Retirement Savings Accounts Amendment Regulations 2007 (No. 1)[1]

Select Legislative Instrument 2007 No. 104

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 *Retirement Savings Accounts Act 1997*.

Dated 26 April 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 *Retirement Savings Accounts 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 30 April 2007 — regulation 4 and Schedule 2;

(c) on 1 July 2007 — regulation 5 and Schedule 3.

3 Amendment of *Retirement Savings Accounts Regulations 1997*

Schedule 1 amends the *Retirement Savings Accounts Regulations 1997*.

4 Amendment of *Retirement Savings Accounts Regulations 1997*

Schedule 2 amends the *Retirement Savings Accounts Regulations 1997*.

5 Amendment of *Retirement Savings Accounts Regulations 1997*

Schedule 3 amends the *Retirement Savings Accounts Regulations 1997*.

Schedule 1 Amendments commencing on day after registration

(regulation 3)

[1] Subparagraph 1.07 (3A) (e) (vi)

omit

payment split; and

insert

payment split; or

[2] After subparagraph 1.07 (3A) (e) (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

[3] Paragraph 1.08 (2) (c)

omit

subregulation (3).

insert

subregulation (3); or

[4] After paragraph 1.08 (2) (c)

insert

(d) for the purpose of paying an 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 primary beneficiary.

[5] Subregulation 4.01 (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

[6] After regulation 4.20

Insert

4.20A Payment and commutation of pension in breach of standards

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

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

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

[7] Subregulation 4.23A (3)

after

the Department of Immigration and Multicultural and Indigenous Affairs,

insert

the Department of Immigration and Multicultural Affairs or the Department of Immigration and Citizenship,

[8] Subregulation 5.03 (3)

omit

subregulation (5)

insert

subregulations (4B) and (5)

[9] Subregulation 5.03 (4)

omit

Subject to subregulation (5)

insert

Subject to subregulations (4B) and (5)

[10] Subregulation 5.03 (4A)

omit

Subject to subregulation (5)

insert

Subject to subregulations (4B) and (5)

[11] After subregulation 5.03 (4A)

insert

(4B) An RSA institution may accept contributions that are made by an RSA holder in respect of the RSA holder:

(a) in accordance with an item in the following table; and

(b) during the period specified in the item.

Item	If the RSA holder …	the RSA institution may accept contributions that are made by the RSA holder in respect of the RSA holder 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 RSA holder 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)	(a) the contributions are made in the period 10 May 2006 to 30 June 2007 (inclusive); and (b) the RSA holder was gainfully employed on at least a part-time basis in either the 2005–06 or 2006–07 financial year

[12] Subregulation 5.03 (6)

omit

has worked

insert

was gainfully employed for

[13] After subregulation 5.03 (6)

insert

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

[14] Schedule 2, items 108A, 108B and 109

substitute

109	Compassionate ground	A single lump sum, not exceeding an amount determined, in writing, by APRA, being an amount that:

		(a) taking account of the ground and of the person's financial capacity, is reasonably required; and (b) in the case of the ground mentioned in paragraph 4.22A (1) (b) — in each 12 month period (beginning on the date of first payment), does not exceed an amount equal to the sum of: (i) 3 months' repayments; and (ii) 12 months' interest on the outstanding balance of the loan.
110	Attaining preservation age	One or more of the following: (a) a non-commutable allocated annuity within the meaning of Part 6 of the SIS Regulations; (b) a non-commutable allocated pension; (c) a non-commutable annuity within the meaning of Part 6 of the SIS Regulations; (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 *Income Tax Assessment Act 1997*; or	Restrictions contained in subsections 292-415 (1) and (2) of the *Income Tax Assessment Act 1997*

	(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*	
113	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*
114	Any other condition, if expressed to be a condition of release, in an approval under paragraph 15 (4) (d) of the Act	Restrictions expressed in the approval to be cashing restrictions applying to the condition of release

Schedule 2 Amendment commencing on 30 April 2007

(regulation 4)

[1] Subregulation 4.38 (3)

substitute

(3) Subject to subregulation (4), an ***untaxed splittable contribution***:

(a) is a contribution made by an RSA holder or by another person to an RSA; but

(b) does not include a contribution of that kind that:

(i) is made after 30 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), before definition of *Act*

insert

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

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

[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 contributions*

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), definition of *eligible termination payment*

omit

[5] 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.

[6] Paragraph 1.05 (b)

omit

the Australian Society of Certified Practising Accountants

insert

CPA Australia Limited

[7] Subparagraph 1.06 (1) (b) (ii)

omit

2 years

insert

5 years

[8] Subregulation 1.07 (1)

substitute

(1) A benefit is taken to be a pension for the purposes of the Act if it is provided under terms and conditions of an RSA that:

(a) meet the standards of subregulation (3D); and

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

(c) meet the standards of regulation 1.08A.

(1A) A benefit that commenced to be paid before 20 September 2007 is taken to be a pension for the purposes of the Act if it is provided under terms and conditions of an RSA that meet the standards of subregulation (2) or (3A).

(1B) A benefit that commenced to be paid on or after 20 September 2007 is taken to be a pension for the purposes of the Act if:

(a) the benefit arises under terms and conditions of an RSA that meet the standards of:

(i) subregulation (3A); and

(ii) subregulation (3D); and

(b) the benefit was purchased with a rollover superannuation benefit that resulted from the commutation of:

(i) an annuity provided under a contract that meets the standards of subregulation 1.05 (2), (9) or (10) of the SIS Regulations; or

(ii) a pension provided under rules that meet the standards of subregulation 1.06 (2), (7) or (8) of the SIS Regulations; or

(iii) a pension provided under terms and conditions of an RSA that meet the standards of subregulation (3A).

[9] Subparagraph 1.07 (3A) (e) (iv)

omit

eligible termination payment

insert

superannuation lump sum

[10] After subregulation 1.07 (3C)

insert

(3D) Terms and conditions for the provision of a benefit (the ***pension***) meet the standards of this subregulation if the terms and conditions ensure that payment of the pension is made at least annually, and also ensure that:

(a) the total of payments in any year (including under a payment split) is at least the amount calculated under clause 1 of Schedule 5; and

(b) the pension is transferable only on the death of the beneficiary (primary or reversionary, as the case may be); and

(c) the capital value of the pension and the income from it cannot be used as a security for a borrowing.

(3E) Terms and conditions of an RSA do not meet the standards of any of subregulations (2), (3A) or (3D) if, in relation to the death of the beneficiary on or after 1 July 2007, the pension is transferred to a person who would not be eligible to be paid a benefit in the form of a pension under subregulation 4.24 (3A).

[11] Paragraph 1.08 (2) (ba)

omit

the amount of income payments already made

insert

the amount of payments to the RSA holder already made

[12] After regulation 1.08

insert

1.08A Commutation of an account-based pension

(1) For paragraph 1.07 (1) (c), a benefit meets the standards of this regulation if, under the applicable terms or conditions of the RSA, the pension cannot be commuted, in whole or in part, except in the following circumstances:

(a) the commutation results from the death of the pensioner or a reversionary pensioner;

(b) the sole purpose of the commutation is:

(i) to pay a superannuation contributions surcharge; or

(ii) to give effect to an entitlement of a non-member spouse under a payment split; or

(iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*;

(c) for a commutation in part — the account balance of the pension, immediately after the commutation, is equal to or greater than the minimum payment amount calculated in accordance with Schedule 5, as reduced by the amount of payments to the pensioner already made in the financial year in which the commutation occurs;

(d) the pension has paid, in the financial year in which the commutation takes place, at least the minimum amount prescribed by subregulation (2).

(2) For paragraph (1) (d), the minimum amount is the amount calculated using the formula:

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

where:

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

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

(a) begins on:

(i) if the pension commenced in the financial year in which the commutation is to take place — the commencement day; or

(ii) otherwise — 1 July in that financial year; and

(b) ends on the day on which the commutation is to take place.

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

[13] Subregulation 3.01 (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.

[14] Subregulation 4.01 (2), before definition of *Commonwealth income support payment*

insert

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

[15] Subregulation 4.01 (2), definition of *non-commutable allocated pension,* paragraph (b)

omit

eligible termination payment

insert

superannuation lump sum

[16] Subregulation 4.01 (2), definition of *non-commutable pension,* paragraph (b)

omit

eligible termination payment

insert

superannuation lump sum

[17] Subregulation 4.01 (2), definition of *permanent incapacity*

substitute

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

[18] Subregulation 4.01 (2), after definition of *transitional period*

insert

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

(a) meet the standards of subregulation 1.07 (3D); and

(b) allow total payments (including under a payment split) made in a financial year to amount to no more than 10% of the pension account balance:

(i) on 1 July in the financial year in which the payment is made; or

(ii) if that year is the year in which the pension commences — on the commencement day; and

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

[19] Subregulation 4.01 (3)

substitute

(3) Amounts to the credit of an RSA holder (except eligible spouse contributions) in a fund are undeducted contributions if:

(a) the amounts are undeducted contributions within the meaning that was given, before 1 July 2007, by subsection 27A (1) of the Tax Act; or

(b) for any other amounts — the amounts comprise contributions:

(i) made after 30 June 1983 in order to obtain superannuation benefits (within the meaning of the Tax Act); and

(ii) in respect of which no deduction is allowable or has been allowed to the RSA holder under the former section 82AAT of the Tax Act.

[20] Paragraph 4.01 (4) (b)

substitute

(b) in the case of a person who has attained the age of 60 — an arrangement under which the person was gainfully employed has come to an end, and either of the following circumstances apply:

(i) the person attained that age on or before the ending of the employment;

(ii) the RSA provider is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis.

[21] Paragraph 4.10 (2) (a)

omit

section 82AAT

insert

the former section 82AAT

[22] Paragraph 4.13 (2) (a)

after

section 27D of the Tax Act

insert

, as in force before 1 July 2007,

[23] Paragraph 4.13 (3) (a)

omit

section 82AAT

insert

the former section 82AAT

[24] Subparagraph 4.20 (1) (a) (ii)

substitute

(ii) being rolled over or transferred under Division 4.4, 4.4A or 4.5 or Part 4A; or

[25] Subregulation 4.21 (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 RSA holder:

(a) a form (if any) specified in Schedule 2 as a cashing restriction relating to the condition of release; or

(b) if the specified cashing restriction is 'Nil' — any 1 or more of the following forms:

(i) 1 or more lump sums;

(ii) 1 or more pensions;

(iii) the purchase of 1 or more annuities under the SIS Regulations.

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

[26] Subregulation 4.22 (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 RSA holder:

(a) a form (if any) specified in Schedule 2 as a cashing restriction relating to the condition of release; or

(b) if the specified cashing restriction is 'Nil' — any 1 or more of the following forms:

(i) 1 or more lump sums;

(ii) 1 or more pensions;

(iii) the purchase of 1 or more annuities under the SIS Regulations.

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

[27] Subregulation 4.23 (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 RSA holder, any 1 or more of the following forms:

(a) 1 or more lump sums;

(b) 1 or more pensions;

(c) the purchase of 1 or more annuities under the SIS Regulations.

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

[28] Subregulation 4.23A (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.

[29] Subregulation 4.24 (1)

substitute

(1) Subject to subregulation (4), an RSA holder's benefits in an RSA must be cashed as soon as practicable after the RSA holder dies.

[30] Subregulation 4.24 (2)

omit

[31] Subregulation 4.24 (3)

substitute

(3) The form in which benefits may be cashed under this regulation is:

(a) a single lump sum in respect of each person to whom benefits are cashed; or

(b) subject to subregulations (3A) and (3B):

(i) 1 or more pensions; or

(ii) the purchase of 1 or more annuities under the SIS Regulations.

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

[32] Subregulation 4.24 (3A)

substitute

(3A) If an RSA holder dies on or after 1 July 2007, subparagraphs (3) (b) (i) and (ii) apply to an entitled recipient only if, at the time of the RSA holder's death, the entitled recipient:

(a) is a dependant of the RSA holder; and

(b) in the case of a child of the RSA holder:

(i) is less than 18 years of age; or

(ii) being 18 or more years of age:

(A) is financially dependant on the RSA holder and less than 25 years of age; or

(B) has a disability of the kind described in subsection 8 (1) of the *Disability Services Act 1986*.

(3B) If benefits in relation to a deceased RSA holder are being paid to a child of the deceased RSA holder in the form of a pension in accordance with subregulation (3A), the benefits must be cashed as a lump sum on the earlier of:

(a) the day on which the pension is commuted, or the term of the pension expires (unless the benefit is rolled over to commence a new annuity or pension); and

(b) the day on which the child attains age 25;

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

[33] Subregulation 4.24 (4)

omit

subregulations (1) and (2)

insert

subregulation (1)

[34] Subregulations 4.24 (5) and (6)

omit

[35] Subregulation 4.26 (1)

substitute

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

(a) unless:

(i) the RSA holder has died; and

(ii) the conditions of subregulation (2) or (3) are satisfied; or

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

[36] After subregulation 4.26 (3)

insert

(4) The conditions of this subregulation are satisfied if:

(a) the RSA provider has received a release authority under section 292-410 of the 1997 Tax Act in respect of the RSA holder; and

(b) the benefits are cashed in favour of the Commissioner of Taxation in accordance with the authority.

[37] After Division 4.4

insert

Division 4.4A Compulsory rollover and transfer of benefits in RSAs

4.35 Application of Division 4.4A

This Division applies to all RSAs.

4.35A Operating standards

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

4.35B Request form

For this Division:

(a) the form set out in Schedule 2A to the SIS Regulations is adopted with the following modifications as required for the purposes of the Act and these Regulations:

(i) references to a superannuation fund are taken to be references to an RSA institution;

(ii) references to a trustee are taken to be references to an RSA provider;

(iii) references to a member are taken to be references to an RSA holder;

(iv) references to provisions of the SIS Act and the SIS Regulations are taken to be references to the Act and these regulations; and

(b) the form, as adopted, is the ***request form***.

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

It is recommended that applicants use the request form to allow RSA providers to roll over or transfer whole balance amounts as quickly and efficiently as possible. Making the request in another way may require an RSA provider to seek further information from the RSA holder under subregulation 4.35C (2).

If subregulation 4.35D (3) applies, the request may need to be supplemented by the documentation mentioned in that subregulation.

4.35C Request for rollover or transfer of withdrawal benefit

(1) An RSA holder may, in writing, ask the RSA provider to roll over or transfer an amount that is the whole or part of the RSA holder's benefit.

(2) If the RSA provider requires further information that is mandatory information in the request form (whether or not the request is made using the request form):

(a) the RSA provider must, within 10 working days after receiving the request, ask the RSA holder for the information; and

(b) if the RSA provider has not received the information within 10 working days after making the request, the RSA provider must make reasonable further inquiries of the RSA holder to obtain the information.

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

(3) If the RSA provider requires further information in relation to a request for a partial transfer:

(a) the RSA provider must, within 10 working days after receiving the request, ask the RSA holder for the information; and

(b) if the RSA provider has not received the information within 10 working days after making the request, the RSA provider must make reasonable further inquiries of the RSA holder to obtain the information.

(4) If the RSA provider requires the information under subregulation 4.35D (3):

(a) the RSA provider must, within 10 working days after receiving the request, ask the RSA holder for the information; and

(b) if the RSA provider has not received the information within 10 working days after making the request, the RSA provider must make reasonable further inquiries of the RSA holder to obtain the information.

4.35D Rollover or transfer of benefit

General

(1) Subject to regulation 4.35E, if an RSA provider receives a request under regulation 4.35C, the RSA provider 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 RSA holder's benefit may be made:

(i) using the request form; or

(ii) in another manner; and

(b) a request to roll over or transfer an amount that is part of the RSA holder's benefit may include:

(i) the information that would be required by the request form; and

(ii) any other information that the RSA provider of the transferring RSA institution advises the RSA holder to be necessary to process the request.

(3) In addition to the information that is, or would be, required in accordance with subregulation (2), if:

(a) a request is made by an RSA holder (***holder 1***) to roll over or transfer an amount that is the whole or part of the RSA holder's benefit to a self managed superannuation fund; and

(b) the RSA provider of the transferring RSA institution 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 RSA holder who is not a relative, within the meaning of subsection 17A (9) of the SIS Act, of holder 1; and

(iii) the other request:

(A) has been processed; or

(B) is currently with the RSA provider of the transferring RSA institution to be processed;

the RSA provider may also require holder 1 to provide with the request a copy of documentation, complying with the requirements of certification in the request form, that shows that holder 1 is a member or trustee of the self managed superannuation fund before the RSA provider processes holder 1's request.

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

1 A trust deed.

2 The RSA holder's contribution statement.

3 The annual return of the self managed superannuation fund.

(4) Before the RSA provider rolls over or transfers an amount, the RSA provider must be satisfied that the RSA holder:

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

(i) information about any fees or charges that may apply to the proposed rollover or transfer; and

(ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the RSA holder may have; and

(b) does not require such information.

Note Under section 1017C of the *Corporations Act 2001*, an RSA provider must, on request by an RSA holder, give the RSA holder the information and documents mentioned in subsections 1017C (3A) and (5). See also regulations 7.9.46 and 7.9.47 of the *Corporations Regulations 2001*.

(5) The RSA provider 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 RSA provider receives a request made under subregulation 4.35C (1); or

(b) if the RSA provider requires further information — the time when the RSA provider receives all of the information that would be required in accordance with subregulations 4.35C (2), (3) and (4).

4.35E When an RSA provider may refuse to roll over or transfer an amount

(1) An RSA provider may refuse to roll over or transfer an amount under regulation 4.35D if:

(a) the fund or RSA to which the RSA holder has requested the amount is be rolled over or transferred will not accept the amount; or

(b) the amount to be rolled over or transferred is part only of the RSA holder's interest in the fund, and the effect of rolling over or transferring the amount would be that the RSA holder's interest in the fund from which the amount is to be rolled over or transferred would be less than $5 000; or

(c) the RSA provider has, under regulation 4.35D, rolled over or transferred an amount of the RSA holder's interest within 12 months before the request is received.

(2) If an RSA provider refuses to roll over or transfer an amount under subregulation (1), the RSA provider must tell the RSA holder of the refusal in writing.

[38] Regulation 4.37, 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 with subregulation 4.42 (2).

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

[39] Regulation 4.37, definition of *eligible non-resident non-complying superannuation fund*

substitute

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

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

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

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

[40] Regulation 4.37, 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

[41] Regulation 4.37, definition of *post-June 83 component*

omit

[42] Regulation 4.37, after definition of *splittable contribution*

insert

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

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

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

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

[43] Regulation 4.37, definition of *undeducted contributions*

omit

[44] Paragraph 4.38 (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

[45] Subregulation 4.38 (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.

[46] Subregulation 4.38 (3)

substitute

(3) Each of the following is not an ***untaxed splittable contribution***:

(a) a payment made to a superannuation fund by an employer, or by another person under an agreement to which the employer is a party, for the purpose of providing superannuation benefits for, or for dependants of, an employee of the employer;

(b) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;

(c) an amount allotted under this Division;

(d) a superannuation lump sum that is paid from a foreign superannuation fund.

[47] Subregulation 4.39 (2)

substitute

(2) Each of the following, received for an RSA holder, is not a ***splittable contribution***:

(a) a roll-over superannuation benefit within the meaning of Division 306 of the 1997 Tax Act;

(b) an amount allotted under this Division;

(c) a superannuation lump sum that is paid from a foreign superannuation fund;

(d) a directed termination payment or an amount that would form part of the contributions segment of the superannuation interest.

[48] Subregulation 4.41 (4), note

substitute

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

[49] Subregulation 4.42 (3)

omit

undeducted contributions that would form part of the ETP

insert

crystallised segment that would form part of the superannuation interest

[50] Subregulation 4.42 (4)

omit

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

insert

taxable component that would form part of the superannuation benefit

[51] Subregulation 4A.25 (2)

omit

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

insert

a superannuation death benefit within the meaning of the 1997 Tax Act

[52] Regulation 5.03

substitute

5.03 Acceptance of contributions

(1) An RSA institution may accept contributions only in accordance with the following table and subregulations (2), (3), (4) and (6).

Item	If the RSA holder …	the RSA institution may accept …
1	is under 65	contributions that are made in respect of the RSA holder
2	is not under 65, but is under 70	contributions that are made in respect of the RSA holder that are: (a) mandated employer contributions; or (b) if the RSA holder has been gainfully employed on at least a part-time basis during the financial year in which the contributions are made: (i) employer contributions (except mandated employer contributions); or (ii) RSA holder contributions
3	is not under 70, but is under 75	contributions that are made in respect of the RSA holder that are: (a) mandated employer contributions; or (b) if the RSA holder 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 RSA holder turns 75 that are: (i) employer contributions (except mandated employer contributions); or (ii) RSA holder contributions made by the RSA holder
4	is not under 75	mandated employer contributions

(2) In addition to subregulation (1), the RSA institution must not accept any RSA holder contributions if the RSA holder's tax file number has not been quoted (for superannuation purposes) to the RSA provider.

(3) In addition to subregulation (1), the RSA institution must not accept any RSA-capped contributions in a financial year in respect of an RSA holder that exceed:

(a) if the RSA holder is 64 or less on 1 July of the financial year — 3 times the amount of the non-concessional contributions cap; or

(b) if the RSA holder is 65 but less than 75 on 1 July of the financial year — the non-concessional contributions cap.

(4) If an RSA institution receives an amount in a manner that is inconsistent with subregulation (1), (2) or (3):

(a) the RSA institution must return the amount to the RSA holder 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 RSA holder's tax file number is quoted (for superannuation purposes) within 30 days of the amount being received by the RSA institution; or

(ii) for an amount received in a manner that is inconsistent with subregulation (3) — a valid notice under section 290-170 of the 1997 Tax Act is received by the RSA institution within 30 days of the amount being received by the RSA institution; and

(b) the RSA institution is also authorised to take any of the following action to the extent that the rules of the RSA institution allow:

(i) if the price at which the interest could have been acquired on the day on which the amount is returned is less than the price on the day on which the interest was acquired, the amount that would otherwise be returned to the RSA holder 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 RSA holder 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 RSA holder may be reduced to account for reasonable administration costs and transaction costs, incurred by the RSA institution, that:

(A) are reasonably related to the acquisition of the interest and the return of the amount; and

(B) do not exceed the true cost of an arm's length transaction;

other than costs related to commissions or similar benefits;

(v) if:

(A) the interest is a risk insurance interest, or the part of an interest that is a risk insurance interest; and

(B) the interest has been issued for a specific period, or the premium for the interest has been paid in relation to cover for a specific period; and

(C) a proportion of the specific period has already passed when the decision is made to return the amount to the RSA holder;

the amount that would otherwise be returned to the RSA holder 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 RSA institution to any person in connection with the risk insurance product and which is not recoverable by the RSA institution from that person; and

(E) the proportion equal to the proportion of the period that has passed of the difference between the amount that would otherwise be returned and the amount referred to in paragraph (a).

(5) If an RSA institution acts under subregulation (4), the RSA institution is taken not to have contravened the Act or these Regulations in relation to the acceptance of the amount or in relation to the return of the amount to the RSA holder.

(6) An RSA institution may accept contributions in respect of an RSA holder if the RSA institution is reasonably satisfied that the contribution is in respect of a period during which, under an item in the table in subregulation (1), the RSA institution may accept the contribution in respect of that RSA holder, even though the contribution is actually made after that period.

(7) In this regulation:

administration costs has the same meaning as in subregulation 5.01 (1).

employer contribution has the same meaning as in subregulation 1.03 (1).

mandated employer contributions has the same meaning as in subregulation 1.03 (1).

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

quoted (for superannuation purposes) has the same meaning as in section 295-615 of the 1997 Tax Act.

RSA-capped contributions means the RSA holder contributions described in the definition of that expression in subregulation 1.03 (1), other than the following:

(a) a contribution to which a valid and acknowledged notice under section 290-170 of the 1997 Tax Act relates;

(b) a contribution that meets the requirements of paragraph 292-95 (1) (d) of the 1997 Tax Act;

(c) a contribution that meets the requirements of subsection 292-100 (9) of the 1997 Tax Act;

(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*.

RSA holder contributions has the same meaning as in subregulation 1.03 (1).

tax file number has the meaning given by section 16 of the Act.

transaction costs means any of the following:

(a) brokerage paid because of an investment transaction;

(b) a cost arising from maintenance of a property investment;

(c) stamp duty on an investment transaction.

[53] Schedule 2, item 110, column 3

substitute

		Any of the following: (a) a transition to retirement pension; (b) a non-commutable allocated pension; (c) a non-commutable pension; (d) a non-commutable allocated annuity, or a non-commutable annuity, within the meaning of Part 6 of the SIS Regulations; (e) an annuity being provided as a transition to retirement income stream within the meaning of Part 6 of the SIS Regulations.

[54] Schedule 2, after item 110

insert

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

[55] After Schedule 4

insert

Schedule 5 Minimum payment amount for an account-based pension

(regulation 1.08A)

1 (1) Subject to clauses 2 and 3, the amount of payments mentioned in paragraph 1.07 (3D) (a) is the amount worked out using the formula:

Account balance × Percentage factor

(2) In subclause (1):

account balance means:

(a) the amount of the pension account balance:

(i) on 1 July in the financial year in which the payment is made; or

(ii) if that year is the year in which the pension payments commence — on the commencement day; or

(b) if the amount of the pension account balance under paragraph (a) is less than the withdrawal benefit to which the beneficiary would be entitled if the pension were to be fully commuted — the amount of the withdrawal benefit.

percentage factor means the percentage factor specified in the item in the table in clause 4 that applies to the beneficiary because of the beneficiary's age on:

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

(b) if that is the year in which the pension payments commence — the commencement day.

2 For the determination of the minimum total payment in the year in which the commencement day of the pension occurs, if that day is a day other than 1 July, the applicable value specified in column 3 of the table must be applied

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

3 If the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.

4 An amount determined under this Schedule is to be rounded to the nearest 10 whole dollars. If the amount ends in an exact 5 dollars, it is to be rounded up to the next 10 whole dollars.

Table

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.