the member may be reduced by the sum of:
 - (D) that part of any amount received in a manner inconsistent with subregulation (1), (2) or (3) as has been paid by the fund to any person in connection with the risk insurance product and which is not recoverable by the fund from that person; and
 - (E) the proportion equal to the proportion of the period that has passed of the difference between the amount that would otherwise be returned and the amount referred to in (a).

-
- (5) If a regulated superannuation fund acts under subregulation (4), the fund is taken not to have contravened the Act or these Regulations in relation to the acceptance of the amount or in relation to the return of the amount to the member of the fund.
- (6) A regulated superannuation fund may accept contributions in respect of a member if the trustee is reasonably satisfied that the contribution is in respect of a period during which, under an item in the table in subregulation (1), the fund may accept the contribution in respect of that member, even though the contribution is actually made after that period.
- (7) In this regulation:
- administration costs** has the same meaning as in subregulation 5.01 (1).
- employer contributions** has the same meaning as in subregulation 1.03 (1).
- mandated employer contributions** has the same meaning as in subregulation 5.01 (1).
- member contributions** has the same meaning as in subregulation 5.01 (1).
- fund-capped contributions** means the member contributions described in the definition of that expression in subregulation 5.01 (1), other than the following:
- (a) a contribution to which a valid and acknowledged notice under section 290-170 of the *Income Tax Assessment Act 1997* relates;
 - (b) a contribution that meets the requirements of paragraph 292-95 (1) (d) of the *Income Tax Assessment Act 1997*;
 - (c) a contribution that meets the requirements of subsection 292-100 (9) of the *Income Tax Assessment Act 1997*;
 - (d) a payment made by the Commissioner of Taxation under section 65 of the *Superannuation Guarantee (Administration) Act 1992*;
 - (e) a payment made by the Commissioner of Taxation under section 61 or 61A of the *Small Superannuation Accounts Act 1995*;

- (f) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
- (g) a contribution that is a directed termination payment within the meaning of section 82-10F of the *Income Tax (Transitional Provisions) Act 1997*.

non-concessional contributions cap means the amount mentioned in subsection 292-85 (2) of the *Income Tax Assessment Act 1997*.

quoted (for superannuation purposes) has the same meaning as in the *Income Tax Assessment Act 1997*.

superannuation provider means:

- (a) the trustee of a complying superannuation fund; or
- (b) the trustee of a constitutionally protected fund, within the meaning of the *Income Tax Assessment Act 1997*.

tax file number has the meaning given by section 299W of the Act.

transaction costs means any of the following:

- (a) brokerage paid because of an investment transaction;
- (b) a cost arising from maintenance of a property investment;
- (c) stamp duty on an investment transaction.

7.05 Accrual of benefits — defined benefit funds

- (1) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who is under age 65.
- (2) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who has reached age 65 but not age 70 only if:
 - (a) the accrual is attributable to mandated employer contributions; or
 - (b) the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.

-
- (3) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member of the fund who has reached age 70 but not age 75 only if:
- (a) the accrual is attributable to mandated employer contributions; or
 - (b) the accrual is attributable to:
 - (i) contributions made by the member in respect of the member; or
 - (ii) contributions made by the employer that are not mandated employer contributions;and the member has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made.
- (4) Subject to subregulation (5), a defined benefit fund may grant an accrual of benefits in respect of a member who has reached age 75 only if the accrual is attributable to mandated employer contributions.
- (5) A defined benefit fund may grant an accrual of benefits in respect of a member if the trustee is reasonably satisfied that the accrual is in respect of a period during which, under subregulation (1), (2), (3) or (4), the fund may grant an accrual of benefits in respect of that member, even though the grant occurs after that period.

[81] Subregulation 7A.14 (2)

omit

a death benefit ETP under the *Income Tax Assessment Act 1936*

insert

a superannuation death benefit (within the meaning of subsection 995-1 (1) of the 1997 Tax Act)

[82] Paragraph 9.04E (c)

omit

pension.

insert
pension; or

[83] After paragraph 9.04E (c)

insert
(d) an account-based pension.

[84] Regulation 11.07, heading

substitute

11.07 Operating standard — disclosure of certain information (funds other than self managed superannuation funds)

[85] Subregulation 11.07 (1)

after
a superannuation entity

insert
other than a self managed superannuation fund

[86] Paragraph 11.07 (2) (b)

omit
1 month of

insert
28 days after

[87] After regulation 11.07

insert

11.07AA Operating standard — disclosure of certain information (self managed superannuation funds)

- (1) For subsections 31 (1), 32 (1) and 33 (1) of the Act, it is a standard applicable to the operation of a self managed superannuation fund that the trustee must give notice in writing to the Regulator, in accordance with subregulation (2), of any change in:
 - (a) the name of the entity; or
 - (b) the postal address, registered address or address for service of notices, of the entity; or
 - (c) details of the contact person, and contact telephone and facsimile numbers; or
 - (d) the membership of the fund; or
 - (e) the trustees of the fund; or
 - (f) the directors of the fund's corporate trustee.
- (2) A notice mentioned in subregulation (1) must be given:
 - (a) using the approved form; and
 - (b) within 28 days after the occurrence of the change.

[88] Subregulation 11.07A (3)

omit

21 days

insert

28 days

[89] Regulation 12.01, definition of *pre-1 July 88 funding credit balance*

substitute

pre-1 July 88 funding credits available has the meaning given by subsection 295-265 (2) of the 1997 Tax Act.

[90] Subregulation 12.10 (2)

omit

subsection 159SG (2)

insert

Subdivision 960-M

[91] Paragraph 12.11 (2) (a)

omit

pre-1 July 88 funding credit balance of

insert

pre-1 July 88 funding credits available in

[92] Paragraph 12.12 (3) (b)

omit

pre-1 July 88 funding credit balance

insert

pre-1 July 88 funding credits available

[93] Paragraph 12.13 (3) (b)

omit

pre-1 July 88 funding credit balance

insert

pre-1 July 88 funding credits available

[94] Paragraph 12.15 (c)

omit

pre-1 July 88 funding credit balance of

insert

pre-1 July 88 funding credits available in

[95] Schedule 1, heading*substitute***Schedule 1 Conditions of release of benefits**

(Subregulations 1.03AB (2) and 6.01 (2), paragraphs 6.15A (1) (a) and (b), (2) (b), (3) (b), (4) (c) and (5) (c), subparagraph 6.16 (3) (b) (ii) and paragraphs 6.18 (3) (a), 6.19 (3) (a), 6.23 (3) (a) and 7A.01A (a) and (c))

[96] Schedule 1, Part 1, item 110, column 3*substitute*

Any of the following:

- (a) a transition to retirement income stream;
- (b) a non-commutable allocated annuity;
- (c) a non-commutable allocated pension;
- (d) a non-commutable annuity;
- (e) a non-commutable pension

[97] Schedule 1, Part 1, after item 110*insert*

111 Being a lost member who is Nil
found, and the value of
whose benefit in the fund,
when released, is less than
\$200

[98] Schedule 1, Part 2, item 208, column 3

substitute

Any of the following:

- (a) a transition to retirement income stream;
- (b) a non-commutable allocated annuity;
- (c) a non-commutable allocated pension;
- (d) a non-commutable annuity;
- (e) a non-commutable pension

[99] After Schedule 1, Part 2, after item 210

insert

211	Being a lost member who is found, and the value of whose benefit in the fund, when released, is less than \$200	Nil
-----	---	-----

[100] Schedule 1AAA, item 1

omit

Australian Society of Certified Practising Accountants


insert

CPA Australia Limited

[101] After Schedule 2*insert*

Schedule 2A Request to transfer whole balance of superannuation benefits between funds form

(regulation 6.34)




Completing the request to transfer whole balance of superannuation benefits between funds form

By completing this form, you will request the transfer of the WHOLE balance of your superannuation benefits between funds. This form can NOT be used to transfer part of the balance of your superannuation benefits. This form will NOT change the fund to which your employer pays your contributions. The Standard Choice Form must be used by you to change funds.

BEFORE COMPLETING THIS FORM

- Read the important information below.
- Check that the fund you are transferring your benefits TO can accept this transfer.

WHEN COMPLETING THIS FORM

- Refer to these instructions where a question shows a message like this: 
- Print clearly in BLOCK LETTERS.

AFTER COMPLETING THIS FORM

- Sign the authorisation.
- Attach the appropriately certified proof of identity documents.
- Review the checklist below.
- Send the request form to your fund.

IMPORTANT INFORMATION

1 This transfer may close your account (you will need to check this with your FROM fund).

This form can NOT be used to:

- transfer part of the balance of your superannuation benefits
- transfer benefits if you don't know where your superannuation is
- transfer benefits from multiple funds on this one form – a separate form must be completed for each fund you wish to transfer superannuation from
- change the fund to which your employer pays contributions on your behalf
- open a superannuation account, or
- transfer benefits under certain conditions or circumstances, for example if there is a superannuation agreement under the *Family Law Act 1975* in place.

CHECKLIST

- Have you read the important information?
- Have you considered where your future employer contributions will be paid?
- Have you checked your TO fund can accept the transfer?
- Have you completed all of the mandatory fields on the form?
- Have you signed and dated the form?
- Have you attached the certified documentation including any linking documents if applicable?

WHAT HAPPENS TO MY FUTURE EMPLOYER CONTRIBUTIONS?

Using this form to transfer your benefits will not change the fund to which your employer pays your contributions and may close the account you are transferring your benefits FROM.

If you wish to change the fund into which your contributions are being paid, you will need to speak to your employer about Choice. For the appropriate forms and information about whether you are eligible to choose the fund to which your employer contributions are made, visit www.superchoice.gov.au or call the Australian Taxation Office on 13 10 20.

THINGS YOU NEED TO CONSIDER WHEN TRANSFERRING YOUR SUPERANNUATION

When you transfer your superannuation, your entitlements under that fund may cease. You need to consider all relevant information before you make a decision to transfer your superannuation. If you ask for information, your superannuation provider must give it to you. Some of the points you may consider are:

- **Fees** – your FROM fund must give you information about any exit or withdrawal fees. If you are not aware of the fees that may apply, you should contact your fund for further information before completing this form. The fees could include administration fees as well as exit or withdrawal fees. Your TO fund may also charge entry or deposit fees on transfer. Differences in fees funds charge can have a significant effect on what you will have to retire on. For example, a 1% increase in fees may significantly reduce your final benefit.
- **Death and disability benefits** – your FROM fund may insure you against death, illness or an accident which leaves you unable to return to work. If you choose to leave your current fund, you may lose any insurance entitlements you have. Other funds may not offer insurance, or may require you to pass a medical examination before they cover you. When considering a new fund, you may wish to check the costs and amount of any cover offered.

WHAT HAPPENS IF I DO NOT QUOTE MY TAX FILE NUMBER (TFN)?

You are not obligated to provide your TFN to your superannuation fund. However, if you do not provide your TFN, your fund may be taxed at the highest marginal tax rate plus the Medicare levy on contributions made to your account in the year, compared to the concessional tax rate of 15%. Your fund may deduct this additional tax from your account.

If your superannuation fund does not have your TFN, you will not be able to make personal contributions to your superannuation account. Choosing to quote your TFN will also make it easier to keep track of your superannuation in the future.

Under the *Superannuation Industry (Supervision) Act 1993*, your superannuation fund is authorised to collect your TFN, which will only be used for lawful purposes. These purposes may change in the future as a result of legislative change. The TFN may be disclosed to another superannuation provider, when your benefits are being transferred, unless you request in writing that your TFN is not to be disclosed to any other trustee.

TRANSFERS TO SELF MANAGED SUPERANNUATION FUNDS

You may use this form to transfer your benefits to your own self managed superannuation fund (SMSF).

You should be aware that SMSFs are subject to the same rules and restrictions as other funds, when benefits are to be paid out. In particular, superannuation benefits in a SMSF are required to be 'preserved', meaning they are not generally able to be accessed until you are over age 55 and retired.

The trustee of your FROM fund may be able to request further information from you about your status as a member, a trustee or a director of a corporate trustee of your SMSF, if there are multiple transfer requests to your SMSF. Penalties may apply for providing false or misleading information.

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Page 1

Completing proof of identity

You will need to provide documentation with this transfer request to prove you are the person to whom the superannuation entitlements belong.

ACCEPTABLE DOCUMENTS

The following documents may be used.

EITHER

One of the following documents only:

- driver's licence issued under State or Territory law
- passport.

OR

One of the following documents:

- birth certificate or birth extract
- citizenship certificate issued by the Commonwealth
- pension card issued by Centrelink that entitles the person to financial benefits.

AND

One of the following documents:

- letter from Centrelink regarding a Government assistance payment
- notice issued by Commonwealth, State or Territory Government or local council within the past twelve months that contains your name and residential address. For example:
 - Tax Office Notice of Assessment
 - Rates notice from local council.

HAVE YOU CHANGED YOUR NAME OR ARE YOU SIGNING ON BEHALF OF ANOTHER PERSON?

If you have changed your name or are signing on behalf of the applicant, you will need to provide a certified linking document. A linking document is a document that proves a relationship exists between two (or more) names.

The following table contains information about suitable linking documents.

Purpose	Suitable linking documents
Change of name	Marriage certificate, deed poll or change of name certificate from the Births, Deaths and Marriages Registration Office.
Signed on behalf of the applicant	Guardianship papers or Power of Attorney.

CERTIFICATION OF PERSONAL DOCUMENTS

All copied pages of ORIGINAL proof of identification documents (including any linking documents) need to be certified as true copies by any individual approved to do so (see below).

The person who is authorised to certify documents must sight the original and the copy and make sure both documents are identical, then make sure all pages have been certified as true copies by writing or stamping 'certified true copy' followed by their signature, printed name, qualification (eg Justice of the Peace, Australia Post employee, etc) and date.

The following can certify copies of the originals as **true and correct** copies:

- a permanent employee of Australia Post with five or more years of continuous service
- a finance company officer with five or more years of continuous service (with one or more finance companies)
- an officer with, or authorised representative of, a holder of an Australian Financial Services Licence (AFSL), having five or more years continuous service with one or more licensees
- a notary public officer
- a police officer
- a registrar or deputy registrar of a court
- a Justice of the Peace
- a person enrolled on the roll of a State or Territory Supreme Court or the High Court of Australia, as a legal practitioner
- an Australian consular officer or an Australian diplomatic officer
- a judge of a court
- a magistrate, or
- a Chief Executive Officer of a Commonwealth court.

WHERE DO I SEND THE FORM?


You can send your completed and signed form with your certified proof of identity documents to either fund.

3 MORE INFORMATION

For more information about superannuation, visit the:

- Australian Securities and Investments Commission website at www.fido.asic.gov.au, or
- Australian Taxation Office website at www.ato.gov.au/super

For more information about this form, phone the Australian Taxation Office on **13 10 20**.


Australian Government

Request to transfer whole balance of superannuation benefits between funds under the Superannuation Industry (Supervision) Act 1993

COMPLETING THIS FORM

- Read the important information pages
- Refer to instructions where indicated with a **Ⓢ**
- This form is only for whole (not part) balance transfers.

AFTER COMPLETING THIS FORM

- Sign the authorisation
- Send form and certified proof of identity documents to either your **FROM** or **TO** fund.

Personal details

Title: Mr Mrs Miss Ms Other

*Family name

*Given names

Other/previous names

*Date of birth / /

Tax file number

Under the Superannuation Industry (Supervision) Act 1993, you are not obliged to disclose your tax file number, but there may be tax consequences.

Ⓢ See 'What happens if I do not quote my tax file number?'

*Gender Male Female

*Contact phone number

Fund details

FROM

*Fund name

Fund phone number

Membership or account number

Australian business number (ABN)

Superannuation Product Identification Number (SPIN)

ⓘ If you have multiple account numbers with this fund, you must complete a separate form for each account you wish to transfer.

TO

*Fund name

*Fund phone number

*Membership or account number

Australian business number (ABN)

Superannuation Product Identification Number (SPIN)

ⓘ You must check with your **TO** fund to ensure they can accept this transfer.

***Proof of identity** **Ⓢ** See 'Completing proof of identity'

I have attached a certified copy of my driver's licence or passport

OR

I have attached certified copies of both:

Birth/Citizenship Certificate or Centrelink Pension Card

AND

Centrelink payment letter or Government or local council notice (<1 year old) with name and address

Authorisation

By signing this request form I am making the following statements:

- I declare I have fully read this form and the information completed is true and correct
- I am aware I may ask my superannuation provider for information about any fees or charges that may apply, or any other information about the effect this transfer may have on my benefits, and do not require any further information.
- If the **TO** fund is a self managed superannuation fund (SMSF), I confirm that I am a member, trustee or director of a corporate trustee of the SMSF.
- I discharge the superannuation provider of my **FROM** fund of all further liability in respect of the benefits paid and transferred to my **TO** fund.

I request and consent to the transfer of superannuation as described above and authorise the superannuation provider of each fund to give effect to this transfer.

*Name (Print in BLOCK LETTERS)

*Signature

*Date / /

Ⓢ Denotes mandatory field. If you do not complete all of the mandatory fields, there may be a delay in processing your request.

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[102] After Schedule 6

insert

Schedule 7 Minimum payment amount for a superannuation income stream

(paragraph 1.05 (11A) (a), subparagraph 1.05 (11A) (b) (i), paragraph 1.06 (9A) (a), subparagraph 1.06 (9A) (b) (i) and regulation 1.07D)

- 1 (1) Subject to clauses 3 and 4, the amount of payments mentioned in paragraph 1.05 (11A) (a) or 1.06 (9A) (a) is the amount worked out using the formula:

account balance × percentage factor.

- (2) In subclause (1):

account balance means:

- (a) the amount of the annuity or pension account balance:
- (i) on 1 July in the financial year in which the payment is made; or
 - (ii) if that year is the year in which the annuity or pension payments commence — on the commencement day; or
- (b) if the amount of the annuity or pension account balance under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the annuity or pension were to be fully commuted — the amount of the withdrawal benefit.

percentage factor means the percentage factor specified in the item in the table that applies to the beneficiary because of the beneficiary's age on:

- (a) 1 July in the financial year in which the payment is made; or

-
- (b) if that is the year in which the annuity or pension payments commence — the commencement day.
- 2 (1) The amount of payments mentioned in
- (a) subparagraph 1.05 (11A) (b) (i) and sub-subparagraph 1.05 (11A) (b) (ii) (D); and
- (b) subparagraph 1.06 (9A) (b) (i) and sub-subparagraph 1.06 (9A) (b) (ii) (C);
- is the amount worked out using the formula:
- $$\text{purchase price} \times \text{percentage factor.}$$
- (2) In subclause (1):
- purchase price*** means the total amount paid as consideration to purchase the income stream.
- percentage factor*** means the percentage factor specified in the item in the table that applies to the beneficiary because of the beneficiary's age on:
- (a) the commencement day; or
- (b) the anniversary of the commencement day.
- 3 For the determination of the minimum total payment in the year in which the commencement day of the annuity or pension occurs, if that day is a day other than 1 July, the applicable value specified in column 3 of the table must be applied proportionally to the number of days in the financial year that include and follow the commencement day.
- 4 If the commencement day of the annuity or pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
- 5 An amount determined under this Schedule is to be rounded to the nearest 10 whole dollars. If the amount ends in an exact 5 dollars, it is to be rounded up to the next 10 whole dollars.

Table

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

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.