

Retirement Savings Accounts Regulations 1997 No. 116

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 116

Issued by the authority of the Assistant Treasurer

Retirement Savings Accounts Act 1997

Retirement Savings Accounts Regulations

Section 200 of the *Retirement Savings Accounts Act 1997* (the Act) provides that the Governor-General may make Regulations for the purposes of the Act.

The Act implements the 1996-97 Budget initiative to allow banks, building societies, credit unions and life insurance companies to provide superannuation without a trust structure in the form of retirement savings accounts (RSAs).

RSAs will be a simple, low cost, low risk product especially suited to those with small amounts of superannuation, such as itinerant and casual workers. They will also benefit those people who want to amalgamate several small superannuation holdings and those nearing retirement who wish to minimise the risk on their superannuation savings. RSAs will be required to be 'capital guaranteed' (that is, the balance of the RSA comprising accumulated contributions and interest cannot be reduced by negative investment terms). RSAs, into which an RSA holder and/or an employer on the holder's behalf will be able to make contributions, will also be fully portable, owned and controlled by the holder, and subject to the retirement income standards applying to other (trust-based) superannuation products, including preservation and disclosure.

The Act and the regulations provide for the functional supervision of RSAs and RSA providers by the Insurance and Superannuation Commission. This functional supervision involves an approval and annual reporting process to ensure compliance by the RSA providers with retirement income and other superannuation standards and is closely modelled on the regulatory regime currently in place for superannuation entities under the *Superannuation Industry (Supervision) Act 1993*. This will ensure that the regulatory treatment of RSAs is as consistent as possible with that which applies to existing (trust-based) superannuation products.

The regulations have been developed in consultation with representatives of the superannuation industry, the consumer movement and related professional associations.

The regulations are described in detail in Attachment A. They cover the following areas:

Part 1 - Preliminary - provides information on the citation and commencement of the regulations and definitions of various terms used throughout the regulations.

Part 2 - Information for RSA holders and others - prescribes the information that RSA providers must give to RSA holders or other persons on specified occasions.

Part 3 - Benefit protection standards - prescribes requirements for RSA providers concerning the minimum level of benefits that RSA holders are entitled to and the protection of RSAs holding less than \$1,000 from erosion by fees and charges.

Part 4 - Payment standards - prescribes requirements for RSA providers concerning when, to whom and in what form benefits can be paid from RSAs.

Part 5 - Contribution standards - prescribes when contributions may be accepted on behalf of RSA holders.

Part 6 - Miscellaneous - provides details on a number of provisions covering the reconsideration and review of reviewable decisions made by the Insurance and Superannuation Commissioner, miscellaneous operating standards, various prescribed matters in relation to RSA institutions and providers', and other matters.

The Regulation Impact Statement in respect of these regulations is at Attachment B.

The regulations will commence on the date of commencement of the Act. The Act is proclaimed to commence on 2 June 1997.

Subsection 4(1) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make regulations, the regulations may be made before the Act comes into operation. Subsection 4(2A) of the *Acts Interpretation Act 1901* provides that regulations made in these circumstances take effect on or from the date specified in the regulations, provided that that date is not earlier than the date on which the Act comes into operation.

ATTACHMENT A

PART 1 - PRELIMINARY

BACKGROUND

The citation provision in this Part provides that the Regulations are called the Retirement Savings Accounts Regulations. The Regulations will commence on the date of commencement of the *Retirement Savings Accounts Act 1997* (the Act).

The Regulations use a number of terms that have a precise technical meaning and are not defined in the Act. Where these terms are used consistently throughout the Regulations they have been defined in regulation 1.03. The Act also provides in a number of definitions a cross reference to further requirements contained in the Regulations.

Regulations 1.04, 1.05, 1.06 and 1.07 prescribe the meaning of 'eligible person', 'approved auditor', 'lost RSA holder' and 'pension' respectively.

Regulation 1.01 - Citation

Regulation 1.01 provides that the regulations may be cited as the Retirement Savings Accounts Regulations.

Regulation 1.02 - Commencement

The Regulations will commence on the date of commencement of the Act. The Act will be proclaimed to commence on 2 June 1997.

Regulation 1.03 - Interpretation

Regulation 1.03 provides definitions of a number of words and expressions for the purposes of the Regulations.

Regulation 1.04 - Eligible person - section 13 of the Act

Regulation 1.04 prescribes that, for the purposes of section 13 of the Act, an 'eligible person' must be an individual. This ensures that RSAs may only be held by individuals, and not by bodies such as corporations.

Regulation 1.05 - Approved auditor

Regulation 1.05 prescribes, for the purposes of section 16 of the Act, who may be 'approved auditors' of an RSA provider.

Regulation 1.06 - Lost RSA holder

Regulation 1.06 provides a definition for the term 'lost RSA holder'. There are two main consequences arising from an RSA holder becoming lost:

- (1) the RSA provider must protect the RSA holder's RSA from erosion by fees and charges;
- and

(2) the RSA provider must report details regarding the RSA holder to the Commissioner of Taxation (these details will be kept by the Commissioner of Taxation for the purpose of the maintaining a register of lost RSA holders).

There are also implications for the requirement on RSA providers to disclose information to the RSA holder pursuant to Part 2 of the Regulations (see regulation 2.04).

When is an RSA holder a lost RSA hold

Subregulation 1.06(1) prescribes when an RSA holder is a lost RSA holder. An RSA holder is a lost RSA holder if at a particular time the RSA holder is:

- * uncontactable; or
- * inactive.

However, an RSA holder is not a lost RSA holder if.

- * the RSA provider has recently verified the RSA holder's address and has no reason to believe that the address may now be incorrect; or
- * the RSA holder is permanently excluded from being a lost RSA holder.

'Uncontactable'

An RSA holder is uncontactable only if the RSA provider has never had an address for the RSA holder (for example, an itinerant worker who does not give their employer their address), or alternatively, if the RSA provider has attempted to contact the RSA holder on one or two occasions (as the RSA provider so chooses) in writing and the communications have been returned unclaimed.

'Inactive'

An RSA holder is inactive only if they have been an RSA holder for two or more years and the RSA provider has not received a contribution or rollover for the RSA holder in the last two years of RSA holdership unless the RSA provider has within the last two years verified the RSA holder's address and has no reason to believe that the address may now be incorrect.

Verification means acquiring reasonable evidence that the RSA holder's address is correct (for example, a slip returned by the RSA holder acknowledging that the address which the RSA provider has for the RSA holder is correct or telephoning the RSA holder and confirming that their address is correct).

Permanent exclusion from the lost RSA holder definition

Subregulation 1.06(2) provides that an RSA holder is permanently excluded from being a lost RSA holder if.

- * the RSA holder is an inactive RSA holder and has indicated through a positive act (for example, deferring a benefit in the RSA) that they wish to remain the holder of the RSA; or
- * the RSA holder has contacted the RSA provider at any time after the time at which the RSA was opened and indicated to the RSA provider that they wish to continue being an RSA holder.

The two sub-categories of permanently excluded RSA holders are designed to allow, in certain cases, RSA providers to be exempt from protection and reporting requirements in respect of RSA holders who have indicated they wish to continue being a RSA holder. If this exclusion does not apply, these RSA holders may be transferred to an eligible rollover fund (on the ground that the RSA provider is not prepared to protect and report on behalf of these RSA holders).

These cases are essentially cases where, on the evidence, it is likely that the RSA holder will be able to contact the RSA provider so as to notify the RSA provider of any change of address and/or collect their benefits.

Subject to the constraint that an RSA provider cannot add other types of RSA holders to the defined category of permanently excluded RSA holders, RSA providers have considerable discretion with the concept of permanently excluded RSA holders so as to meet the particular circumstances of the RSA provider and each RSA holder (or class of RSA holders). This discretion is set out in subregulation 1.06(3).

Regulation 1.07 - Meaning of "pension" - section 16 of Act

Regulation 1.07 prescribes, for the purposes of section 16 of the Act, what is meant by the term 'pension'.

Section 16 of the Act defines the term 'pension' as including certain types of benefits which are taken under the regulations to be pensions. Regulation 1.07 prescribes, for the purposes of section 16, the types of benefits which will be taken to be pensions. If a particular type of benefit is taken to be a 'pension' then it will be subject to concessional tax treatment under the *Income Tax Assessment Act 1936*.

This regulation is essentially a copy of the existing provisions in SIS subregulations 1.06(4) and (5), that is, the standards applying to allocated pensions.

A benefit that complies with the standards set out in regulation 1.07 will be considered to be a pension. The principal feature of these types of benefits is that payments are not defined. These types of benefits are commonly known as allocated pensions and the owner of the pension can choose how much to draw down each year, subject to certain restrictions. Other standards that apply to these products relate to transfer of the pension and the use of the pension as security for borrowing. Payments under these types of pensions are subject to minimum and maximum limits which are prescribed under Schedule 1 of the Regulations.

PART 2 - INFORMATION FOR RSA HOLDERS AND OTHERS

BACKGROUND

The disclosure requirements under Part 2 of the Regulations aim to ensure that RSA holders are given adequate, appropriate and timely information regarding their benefits in an RSA. The regulations also require that relevant information is available to RSA holders and certain third parties on request to an RSA provider.

The regulations cover the following areas:

- * the content of information that must be provided:
 - before or soon after a person becomes an RSA holder;
 - regularly to RSA holders concerning their benefits in the RSA;
 - when the money in an RSA is at least \$10,000;
 - where a 'significant event' occurs;
 - where a person requests information; and
 - where a person ceases to be an RSA holder;
- * when information must be given and to whom information must be given in each of those circumstances; and
- * the method of providing the information.

Division 2.1 - Introductory

Regulation 2.01 - Interpretation

Regulation 2.01 sets out a number of definitions and expressions for the purposes of Part 2.

Regulation 2.02 - Duties and requirements arising under this Part

Regulation 2.02 prescribes the duties and requirements that RSA providers must comply with when providing information to RSA holders. These requirements include:

- * to give information within the time specified in the relevant Division;
- * to provide information in writing which is worded and presented in a clear and effective manner (information can be given in diagrammatical form where appropriate);
- * that where information is likely to materially mislead RSA holders then further information to rectify any misleading or potentially misleading effect must be given.

Regulation 2.03 - Giving information - reasonable efforts sufficient

An RSA provider is taken to have satisfied the requirement to give information to a person if.

- * if they have sent the information to the last known address of the person;

- * the RSA provider cannot, after making reasonable efforts, obtain certain information (for example, an RSA holder has arranged insurance cover directly with an insurance company, then it would be unreasonable for the RSA holder to determine the sum assured of that policy); or
- * they are not required to provide the information as a result of regulation 2.04.

Regulation 2.04 - RSA holders to whom RSA providers are not required to give information

Regulation 2.04 provides for certain situations where an RSA provider does not have to provide information to an RSA holder. These are:

- * where the RSA provider is satisfied that the address they have for the RSA holder is incorrect and they are unable, after taking reasonable steps, to find the address for that RSA holder; or
- * they do not have an address for the RSA holder and have been unable to obtain an address after taking reasonable steps to locate the RSA holder.

However, if the RSA provider becomes aware of the address or location of the RSA holder at a later time, then they are required to recommence providing information to that RSA holder.

Regulation 2.05 - Charges for information requested

An RSA provider may charge a person for information which they have requested. The amount of the charge cannot be greater than the reasonable cost to the RSA provider of providing the information (for example, costs of collecting and printing the information).

However, an RSA provider cannot charge a person who:

- * is the holder of an RSA;
- * was an RSA holder in the previous 12 months;
- * is the legal personal representative of the RSA holder; or
- * has a right or claim under the RSA;

for information which is reasonably required to understand any benefit entitlements or the main features of the RSA. However, this restriction does not apply if the person has requested, and been given, the same information in the previous 12 months.

Division 2.2 - Information before becoming an RSA holder or on employer's making an application on behalf of employee

Background

Division 2.2 prescribes the information that must be provided by an RSA institution to:

- * a person before becoming an RSA holder;
- * an employer before making an application on an employees behalf; and

* an employee who becomes an RSA holder as a result of an employer making an application on their behalf.

These regulations have been made for the purposes of the relevant sections of Division 4 of Part 5 of the Act.

Regulation 2.06 - Information to be given to prospective RSA holder

Section 53 of the Act prescribes that an RSA provider must not allow a person to become the holder of an RSA unless that person has received documents containing the information prescribed by the regulations. Regulation 2.06 sets out the information that must be provided to a person before becoming an RSA holder.

Information does not have to be provided where it is not applicable to the RSA or RSA provider. For example, if an RSA provider does not have an ACN or ARBN then it is not required to comply with that requirement.

The information to be given includes, but is not limited to:

* a statement of the lower risk/lower return nature of the product and its impact on long term benefits, that other superannuation arrangements are available and that the person may wish to seek information about the rates of returns of these alternatives;

* a statement on the benefits provided to an RSA holder and when they are payable;

* a statement that benefits can be transferred at any time, subject to any notice

period;

the taxation of RSAs;

where the RSA is a fixed term RSA or has a fixed term component, the rate of interest and the period to which that rate applies;

where the RSA's, or a component of the RSA's, interest rate is variable, then a table of the annual actual or notional rate of net interest for similar variable rate options applied for each of the previous five years, and the compound average of the annual actual or notional rate of net interest applied for the previous five years (a similar variable rate option is defined under subregulation 2.06(4) as being an atcall variable rate deposit, or a capital guaranteed life insurance policy);

* a statement of the fees and charges that may be charged directly to the account (for example, transaction or account keeping fees); and

* details of the internal complaints mechanisms, and of the role of the Superannuation Complaints Tribunal (the SCT).

The following is an example of information to be given under subparagraphs 2.06(1)(k)(iii) and (iv).

Below is a table showing net rate of interest applied to the variable rate options over the last 5 years.

1997/98	1998/99	1999/2000	2000/01	2001/02
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3.25% 3.5% pa 3.5% pa 4% pa 3.75% pa

The 5 year compounded average of the net rates of interest for these options is 3.55% per annum.

Where five years of figures do not exist then the RSA provider must show the interest credited for the whole period of existence of the variable interest rate options. For the first five years, it is intended that RSA providers will provide a mixture of RSA variable rates and similar variable rate options. Also, the information mentioned in subparagraphs 2.06(1)(k)(iii) and (iv) cannot be more than 15 months old at the time a person receives that information. For example, if a person intends to open an RSA on 30 June 1998, then the information must relate to a period not ending before 31 March 1997.

Regulation 2.07 - When information need not be given to RSA holders

Subsection 53(4) of the Act states that the requirement to provide information does not apply in certain circumstances. The purpose of regulation 2.07 is to prescribe those circumstances.

An RSA provider will not be required to provide information before a person becomes an RSA holder if:

* an employer who makes an application on behalf of an employee for an RSA certifies to the RSA institution in writing that the employer has complied with section 52; and

* if that person becomes an RSA holder with a particular RSA institution as a direct result of: - a takeover of the RSA provider with which the person previously held an RSA by that RSA institution or a related corporation of the RSA institution; - a merger involving the RSA provider with which the person previously held an RSA and which results in the creation of the RSA institution; or - the transfer of any or all of the assets and liabilities of the RSA provider to the RSA institution under a provision of the *Banking Act 1959*, the *Life Insurance Act 1995* or any other law of the Commonwealth, State or Territory, under a voluntary transfer of engagements, or on the request of a prescribed regulatory agency.

The prescribed regulatory agencies in this context are outlined in regulation 6.12.

Regulation 2.08 - Information to be given to employers

Section 54 of the Act prescribes that an RSA institution must ensure that before an employer makes an application to open an RSA on behalf of an employee, that they have received documents containing the information prescribed by the regulations. Regulation 2.08 prescribes that the employer must receive: information prescribed by regulation 2.06; plus information about the cooling off period under Division 7 of Part 5 of the Act.

Regulation 2.09 - Prescribed information - paragraph 52(2)(a) of the Act

Paragraph 52(2)(a) of the Act prescribes that an employer must provide certain information at the same time they provide an application for an RSA. Regulation 2.09 prescribes that the employer must provide the employee with the information provided to them by the RSA provider. This information must meet the requirements prescribed by regulation 2.06.

Regulation 2.10 - Information to be given to employees

Section 55 of the Act requires an RSA institution to provide the prescribed information to a person who has become an RSA holder as a result of their employer making an application to open an RSA on their behalf. Regulation 2.09 prescribes that the person must receive:

- * a statement that the RSA has been opened by their employer; plus
- * information about the cooling off period under Division 7 of Part 5 of the Act.

An RSA provider does not have to provide this information to the person, if..

- * the employer has opened the RSA under subsection 52(5) (as the RSA holder has already been given information concerning the RSA by their employer and has chosen to have the RSA opened on their behalf); or
- * that person closes the RSA before the time the RSA institution would have been required to give the information.

Division 2.3 - Information to *be* given for *each* reporting period

Regulation 2.11 - Operating standards

The requirements of Division 2.3 are operating standards for the purpose of subsection 38(1) of the Act.

Regulation 2.12 - Reporting periods

Regulation 2.12 prescribes requirements on how long a reporting period can be, when they commence and what information must be provided in respect of a reporting period.

The requirements are:

- * RSA information must be given in respect of consecutive reporting periods;
- * a reporting period cannot be longer than 12 months unless the RSA provider has received approval from the Commissioner;
- * all information must be provided during the reporting period; and
- * where it is the first reporting period, the period commences on the day the RSA is issued or opened, and for subsequent reporting periods immediately after the end of the previous reporting period.

Regulation 2.13 - Time for compliance

An RSA provider must give RSA information to a person who is an RSA holder on the last day of the reporting period. The RSA information must be given as soon as practicable but within three months after the end of the relevant reporting period.

Regulation 2.14 - Information to be given in all cases

Regulation 2.14 prescribes the information that must be given to an RSA holder each year. This includes, but is not limited to:

- * a statement of the lower risk/lower return nature of the product and its impact on long term benefits, that other superannuation arrangements are available and that the person may wish to seek information about the rates of returns of these alternatives;

- * the amount of a person's withdrawal benefit (amount received if they voluntarily closed the RSA) at the start and end of the reporting period;
- * the amount of withdrawal benefits that are preserved, restricted non-preserved and unrestricted non-preserved at the end of the reporting period; and
- * details of the inquiries and complaints mechanism of the RSA provider.

Regulation 2.15 - Information to be given where applicable

Regulation 2.15 provides a further prescriptive listing of certain items, which only need to be disclosed where they are 'applicable' to the particular RSA product concerned. This is a matter for the discretion of the RSA provider. These include, but are not limited to:

- * the amount of contributions made by the RSA holder and/or their employer during the period;
- * fees and charges deducted from the RSA during the period;
- * the amount of any withdrawals during the period;
- * a table of the annual actual or notional rate of net interest credited for each of the previous five years, and the compound average of the annual actual or notional rate of net interest credited for the previous five years, for the RSA (where the RSA has not been in existence for five years then they must show the interest credited for the period the RSA has been in existence);
- * the amount and rate of interest credited during the period; and
- * the effect of the RSA holder-protection standards.

An RSA provider does not have to disclose a nil amount (for example, if no contributions are made during the period, this does not have to be disclosed).

The following is an example of information to be given under paragraph 2.15(1)(h).

Below is a table showing net rate of interest applied to your account over the last 5 years.

1997/98	1998/99	1999/2000	2000/01	2001/02
3.25%	3.5% pa	3.5% pa	4% pa	3.75% pa

The 5 year compounded average of the net rates of interest for these options was 3.55% per annum.

Regulation 2.16 - Exception - certain cases of RSA holders leaving RSA provider

Where a person closes an RSA after the completion of a reporting period but before information is given, the RSA provider does not need to give the information if the RSA holder was given, or intends to give, similar information covering that period under Division 2.7 (Division 2.7 prescribes the information to be given on closing an RSA). This avoids the need to give two reports (one under this Division and one under Division 2.7).when one would be sufficient.

This exception works in conjunction with subregulation 2.43(1) in Division 2.7.

If the person has ceased to be an RSA holder as a result of their death then the exception applies, provided the relevant requirements under Division 2.7 that apply in such circumstances are met.

Regulation 2.17 - Exception - RSA holders subject to compulsory protection of small amounts

Regulation 2.17 provides an exception from the RSA information reporting requirements for protected RSA holders.

A protected RSA holder is an RSA holder who has withdrawal benefits which are less than \$ 1,000 and contain or have contained mandated employer-financed benefits. A benefit is taken to contain, or to have contained, mandated employer-financed benefits unless the RSA provider positively determines otherwise.

If an RSA holder is a protected RSA holder at the end of a reporting period, then the only information required to be disclosed under the RSA information reporting requirements in respect of those withdrawal benefits for the reporting period are:

- * a statement of the lower risk/lower return nature of the product and its impact on long term benefits, that other superannuation arrangements are available and that the person may wish to seek information about the rates of returns of these alternatives;
- * the contact details of the RSA provider;
- * either: - the amount of the holder's withdrawal benefit at the end of the reporting period; or - the total of the amounts which have been received by the RSA provider in respect of the holder;
- * a table of the actual or notional rate of net interest credited for the previous five years, and the compound average of the actual or notional rate of net interest credited for the previous five years, for the RSA (where the RSA has not been in existence for 5 years then they must show the interest credited for the period the RSA has been in existence);
- * details of the inquiries and complaints mechanism of the RSA provider; and
- * a statement that additional information is available on request.

The following is an example of information to be given under paragraphs 2.17(1)(c) and (d).

Below is a table showing net rate of interest applied to your account over the last 5 years.

1997/98	1998/99	1999/2000	2000/01	2001/02
3.25%	3.5% pa	3.5% pa	4% pa	3.75% pa

The 5 year compounded average of the net rates of interest for these options was 3.55% per annum.

It is intended that the reduced reporting requirements will lower costs to RSA providers which have protected RSA holders.

Regulation 2.18 - Exception - RSA holders with small amounts that are expected to grow quickly

Regulation 2.18 provides an exception from disclosing the effect of compulsory protection to RSA holders who have small amounts which the RSA provider reasonably expects will grow quickly (through additional contributions or rollovers). The RSA provider must reasonably expect that the RSA holder will have a withdrawal benefit of at least \$1,500 within 12 months of the end of the period. If the RSA provider utilises this exception, the RSA provider is not required to apply the protection rules unless the expectation does not eventuate. The RSA holder is deemed to have been protected because they have a relatively large and sustainable withdrawal benefit, vis-a-vis fees and charges, of \$1,500.

An RSA provider that uses this exception in respect of an RSA holder may not take advantage of the exception mentioned in regulation 2.17 in respect of the RSA holder. This is because the RSA provider expects to provide the RSA holder with full RSA information in the near future and any change in the level of disclosure would be confusing for the RSA holder.

A reasonable expectation

In practice, an RSA provider is likely only to have a 'reasonable expectation' if the expectation is based on employees who make significant voluntary contributions for their retirement.

What happens where the RSA provider's reasonable expectation does not eventuate?

If the RSA provider's reasonable expectation does not eventuate (for example, the RSA holder only has withdrawal benefits of \$1,300 within 12 months) the RSA provider must for each reporting period ending on or after the end of the 12 month period give information to the RSA holder which takes account of the effect of the RSA holder-protection standards.

The RSA provider must also treat the RSA holder as if the RSA holder had been subject to RSA holder protection. This may mean that the RSA holder has a larger withdrawal benefit (for example, \$1,400) than has otherwise been the case (whilst RSA holder protection has not applied). This is likely to be as a result of the compounding effect on earlier protected balances. Accordingly, in practical terms, RSA providers using the \$1,500 exception will be required to notionally retain two types of withdrawal benefits until it is determined whether the expectation has eventuated.

Example of what happens where expectation does not eventuate

Twelve months after the RSA provider has acted on a reasonable expectation that the RSA holder would have at least \$1,500 by the end of twelve months, the RSA holder only has a withdrawal benefit of \$1,300 (a 'never been protected amount'). The RSA holder also has a withdraw benefit, which would have applied if the RSA holder was subject to protection, of \$1,400 (a 'once protected when under \$ 1,000 amount').

The RSA holder's 'never been protected amount' has grown slower than the 'once protected when under \$ 1,000 amount' because of erosion by fees and charges in the early stages of its growth which has meant that there has been a reduced compounding effect.

Since the RSA provider's expectation has not eventuated, the RSA provider will be required to disclose the 'once protected when under \$1,000 amount' of \$1,400.

Note: The RSA provider's expectation may also not eventuate because the RSA holder closes the RSA within 12 months of the end of the period with less than \$1,500.

Division 2.4 - Information on amount of RSA

Regulation 2.19 - Operating standards

The requirements of Division 2.4 are operating standards for the purpose of subsection 38(1) of the Act.

Regulation 2.20 - Duty to give information

Where, at the end of a reporting period, the balance of an RSA is \$10,000 or more, an RSA provider must give the RSA holder a notice which:

- * outlines the effect of the lower-risk/lower-return nature of the RSA on possible benefits in the long term; and
- * that they may wish to consider other superannuation arrangements that may provide a greater return over the long term, and seeking advice on alternative strategies which may be more suitable.

The notice must be given at the time that the next RSA information is sent to the RSA holder and must be in bold print on a separate sheet of paper.

The purpose of the notice is to inform RSA holders that RSAs are expected to yield relatively modest returns due to their capital guaranteed nature, and may therefore not be suitable under all circumstances as a long term retirement savings vehicle.

Division 2.5 - Information concerning significant events

Background

Division 2.5 places requirements on RSA providers to tell RSA holders of events or decisions, in relation to an RSA, which impact on their benefits. This Division does not require an RSA provider to inform RSA holders of commercial decisions relating to the RSA provider (for example, a decision to restructure the institution).

Regulation 2.21 - Operating standards

The requirements of Division 2.5 are operating standards for the purpose of subsection 38(1) of the Act.

Regulation 2.22 - Time for compliance - event

Regulation 2.22 prescribes the time within which an RSA provider must give information under Division 2.5.

Where an event has an adverse effect then the RSA provider must provide information concerning the event before its occurrence or within 30 days of its occurrence. For an event which is not regarded as adverse then the RSA provider has to give the information no later than ^1 months after the event.

Where the event is minor and an RSA holder would not be expected to be concerned about a delay in receiving the information, then the information can be delayed for up to 12 months (this allows RSA providers to give the information to RSA holders as part of the next RSA information).

Regulation 2.23 - Time for compliance - increase in fees or charges or decrease in interest rates

Regulation 2.23 requires an provider to notify an RSA holder of any decrease in interest rates or increase in charges before, or on the day that they occur. An RSA provider can provide this information either by a written notice to the RSA holder or by an advertisement in the national or local media.

Regulation 2.24 - Time for compliance - decisions of RSA provider

Where an RSA holder would reasonably expect to be informed of an event before it occurs (for example, being transferred to a new RSA institution) the information is to be given as soon as practicable after the RSA provider becomes aware of the need for the decision. Despite this requirement the information need not be given more than 3 months before the expected date of the event.

Regulation 2.25 - Information to be given

An RSA provider must provide under this Division information that helps an RSA holder to understand any nature or purpose of an event or decision, and to make an informed judgment about the effect of the event or decision.

Regulation 2.26 - Contact details to accompany information

Regulation 2.26 provides that an RSA provider must also give a statement of the contact details of the RSA provider with information given under this Division.

Regulation 2.27 - General requirement

Regulation 2.27 requires information to be provided to an RSA holder concerning any event or decision in relation to the RSA, that the RSA provider reasonably believes the RSA holder would reasonably be expected to be informed of.

Regulation 2.28 - Specific requirements - changes in terms and conditions

The general requirement is supported by a prescriptive listing of particular events. Where one of these events occur, the RSA provider must give an RSA holder information concerning the event.

The events are:

- * Changes in the terms and conditions of an RSA where those changes would have an adverse effect on the amount of the RSA, the benefits to which the holder is entitled, or the circumstances in which benefits would be payable; and
- * where an RSA holder is transferred to another RSA or superannuation entity.

Regulation 2.29 - Specific requirements - benefit to be paid to eligible rollover fund

The regulations impose a requirement on RSA providers to give appropriate information to RSA holders who will be transferred to an eligible rollover fund unless they choose an RSA institution or superannuation entity. This is to ensure that RSA holders being transferred to eligible rollover funds, when given the option of choosing another RSA institution or superannuation entity, make an informed choice whether to have benefits paid to an eligible rollover fund or to an RSA institution or superannuation entity of their choice. The term 'transfer' when used in relation to an RSA holder connotes either the transfer or rollover of an RSA holder's benefits.

The information which an RSA provider is required to give, relates only to the transfer of the RSA holder to the eligible rollover fund. For example, RSA providers are not required to give the RSA holder any information relating to entities, other than the eligible rollover fund, into which the RSA holder may choose to have their benefits paid.

The information must include information relevant to the circumstances including (see subregulation 2.29(2)):

an explanation of why the RSA provider intends paying the RSA holder's benefits to an eligible rollover fund if no choice is exercised within the period;

[Example: In the case of an RSA provider which has decided not to retain and protect a small amount, this may (depending on the circumstances) involve stating that if the RSA provider were to retain the RSA holder, the RSA provider will be required by legislation to provide protection for the benefits of the RSA holder, an explanation of RSA holder protection and a statement that the RSA provider has decided not to provide RSA holder protection for the RSA holder];

- * a statement of the effect of having benefits paid to an eligible rollover fund (for example, that eligible rollover funds are required to protect the benefits of all members);
- * the contact details of the eligible rollover fund (for example, name of fund and address);
- * the amount of the RSA holder's benefit that will be paid from the RSA; and
- * a statement that if the RSA holder nominates an RSA institution or superannuation entity which does not accept the RSA holder's benefit, or if the RSA holder makes no nomination within the specified time, then the RSA provider will pay the benefits to the eligible rollover fund.

Regulation 2.30 - Information about Superannuation Complaints Tribunal

If a person makes a complaint to the RSA provider's internal complaints mechanism established under section 47 of the Act, an RSA provider must give the complainant details of the existence and the functions of the SCT. This must be provided when the complainant is informed of the decision of the RSA provider in relation to their complaint.

This is consistent with the procedures under the *Superannuation (Resolution of Complaints) Act 1993*, in which the SCT can deal with a complaint after it has been handled by the RSA provider's internal complaints mechanism.

Division 2.6 - Information on request

Regulation 2.31 - Operating standards

The requirements of Division 2.6 are operating standards for the purpose of subsection 38(1) of the Act.

Regulation 2.32 - Documents may be made available for inspection

Regulation 2.32 provides that a requirement to 'give' information to a person under this Division is taken to be met if the RSA provider makes the information available for inspection at a suitable place during normal business hours. For example, if the person lives in an isolated area, a suitable place would be the nearest major centre that the person regularly visits. Alternatively, the RSA provider and the person requesting the information may come to some other arrangement as to how the information is to be given.

Regulation 2.33 - Time for compliance

Information requested under this Division must be provided as soon as practicable after the request is made, and in any event reasonable efforts must be made to give the information within one month of receiving the request.

Regulation 2.34 - General requirement

There are two types of persons who may request information: concerned persons and employers who have made an application on behalf of an employee.

If the person who makes a request is a concerned person (being an RSA holder, a person who held an RSA in the previous 12 months, a legal personal representative of the RSA holder, or a person who has a right or claim under the RSA (see subregulation 2.34(3)), an RSA provider must provide information which the person reasonably requires to: understand any benefit entitlements they may have, or used to have; and understand the main features of the RSA.

If the person who makes the request is an employer, the RSA provider must provide information which the person reasonably requires for the purpose of..

- * understanding the kinds of benefits to which their employees will or may become entitled, and the main features of the RSA; and
- * a matter related to the *Superannuation Guarantee (Administration) Act 1992*.

In providing this information, an RSA provider is not required to disclose: any internal working document of the RSA provider; personal information of another person which would be unreasonable to disclose;

information having a commercial value that would be destroyed or reduced by the disclosure; or

information to which the RSA provider owes a duty of non-disclosure to another person.

Regulation 2.35 - Specific requirements

An RSA provider is required to provide a concerned person with a copy of the terms and conditions of the RSA, if so requested in writing.

Division 2.7 - Information on closing an RSA

Regulation 2.36 - Application

This regulation outlines the following exceptions to this Division:

- * the exception relating to exit reporting periods in the case of persons who cease to an RSA holder; and
- * the exception concerning information to be provided to protected RSA holders.

Regulation 2.37 - Operating standards

The requirements of Division 2.7 are operating standards for the purpose of subsection 38(1) of the Act.

Regulation 2.38 - Time for compliance

Information required to be given under this Division must be provided as soon as practicable, and reasonable efforts must be taken to ensure that information is provided not later than one month, after a person ceases to be the holder of an RSA. Reasonable efforts must also be made to provide information about any continuation option (in relation to an insured benefit such as a death or disability benefit) with sufficient time for the person to act on the option before it lapses.

Regulation 2.39 - Exit reporting period

The 'exit reporting period' is the period beginning on the first day of the RSA holder reporting period in which the person ceased to be an RSA holder and ending at the end of the day on which the person ceases to be an RSA holder.

Regulation 2.40 - Information to be given in cases other than death of RSA holder

Where a person ceases to be a holder of an RSA, otherwise than by death, an RSA provider must give to that person information which includes, but is not limited to:

- * the amount of a person's withdrawal benefit (amount received if they voluntarily closed the RSA) at the start and end of the exit reporting period;
- * the amount of withdrawal benefits that are preserved, restricted non-preserved and unrestricted non-preserved at the end of the exit reporting period; and
- * details of the inquiries and complaints mechanism of the RSA provider.

Regulation 2.41 - Information to be given where applicable

Regulation 2.41 provides a further prescriptive listing of certain items, which only need to be disclosed to a person who ceases to be a holder of an RSA, otherwise than by death, where they are 'applicable'. These include, but are not limited to:

- * the amount of contributions made by the holder and/or their employer during the exit reporting period;
- * fees and charges deducted from the RSA during the exit reporting period;
- * the amount of any withdrawals during the exit reporting period;
- * the amount and rate of interest credited during the exit reporting period; and
- * details of any continuation option for insurance cover.

An RSA provider does not have to disclose a nil amount (for example, if no contributions are made during the exit reporting period then they do not have to disclose this).

Regulation 2.42 - Information to be given in case of death of RSA holder

If a person ceases to be the holder of an RSA as a result of their death, any person receiving a benefit as a result must be given a summary of the RSA provider's arrangements for dealing with inquiries or complaints or a statement that such information is available on request.

Regulation 2.43 - Exceptions to "exit reporting period" provisions

Subregulation 2.43(1) works in conjunction with regulation 2.16. These regulations deal with the situation where a person ceases to be an RSA holder after the end of a reporting period but before information is issued for that period. Normally the RSA provider would be required to give to the RSA holder:

- * 'RSA holder information' in relation to the completed reporting period; and
- * information under this Division in relation to the exit reporting period (being the period from the end of the completed period until when the person ceased to be an RSA holder).

The combined operation of regulations 2.16 and 2.43 means that, rather than issuing a report in respect of each period referred to above, the RSA provider can simply issue one report covering both the 'complete period' and the 'exit period', provided that (generally) the extended period does not exceed fifteen months. That report must contain all the information required to be given under this Division (the information required to be given under this Division is for the most part the same as 'RSA information' required to be given under Division 2.2).

An RSA provider is not required to give the information prescribed by this Division if the RSA holder is being transferred to another RSA, or superannuation entity and:

- * the RSA holder has been provided with sufficient information concerning the transfer under subregulation 2.43(3); and
- * the RSA holder is likely to be provided with information, by the RSA institution or the trustee of the superannuation entity, to which the RSA holder is being transferred, under regulation 2.14 and 2.15, or Subdivision 2.4.2 of the Superannuation Industry (Supervision) Regulations that will cover the RSA holder's 'exit reporting period'.

Regulation 2.44 - Exception - RSA holders subject to compulsory protection of small amounts

Regulation 2.44 reduces the level of information that is required to be provided to a protected RSA holder when they cease to be an RSA holder. The only information required to be disclosed to a protected RSA holder for the exit reporting period is:

- * the contact details of the RSA provider; and
- * the amount of the RSA holder's withdrawal benefit.

Division 2. 8 - Information to be given on transfer of lost RSA holders

Regulation 2.45 - Application

This Division applies in the case of a payment of benefits of a lost RSA holder to a superannuation entity.

Regulation 2.46 - Operating standard

The requirements of Division 2.8 are operating standards for the purpose of subsection 38(1) of the Act.

Regulation 2.47 - Information to be given on transfer of lost RSA holders

Regulation 2.47 provides that should the benefits of a lost RSA holder be paid to a superannuation entity, the RSA provider must give to the trustee of the superannuation entity:

- * a statement that the person is a lost RSA holder;
- * if the RSA holder has requested that certain information not be disclosed, a statement to that effect;
- * all information that could reasonably help the trustee of the superannuation entity to locate or identify the lost RSA holder (other than the information that the RSA holder requested not to be disclosed).

PART 3 - BENEFIT PROTECTION STANDARDS

BACKGROUND

This Part prescribes:

- * the requirements for RSA providers concerning the minimum level of benefits that RSA providers must maintain for the benefit of an RSA holder (which are all benefits paid into the RSA by, or on behalf of, the RSA holder); and
- * the RSA holder-protection requirements, which generally provide that a small amount (that is, under \$ 1,000) or an amount of a lost RSA holder cannot be eroded by administration fees and charges.

This Part also contains many of the definitions upon which regulations in Part 4 (Payment Standards) rely. This is due to the inter-relationship, in many instances, of the standards relating to what protection, if any, must be afforded to an RSA holder's benefit, and how that benefit may (or must) be paid.

Division 3.1 - Introductory

Regulation 3.01 - Interpretation

This regulation sets out a number of definitions and expressions for the purposes of Part 3.

Regulation 3.02 - RSA provider may provide greater protection

Regulation 3.02 provides that RSA providers may go beyond the mandatory requirements of RSA holder protection. RSA providers can provide a greater degree of RSA holder protection than required by this Part provided such protection is consistent with the mandatory requirements. This power applies despite any provision in the terms and conditions of an RSA. For example, an RSA provider could provide RSA holder protection to all withdrawal benefits less than \$1,500.

Division 3.2 - Treatment of benefits

Regulation 3.03 - Operating standards

Regulation 3.03 provides that a requirement of Division 3.2 is an operating standard for the purposes of subsection 38(1) of the Act.

Regulation 3.04 - Minimum benefits

Regulation 3.04 provides that all of the benefits of an RSA holder in an RSA are minimum benefits (and includes those benefits rolled over or transferred from superannuation entities). The implications of this are:

- * all of the benefits must remain in the RSA until they are cashed (other than for the purpose of the RSA holder's temporary incapacity), rolled-over or transferred as benefits of the RSA holder (see Regulation 3.05);
- * provided that the benefits in an RSA contain, or have contained, mandated employer-financed benefits, and the balance of the RSA is less than \$1,000, all of the benefits in the RSA are subject to the RSA holder-protection standards set out in Division 3.3.

Regulation 3.05 - How benefits are to be treated

An RSA holder's minimum benefits must remain in the RSA until they are cashed (other than for the purpose of the RSA holder's temporary incapacity), rolled-over or transferred as benefits of the RSA holder. This ensures that the benefits of an RSA holder are maintained for retirement income purposes.

Regulation 3.06 - Mandated employer contributions

Regulation 3.06 provides a general presumption that contributions are mandated employer contributions.

Subregulation 3.06(1) provides that, subject to this regulation, contributions to an RSA are taken to be mandated employer contributions. The exceptions in subregulations 3.06(2) and (3) provide that in certain circumstances subregulation 3.06(1) will cease to apply.

In general, the exceptions in subregulations 3.06(2) and (3) are that unless an RSA provider is provided with satisfactory evidence that certain contributions are not mandated employer contributions, the RSA provider is required to treat those contributions as mandated employer contributions for the purposes of the Regulations.

However, subregulation 3.06(2) allows that if one year or more after contributions are received an RSA provider becomes satisfied that they are not mandated employer contributions, the RSA provider may decide to continue to treat the contributions as mandated employer contributions (for example, for administrative convenience).

Subregulation 3.06(3) provides that if, within one year of contributions being received, an RSA provider is satisfied that the contributions are not mandated employer contributions, the RSA provider must treat the contributions as nonmandated employer contributions.

Subregulation 3.06(4) provides that the RSA provider may decide not to continue to treat contributions as mandated employer contributions notwithstanding anything in the terms and conditions of the RSA which might otherwise prevent this. Alternatively, the RSA provider may decide to continue to treat the contributions as mandated employer contributions. Either way, the RSA provider's decision determines whether or not the contributions are taken to be mandated employer contributions for the purposes of the Regulations.

An example of the operation of this regulation is provided in the regulation.

Division 3.3 - RSA holder-protection standards

Regulation 3.07 - Interpretation

Regulation 3.07 defines the meaning of the terms 'exit fee' and 'RSA holder reporting period' for the purposes of Division 3.3.

Regulation 3.08 - Operating standards

Regulation 3.08 provides that a requirement of Division 3.3 is an operating standard for the purposes of subsection 38(1) of the Act.

Regulation 3.09 - RSA holder-protection standards not to apply to certain protected RSA holders

Regulation 3.09 provides that a protected RSA holder, whose benefits may reach \$1,500 within 12 months in accordance with the exception contained in regulation 2.18, is taken never to have been subject to the RSA holder-protection standards for the period from the start of the relevant RSA holder reporting period to the end of the 12 month period, The relevant RSA holder reporting period is the period at the end of which the RSA provider reasonably expected that the RSA holder's withdrawal benefits may reach \$1,500 within 12 months.

An RSA holder (whose RSA reaches a balance of \$1,500) is not subject to RSA holder protection after the end of the 12 month period by virtue of having withdrawal benefits which are equal to or greater than \$1,000. However, the RSA holder will become subject to RSA holder protection if the RSA holder's benefits fall below \$1,000.

Regulation 3.10 - RSA holder-protection standards not to apply to pensions or annuities

Regulation 3.10 provides that that part of a RSA holder's benefit which has commenced to be taken in the form of a pension or annuity is not subject to the RSA holder-protection standards.

This is consistent with the policy intention that the RSA holder-protection standards apply during the accumulation stage of benefits but not the payment stage (that is, it would not be appropriate for them to apply simply because, for example, the RSA holder has chosen to withdraw amounts from the pension or annuity accounts).

Regulation 3.11 - RSA holder-protection standards not to apply to traditional life insurance policies

Regulation 3.11 provides that that part of the RSA holder's benefits which is wholly determined by 'traditional' life insurance policies is excluded from the RSA holder-protection standards.

Traditional life insurance policies, also referred to as 'bundled policies', are a form of life insurance where the payment of a premium entitles the holder to a given sum assured. This sum is payable on the death of the policy holder (that is, the RSA holder), or the maturity of the policy, whichever occurs first.

These policies do not identify separately between fees, investment returns and insurance costs. Rather, these amounts are all included into the premium that the policy holder (that is, the RSA holder) pays. It is therefore almost impossible to directly apply the RSA holder-protection standards to these policies, and as a consequence they are excluded from the RSA holder-protection standards in Division 3.3. Instead, appointed actuaries of life offices should ensure that new traditional life insurance policies are only written where the terms are consistent with the RSA holder-protection standards.

Regulation 3.12 - RSA holder-protection standards

Regulation 3.12 prescribes the RSA holder-protection standards. The application of these standards is explained below.

Overview

The RSA holder-protection standards protect from erosion the minimum benefits (that is, all of the benefits) of RSA holders with small amounts (that is, protected RSA holders) and lost RSA holders.

For the purposes of the RSA holder-protection standards in relation to small amounts, the minimum benefits of an RSA holder in an RSA must always be comprised of a mandated employer-financed component for the RSA holder-protection standards to apply, but may also comprise an RSA holder-financed component (see the definitions of 'RSA holder-financed benefits' and 'mandated employer-financed benefits' in subregulation 1.03(1)).

If the RSA holder-protection standards did not apply, the benefits in an RSA could be eroded by administration costs (as defined in subregulation 3.01(1)) as the definitions of the various types of benefits that make up the total benefits held in an RSA (see the definitions of 'RSA holder-financed benefits' and 'mandated employer-financed benefits' in subregulation 1.03(1)) allow for the deduction of costs.

'Administration costs' is defined in subregulation 3.01(1) and includes all fees and charges deducted from an RSA holder's benefits (including exit fees), whether or not charged against the contributions made by or in respect of the RSA holder, but do not include costs in relation to insurance benefits and taxation costs. In this definition:

- * an insurance benefit means an insured (whether internally or externally insured) death or incapacity (whether temporary or permanent) benefit; and
- * the term 'taxation costs', for example, permits RSA providers to deduct the 15% contributions tax from employer contributions.

The erosion of a benefit through administration costs is the reduction in value of the benefit as a result of administration costs when viewed over a given period of time.

RSA providers will also be permitted to charge costs in accordance with their current practice throughout a period provided that a redistribution is done at the end of the period so as to protect the amounts for the period.

Application of RSA holder-protection standards

The RSA holder-protection standards apply to RSA holders and RSA holder reporting periods.

Subregulation 3.12(1) provides that the RSA holder-protection standards apply to a RSA holder:

- * who is a protected RSA holder; or
- * who is a lost RSA holder who has been subject to the reporting requirement in regulation 6.09, and who is still a lost RSA holder 90 days after they are reportable to the Commissioner of Taxation under regulation 6.09.

The provision outlined in the second dot point above, paragraph 3.12(1)(b), allows RSA providers 90 days to find the RSA holder or transfer the RSA holder to another entity (for example, an eligible rollover fund) before having to protect the RSA holder. It should be noted that in such situations, if the lost RSA holder is subject to small amount protection the RSA provider must immediately protect the RSA holder in accordance with the RSA holder protection standards applying to small amounts.

Subregulation 3.12(3) provides that the RSA holder-protection standards apply to a RSA holder reporting period:

- * in the case of a protected RSA holder - an RSA holder reporting period where, at the end of the period and subject to any adjustments affecting the holder's benefits (net of any exit fee) made by the RSA provider in respect of the period, the RSA holder is a protected RSA holder.

- * in the case of a lost RSA holder - the RSA holder reporting period beginning after the RSA holder becomes reportable for the purposes of regulation 6.09 and thereafter each RSA holder reporting period for any part of which the RSA holder is lost. It should be noted that if an RSA holder ceases to be a lost RSA holder in a RSA holder reporting period, an RSA provider may treat only the part of that period before the RSA holder ceases to be lost as being the relevant RSA holder reporting period.

In relation to the first dot point above, in respect of the 'less than \$1,000' limb test for whether RSA holder-protection applies for a period (see the definition of 'protected RSA holder' in subregulation 1.03(1)) RSA providers may, in the period up until the reports to RSA holders are prepared, ensure that the RSA has \$1,000 or more and is therefore not subject to small amount protection.

For example, an RSA may have \$900 at the end of a period through the normal application of fees and charges. However because of RSA holder-protection, a redistribution of fees and charges after the period means that the RSA has more than \$ 1,000. Paragraph 3.12(3)(a) therefore clarifies that if the RSA provider ensures in preparing the final reports to RSA holders for that period that the RSA holder's RSA has \$ 1,000 or more for the period, the RSA holder (because they do not fall within the 'protected RSA holder' definition) is not subject to RSA holderprotection.

Definition of a 'protected RSA holder'

The definition of 'protected RSA holder' is provided in subregulation 1.03(1). An RSA holder will be a protected RSA holder if he or she has withdrawal benefits (as defined in subregulation 1.03(1)):

- * Of less than \$1,000 in the RSA; and

- * these withdrawal benefits contain or have contained mandated employer-financed benefits (that is, benefits arising from Superannuation Guarantee contributions and award contributions).

RSA providers should be able to determine whether an RSA has withdrawal benefits of less than \$ 1,000 at the end of the RSA holder reporting period, as this amount is the amount that appears as the RSA holder withdrawal benefit on reports issued to RSA holders by the RSA provider. It should be noted that subregulation 1.03(2) contains a 'presumptive like provision' that a benefit in an RSA is taken to contain or to have contained mandated employer-financed benefits unless the RSA provider knows otherwise.

Subregulation 3.12(5) provides that, for the purposes of the RSA holder-protection standards, benefits are taken to be mandated employer-financed benefits unless and to the extent that the RSA provider knows otherwise.

Definition of a 'lost RSA holder'

The definition of a lost RSA holder has already been explained (see the explanation of regulation 1.06).

The substance of the RSA holder-protection standards (subregulation 3.12(2))

The substance of the RSA holder-protection standards is contained in subregulation 3.12(2). This provision provides that the net effect of administration costs charged for an RSA holder reporting period against benefits in an RSA must be that the administration costs that are charged in respect of an RSA holder's benefits in an RSA for an RSA holder reporting period must not exceed the investment earnings credited to the RSA for the period.

Indirect restrictions on the charging of exit fees

It should be noted that although there is no direct prohibition on the charging of exit fees on RSAs, indirect restrictions contained in the RSA holder-protection standards apply to the charging of exit fees and these apply, not only to RSA holders with small amounts but also to lost RSA holders. These indirect restrictions arise as a result of the definition of 'administration costs' in subregulation 3.01 (1) which includes exit fees.

RSA holder protection of the amounts of lost RSA holders

Lost RSA holders are required to be protected in a similar manner to RSA holders with small amounts. However, a number of differences exist between the protection of the amounts of lost RSA holders and the protection of small amounts, including:

(1) The RSA holder protection of the amounts of lost RSA holders will apply to all RSA holders (with the exception of those are permanently excluded from being a lost RSA holder - see subregulation 1.06(2)) regardless of.

* whether the RSA holder's withdrawal benefits in the RSA contain or have contained mandated employer-financed benefits; or

* the amount involved.

Like the protection of small amounts, RSA holder protection of lost RSA holders applies to the minimum benefits in the RSA, that is, to all of the benefits.

(2) Both RSA holder protection of small amounts and RSA holder protection of the amounts of lost RSA holders must be achieved on a RSA holder reporting period basis. However, RSA holder protection of lost RSA holders will only involve protecting for the next period whereas RSA holder protection of small amounts involves protecting for the current period.

In other words, whereas RSA holder protection of small amounts involves protecting small amounts in the period that they are considered small, RSA holder protection of the amounts of lost RSA holders generally only requires RSA providers to protect an RSA holder for the time period commencing the day after the RSA holder is determined to be lost (for example, the period commencing on 1 July 1998, if the RSA holder was determined to be lost on 30 June 1998) until the RSA holder ceases to be lost (say, 31 January 1999). Accordingly, lost RSA

holders must be protected for each RSA holder reporting period which relates to this time period (or for the relevant part of the period).

It should be noted that the RSA provider may extend protection to the end of an RSA holder reporting period, for example 30 June 1999, for administrative convenience.

(3) Where an amount of a lost RSA holder is also a small amount, the RSA holder protection requirements in respect of small amounts take precedence over the RSA holder protection requirements in respect of the amounts of lost RSA holders.

Example of the explanation given by paragraphs 2 and 3 above

Once the RSA provider determines an RSA holder is lost on a particular date, the RSA provider can pay the benefits of the RSA holder from the RSA on that date without, except in the case where the RSA holder has a small amount, ensuring that the RSA holder has been protected for the last RSA holder reporting period.

Regulation 3.13 - Costs not to be deferred

The RSA holder-protection standards also prohibit an RSA provider from charging to the RSA holder in a future RSA holder reporting period, administration costs which the RSA provider would have charged but for the application of the RSA holder-protection standards (in regulation 3.12) in respect of a RSA holder reporting period.

This regulation is based on the principle that the RSA holder-protection standards apply to amounts that are received, accrue or charged in respect of an RSA holder reporting period. In other words, the amounts do not necessarily have to be received, accrue or charged during the period. For example, a contribution in respect of the 1997-98 year of income may actually be received in August 1998.

This is in line with the principle that the RSA holder-protection standards are concerned with the 'net investment earnings' for the period (that is, the excess of the investment earnings credited to an RSA over the administration costs charged in respect of the RSA), which will be generally evidenced by the report given to the RSA holder for the period.

PART 4 - PAYMENT STANDARDS

BACKGROUND

Fundamental to the superannuation system is the principle that moneys set aside today for superannuation should generally be accessed only at retirement, or a retirement related event. The superannuation tax concessions represent a substantial cost to Government in terms of revenue foregone. Restrictions on access to superannuation moneys during the accumulation phase minimises the scope for dissipation of concessionally taxed superannuation moneys before a person's retirement.

At the same time, RSA providers are not permitted to defer the payment of superannuation benefits beyond the retirement of an RSA holder (otherwise estate planning opportunities would arise).

Rules relating to preservation and the payment of benefits give effect to these two broad policy intentions. The rules outlined in this Part are, for all intents and purposes, identical to the ones that apply to regulated superannuation funds in the equivalent Part in the SIS Regulations, that is, Part 6.

The regulations prescribe, as operating standards pursuant to section 38 of the Act, rules which support the ability of RSA providers to pay benefits on or after the happening of certain events, subject to appropriate preservation requirements and restrictions to prevent indefinite deferral beyond retirement. The regulations cover:

- * the circumstances in which a benefit may be paid to an RSA holder;
- * the circumstances in which a benefit must be paid to an RSA holder;
- * the circumstances where a benefit may not be paid to an RSA holder;
- * the circumstances where an RSA holder can rollover or transfer his/her benefit from an RSA to another RSA, regulated superannuation fund or approved deposit fund; and
- * the calculation of different types of preservation components that will comprise an RSA holder's benefits.

OVERVIEW

The intention of the preservation standards is that from 1 July 1998 (that is, the 'RSA changeover day' for most RSA providers and the 'changeover day' for most regulated superannuation funds) the majority of superannuation benefits will be compulsorily preserved until retirement on or after age 55 years. This is intended to ensure that superannuation savings are used for genuine retirement income purposes.

Superannuation benefits, whether they be in RSAs or regulated superannuation funds, are broken up into three distinct categories: preserved benefits; restricted non-preserved benefits; and unrestricted non-preserved benefits.

As explained below in relation to Regulation 4.03, there are two different preservation systems for RSAs (note that similar systems are prescribed for regulated superannuation funds in Part 6 of the SIS Regulations), that is the system that will apply from the commencement of the RSA Regulations until the RSA changeover day and the system that will apply from the RSA changeover day. The calculation of the three different categories of benefits varies under each system, as outlined below.

Under both preservation systems, preserved benefits and restricted non-preserved benefits may not be cashed by the RSA holder unless a condition of release is fulfilled. Schedule 2 of the Regulations lists these conditions of release, which include retirement, permanent incapacity, attaining age 65 and termination of employment prior to retirement with an employer who had contributed to an RSA on the RSA holder's behalf.

Schedule 2 also prescribes the manner in which preserved benefits and restricted nonpreserved benefits may be cashed. The only difference between these two categories applies if the RSA holder terminates employment prior to retirement: there are no cashing restrictions for restricted non-preserved benefits, but an RSA holder's preserved benefits may only be cashed in the form of a non-commutable life pension or annuity.

From the commencement of the RSA Regulations until the RSA changeover day

- * In very simple terms, preserved benefits are largely those that are required to be made under industrial awards or the Superannuation Guarantee (SG) arrangements and deductible contributions made by the RSA holder (that is, for the selfemployed).

* Restricted non-preserved benefits are calculated as the total benefits of the RSA holder in the RSA less Preserved benefits and unrestricted non-preserved benefits, that is, it is a residual amount. Undeducted contributions made by an RSA holder will generally be included as restricted non-preserved benefits.

* Unrestricted non-preserved benefits are those benefits which have satisfied a condition of release and for which no cashing restrictions applies. An RSA holder can access these benefits at any time through discretionary withdrawals.

From the RSA changeover -day

* After the 'RSA changeover day', preserved benefits are calculated as the total benefits of the RSA holder in the RSA less restricted non-preserved benefits and unrestricted non-preserved benefits. In other words, it becomes a residual amount and not an accumulated total.

* From the 'RSA changeover day' the amounts that make up restricted nonpreserved benefits are prescribed, rather than being calculated as a residual amount. Restricted non-preserved benefits are calculated as the greater of.

- an RSA holder's own contributions made after 30 June 1983, where the RSA holder has not been able to claim a tax deduction (commonly called RSA holder undeducted contributions) (note that: these contributions may have originally been made to a regulated superannuation fund and subsequently transferred or rolled over into an RSA); or

- an RSA holder's indexed entitlements to a resignation or retrenchment benefit as at the 'RSA changeover day', where those benefits are not otherwise preserved under the terms and conditions of the RSA.

* The amount of unrestricted non-preserved benefits from the 'RSA changeover day' is calculated in the same manner as in the period between the commencement day of the RSA Regulations and the 'RSA changeover day'.

Division 4.1 - Introductory

Subdivision 4.1.1 - General interpretation

Regulation 4.01 - Interpretation

Subregulation 4.01 (1) provides that (subject to subregulation 4.01(2)) expressions used in Part 4 that are defined for the purposes of Part 3 have the same meanings as in that Part.

Subregulation 4.01(2) inserts definitions of a number of words and expressions for the purposes of Part 4 and Schedule 2.

Subregulation 4.01(3) provides for the purposes of the definition of 'restricted nonpreserved contributions' in subregulation 4.01(2), that certain amounts are undeducted contributions.

Subregulation 4.01(4) provides the specific circumstances where a person will be considered to have retired status for the purposes of Schedule 2.

Subregulation 4.01(5) provides for the purposes of Schedule 2 that a person is in severe financial hardship if a determination has been made by the Commissioner in writing to that effect.

Subregulation 4.01(6) clarifies that references in Part 4 to the terms 'preserved benefits', 'restricted non-preserved benefits', 'restricted non-preserved contributions', 'unrestricted non-preserved benefits' and 'post-65 employer-financed benefits' include those benefits or contributions of that type (as defined in Part 6 of the SIS Regulations) that were received from a superannuation entity.

Regulation 4.02 - Operating standards

Regulation 4.02 provides that a requirement set out in subregulation 4.03(3) is an operating standard for the purposes of subsection 38(1) of the Act.

Regulation 4.03 - RSA changeover day

Regulation 4.03 sets out the requirements for an RSA provider if they decide to fix their own date in the 1998 calendar year for the 'RSA changeover day' in respect of RSA holders.

The 'RSA changeover day' is the day in the 1998 calendar day on which RSA providers will change to a new system of preserving the superannuation benefits held in RSAs, which is briefly explained below. 'RSA changeover day' is defined in subregulation 4.01(2), and is expected to be 1 July 1998 in most cases, although subregulation 4.03(1) allows RSA providers, before 1 July 1998, to fix a date in the 1998 calendar year as the RSA changeover day in respect of RSA holders. If the RSA provider does not fix a day, then the RSA changeover day is 1 July 1998.

There are two different preservation systems prescribed in Part 4 for RSAs:

* the system that will apply from the commencement of the RSA Regulations until the RSA changeover day. Under this system, the types of benefits that make up preserved benefits are defined. The types of benefits that make up unrestricted non-preserved benefits are also defined, with restricted non-preserved benefits being the residual amount of the RSA holder's benefits in the RSA (these terms are explained more fully elsewhere in this Part); and

* the system that applies from the 'RSA changeover day' (for most RSA providers, this is 1 July 1998). Under this system, the types of benefits that make up both restricted non-preserved and unrestricted non-preserved benefits are defined, with preserved benefits being the residual amount of the RSA holder's benefits in the RSA.

Subregulation 4.03(2) provides that in deciding the RSA changeover day in relation to the holder of an RSA, the RSA provider is not bound by the terms and conditions of the RSA.

Subregulation 4.03(3) provides that if the RSA provider fixes a day as the RSA changeover day in relation to the holder of an RSA, the RSA provider must record the decision in writing.

Subregulation 4.03(4) provides that when the RSA provider is making a decision in respect of the RSA changeover day, it is not necessary that the decision is specific to that RSA holder or that the RSA holder be an existing RSA holder.

Subdivision 4.1.2 - Preserved benefits

Regulation 4.04 - Preserved benefits - before RSA changeover day

Regulation 4.04 provides that the amount of a RSA holder's preserved benefits in an RSA at any time during the period commencing on the commencement day of the RSA Regulations and the ending immediately before the 'RSA changeover day' applicable to the RSA holder is the sum of the following amounts:

- * benefits arising directly or indirectly from employer contributions to the RSA on behalf of the RSA holder (these contributions include employer Superannuation Guarantee contributions, employer superannuation contributions made under industrial awards, and voluntary employer contributions);
- * RSA holder-financed benefits arising from contributions (other than undeducted contributions made by the RSA holder) made on or after the commencement day of the RSA Regulations; and
- * benefits arising from payments from the Superannuation Holding Accounts Reserve.

It should be noted that, as a result of the operation of regulations 4.06, 4.07 and 4.08 and Subdivision 4.1.5, preserved benefits in an RSA also include:

- * benefits transferred or rolled over to the RSA before the RSA changeover day which were preserved benefits in the source from which they were received (whether this be another RSA or a regulated superannuation fund) and for which a RSA or SIS changeover day (as applicable) had already passed in the source (regulations 4.06 and 4.07);
- * benefits transferred or rolled over to the RSA which were preserved benefits in the source from which they were received, whether this be another RSA, a regulated superannuation fund or an approved deposit fund (regulation 4.08);
- * contributions made to the RSA or benefits rolled over or transferred to the RSA which are taken by the RSA provider to be preserved benefits (regulation 4.17); and
- * restricted non-preserved benefits or unrestricted non-preserved benefits that have been redistributed into the category of preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, subregulation 4.14(1) provides that preserved benefits will become unrestricted nonpreserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the preserved benefits is 'Nil'.

The requirements of this regulation are generally the same as those for the calculation for preserved benefits by regulated superannuation funds in regulation 6.02 of the SIS Regulations.

Regulation 4.05 - Preserved benefits - on and after RSA changeover day

Regulation 4.05 provides that the amount of an RSA holder's preserved benefits in an RSA at any time on or after the 'RSA changeover day' is the amount of the RSA holder's total benefits in the RSA less the sum of the amount of the RSA holder's restricted non-preserved benefits in the RSA as defined by regulation 4.10 and the amount of the RSA holder's unrestricted non-preserved benefits in the RSA as defined by regulation 4.13.

It should be noted that, as a result of the operation of regulation 4.08 and Subdivision 4.1.5, preserved benefits in an RSA also include:

- * benefits transferred or rolled over to the RSA which were preserved benefits in the source from which they were received, whether this be another RSA, a regulated superannuation fund or an approved deposit fund (regulation 4.08);
- * contributions made to the RSA or benefits rolled over or transferred to the RSA which are taken by the RSA provider to be preserved benefits (regulation 4.17); and

* restricted non-preserved benefits or unrestricted non-preserved benefits that have been redistributed into the category of preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, subregulation 4.14(1) provides that preserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the preserved benefits is 'Nil'.

The requirements of this regulation are generally the same as those for the calculation for preserved benefits by regulated superannuation funds in regulation 6.03 of the SIS Regulations.

Regulation 4.06 - Preserved benefits - rollover or transfer from regulated superannuation funds during 1997 or 1998

Regulation 4.06 provides that, if..

* on a day during the 1997 or 1998 calendar year that is after the day that is the 'SIS changeover day' in relation to a person who is a member of a regulated superannuation fund, benefits of that person in the fund are rolled over or transferred into an RSA; and

* the RSA institution providing the RSA into which the benefits are rolled over or transferred does not decide, on or before the day on which it receives those benefits, that that day is the 'RSA changeover day' in respect of that person;

then the portion of those benefits that is to be taken to be preserved benefits in the RSA is the same as the portion of those benefits that comprised preserved benefits in the regulated superannuation fund immediately before the rollover or transfer.

The intention of this regulation is to ensure that preserved benefits maintain their character, in spite of being transferred or rolled over. If this provision was not included in the RSA Regulations, it may be possible for benefits that were preserved benefits in a regulated superannuation fund to lose their 'preserved character' when transferred or rolled over to an RSA (that is, become restricted non-preserved benefits or unrestricted non-preserved benefits) by operation of other provisions in Part 4.

This regulation also recognises that unlike RSA holders who can only have a 'changeover day' in the 1998 calendar year, members of regulated superannuation funds may have a 'changeover day' in either the 1996, 1997 or 1998 calendar year. Therefore, the only time in which a person's 'RSA changeover day' could precede their 'changeover day' is during the 1998 calendar year.

It should be noted that, as provided for in paragraph 4.06(2)(a), this regulation is in effect subject to the operation of regulation 4.08 and Subdivision 4.1.5. In other words, as explained above in regulation 4.04, preserved benefits in the RSA into which the benefits are being transferred or rolled over from a regulated superannuation fund would also include:

* benefits transferred or rolled over to the RSA which were preserved benefits in the source from which they were received, whether this be another RSA, a regulated superannuation fund or an approved deposit fund (regulation 4.08);

* contributions made to the RSA or benefits rolled over or transferred to the RSA which are taken by the RSA provider to be preserved benefits (regulation 4.17); and

* restricted non-preserved benefits or unrestricted non-preserved benefits that have been redistributed into the category of preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, despite this regulation, subregulation 4.14(1) will still apply. That is, preserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the preserved benefits is 'Nil'.

As provided for in paragraph 4.06(2)(b), this regulation does not affect the operation of regulation 4.04 in relation to: contributions made to the RSA under regulation 4.04; or

benefits rolled over or transferred to the RSA from regulated superannuation funds in relation to which a 'SIS changeover day' has not been decided.

In other words, these benefits will still remain preserved benefits in the RSA under regulation 4.04.

Regulation 4.07 - Preserved benefits - rollover or transfer between RSAs during 1998

Regulation 4.07 provides that, if.

- * on a day during the 1998 calendar year that is after the day that is the 'RSA changeover day' in relation to an RSA held by an RSA holder, benefits of that RSA holder in the RSA are rolled over or transferred into another RSA (the 'transferee RSA'); and
- * the RSA institution providing the 'transferee RSA' does not decide, on or before the day on which it receives those benefits, that that day is the 'RSA changeover day' in respect of the RSA holder (that is, the 'transferee RSA' held by the RSA holder);

then the portion of those benefits that is to be taken to be preserved benefits in the 'transferee RSA' is the same as the portion of those benefits that comprised preserved benefits in the 'transferor fund' immediately before the rollover or transfer.

The intention of this regulation is to ensure that preserved benefits maintain their character, in spite of being transferred or rolled over. If this provision was not included in the RSA Regulations, it may be possible for benefits that were preserved benefits in an RSA to lose their 'preserved character' when transferred or rolled over to another RSA (that is, become restricted non-preserved benefits or unrestricted nonpreserved benefits) by operation of other provisions in Part 4.

It should be noted that, as provided for in paragraph 4.07(2)(a), this regulation is in effect subject to the operation of regulation 4.08 and Subdivision 4.1.5. In other words, as explained above in regulation 4.04, preserved benefits in the 'transferee RSA' would also include:

benefits transferred or rolled over to the RSA which were preserved benefits in the source from which they were received, whether this be another RSA, a regulated superannuation fund or an approved deposit fund (regulation 4.08);

- * contributions made to the RSA or benefits rolled over or transferred to the RSA which are taken by the RSA provider to be preserved benefits (regulation 4.17); and
- * restricted non-preserved benefits or unrestricted non-preserved benefits that have been redistributed into the category of preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, despite this regulation, subregulation 4.14(1) will still apply. That is, preserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the preserved benefits is 'Nil'.

As provided for in paragraph 4.07(2)(b), this regulation does not affect the operation of regulation 4.04 in relation to:

- * contributions made to the 'transferee RSA' under regulation 4.04; or
- * benefits rolled over or transferred to the 'transferee RSA' from other RSAs in relation to which an 'RSA changeover day' has not been decided.

In other words, these benefits will still remain preserved benefits in the 'transferee RSA' under regulation 4.04.

Regulation 4.08 - Effect of rollover or transfer on preserved benefits

Regulation 4.08 provides that preserved benefits do not cease to be preserved benefits merely by being rolled over or transferred. In other words, they maintain their character if they are received by way of a transfer or rollover from another RSA, a regulated superannuation fund, or an approved deposit fund.

Subdivision 4.1.3 - Restricted non-preserved benefits

Regulation 4.09 - Restricted non-preserved benefits - before RSA changeover day

Regulation 4.09 provides that the amount of a RSA holder's restricted non-preserved benefits in an RSA at any time during the period commencing on the commencement date of the RSA Regulations and ending immediately before the 'RSA changeover day' is the amount of the RSA holder's total benefits in the RSA, less the sum of the amount of the RSA holder's preserved benefits in the RSA as defined by regulation 4.04 and the amount of the RSA holder's unrestricted non-preserved benefits in the RSA as defined by regulation 4.13.

It should be noted that, as a result of the operation of Regulations 4.11 and 4.12 and Subdivision 4.1.5, restricted non-preserved benefits in an RSA also include:

- * benefits transferred or rolled over to the RSA before the RSA changeover day which were restricted non-preserved benefits in the source from which they were received (whether this be another RSA or a regulated superannuation fund) and for which a RSA or SIS changeover day (as applicable) had already passed in the source (regulations 4.11 and 4.12);
- * contributions made to the RSA or benefits rolled over or transferred to the RSA which the RSA knows are restricted non-preserved benefits (regulation 4.17); and
- * unrestricted non-preserved benefits that have been redistributed into the category of restricted non-preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, subregulation 4.14(2) provides that restricted non-preserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the restricted nonpreserved benefits is 'Nil'.

The requirements of this regulation are generally the same as those for the calculation for restricted non-preserved benefits by regulated superannuation funds in regulation 6.07 of the SIS Regulations.

Regulation 4.10 - Restricted non-preserved benefits - on and after RSA changeover day

Regulation 4.10 defines what benefits will be restricted non-preserved benefits on or after the 'RSA changeover day'.

Subregulation 4.10(1) provides that the amount of an RSA holder's restricted nonpreserved benefits in an RSA at any time on or after the 'RSA changeover day', is the greatest of the following three amounts:

- (1) The total of:
 - (i) the indexed amount of the RSA holder's restricted non-preserved benefits in the RSA that would be payable to the RSA holder on the 'RSA changeover day' if the RSA holder resigned from employment on that day; and
 - (ii) the indexed amount of the RSA holder's restricted non-preserved benefits received by the RSA from another RSA or a regulated superannuation fund on or after the 'RSA changeover day' that are subject to indexation in the RSA; or
- (2) The total of:
 - (i) the indexed amount of the RSA holder's restricted non-preserved benefits in the RSA that would be payable to the RSA holder on the 'RSA changeover day' if the RSA holder were retrenched from employment on that day;
 - (ii) the indexed amount of the RSA holder's restricted non-preserved benefits received by the RSA from another RSA or a regulated superannuation fund on or after the 'RSA changeover day' that are subject to indexation in the RSA;
- (3) The amount of the RSA holder's restricted non-preserved contributions in the RSA.

The term 'restricted non-preserved contributions' is defined in subregulation 4.01(2).

Subregulation 4.10(2) provides that indexed amounts of restricted non-preserved benefits do not cease to be subject to indexation merely by being rolled over or transferred. In other words, indexed amounts of restricted non-preserved benefits that were received by way of a transfer or rollover from another RSA or a regulated superannuation fund are still indexed in the RSA.

Subregulation 4.10(3) provides that restricted non-preserved contributions do not cease to be restricted non-preserved contributions merely by being rolled over or transferred. That is, they maintain their character if they are received by way of a transfer or rollover from another RSA or a regulated superannuation fund.

Subregulation 4.10(4) provides that references to indexation apply subject to regulation 4.16.

It should be noted that, as a result of the operation of Subdivision 4.1.5, restricted non-preserved benefits in an RSA also include:

- * contributions made to the RSA or benefits rolled over or transferred to the RSA which the RSA knows are restricted non-preserved benefits (regulation 4.17); and
- * unrestricted non-preserved benefits that have been redistributed into the category of restricted non-preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, subregulation 4.14(2) provides that restricted non-preserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the restricted nonpreserved benefits is 'Nil'.

The requirements of this regulation are generally the same as those for the calculation for restricted non-preserved benefits by regulated superannuation funds in regulation 6.08 of the SIS Regulations.

Regulation 4.11 - Restricted non-preserved benefits - rollover or transfer from regulated superannuation funds during 1997 or 1998

Regulation 4.11 provides that, if:

- * on a day during the 1997 or 1998 calendar year that is after the day that is the 'SIS changeover day' in relation to a person who is a member of a regulated superannuation fund, benefits of that person in the fund are rolled over or transferred into an RSA; and
- * the RSA institution providing the RSA into which the benefits are rolled over or transferred does not decide, on or before the day on which it receives those benefits, that that day is the 'RSA changeover day' in respect of that person;

then the portion of those benefits that is to be taken to be restricted non-preserved benefits in the RSA is the same as the portion of those benefits that comprised restricted non-preserved benefits in the regulated superannuation fund immediately before the rollover or transfer.

The intention of this regulation is to ensure that restricted non-preserved benefits maintain their character, in spite of being transferred or rolled over. If this provision was not included in the RSA Regulations, it may be possible for benefits that were restricted non-preserved benefits in a regulated superannuation fund to lose their 'restricted non-preserved character' when transferred or rolled over to an RSA (that is, become preserved benefits or unrestricted non-preserved benefits) by operation of other provisions in Part 4.

This regulation also recognises that unlike RSA holders who can only have a 'changeover day' in the 1998 calendar year, members of regulated superannuation funds may have a 'changeover day' in either the 1996, 1997 or 1998 calendar year. Therefore, the only time in which a person's 'RSA changeover day' could precede their 'changeover day' is during the 1998 calendar year.

It should be noted that, as provided for in paragraph 4.11(2)(a), this regulation is in effect subject to the operation of Subdivision 4.1.5. In other words, as explained above in regulation 4.09, restricted non-preserved benefits in the RSA into which the benefits are being transferred or rolled over from a regulated superannuation fund would also include:

- * contributions made to the RSA or benefits rolled over or transferred to the RSA which the RSA knows are restricted non-preserved benefits (regulation 4.17); and
- * unrestricted non-preserved benefits that have been redistributed into the category of restricted non-preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, despite this regulation, subregulation 4.14(2) will still apply. That is, restricted nonpreserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the restricted non-preserved benefits is 'Nil'.

As provided for in paragraph 4.11(2)(b), this regulation does not affect the operation of regulation 4.09 in relation to:

- * contributions made to the RSA under regulation 4.09; or
- * benefits rolled over or transferred to the RSA from regulated superannuation funds in relation to which a 'SIS changeover day' has not been decided.

In other words, these benefits will still remain restricted non-preserved benefits in the RSA under regulation 4.09.

Regulation 4.12 - Restricted non-preserved benefits - rollover or transfer between RSAs during 1998

Regulation 4.12 provides that, if.

- * on a day during the 1998 calendar year that is after the day that is the 'RSA changeover day' in relation to an RSA held by an RSA holder, benefits of that RSA holder in the RSA are rolled over or transferred into another RSA (the 'transferee RSA'); and
- * the RSA institution providing the 'transferee RSA' does not decide, on or before the day on which it receives those benefits, that that day is the 'RSA changeover day' in respect of the RSA holder (that is, the 'transferee RSA' held by the RSA holder);

then the portion of those benefits that is to be taken to be restricted non-preserved benefits in the 'transferee RSA' is the same as the portion of those benefits that comprised restricted non-preserved benefits in the 'transferor RSA' immediately before the rollover or transfer.

The intention of this regulation is to ensure that restricted non-preserved benefits maintain their character, in spite of being transferred or rolled over. If this provision was not included in the RSA Regulations, it may be possible for benefits that were restricted non-preserved benefits in an RSA to lose their 'restricted non-preserved character' when transferred or rolled over to another RSA (that is, become preserved benefits or unrestricted non-preserved benefits) by operation of other provisions in Part 4.

It should be noted that, as provided for in paragraph 4.12(2)(a), this regulation is in effect subject to the operation of Subdivision 4.1.5. In other words, as explained above in regulation 4.09, restricted non-preserved benefits in the 'transferee RSA' would also include:

- * contributions made to the RSA or benefits rolled over or transferred to the RSA which the RSA knows are restricted non-preserved benefits (regulation 4.17); and
- * unrestricted non-preserved benefits that have been redistributed into the category of restricted non-preserved benefits by the RSA provider or under the terms and conditions of the RSA (regulation 4.18).

In addition, despite this regulation, subregulation 4.14(2) will still apply. That is, restricted non-preserved benefits will become unrestricted non-preserved benefits if the RSA holder has satisfied a condition of release and the relevant cashing restriction on the restricted non-preserved benefits is 'Nil'.

As provided for in paragraph 4.12(2)(b), this regulation does not affect the operation of regulation 4.09 in relation to:

- * contributions made to the 'transferee RSA' under regulation 4.09; or
- * benefits rolled over or transferred to the 'transferee RSA' from other RSAs in relation to which an 'RSA changeover day' has not been decided.

In other words, these benefits will still remain restricted non-preserved benefits in the 'transferee RSA' under regulation 4.09.

Subdivision 4.1.4 - Unrestricted non-preserved benefits

Regulation 4.13 - Unrestricted non-preserved benefits

Regulation 4.13 provides that the amount of a RSA holder's unrestricted nonpreserved benefit in an RSA is the sum of.

- * the amount of benefits of the RSA holder that have become unrestricted nonpreserved benefits in the RSA in accordance with regulation 4.14; and
- * the amount of unrestricted non-preserved benefits received by the RSA institution in respect of the RSA holder from a source specified in subregulation 4.10(2), such as certain eligible termination payments (for example, employer ETPs); and
- * the amount of unrestricted non-preserved benefits received by the RSA institution in respect of the RSA holder from sources such as another RSA, a superannuation fund, an approved deposit fund or from a deferred annuity; and
- * any investment earnings on the amounts mentioned in the dot points above.

Subregulation 4.13(1) provides that the RSA institution which receives an eligible termination payment from a source other than another RSA, a superannuation fund, an approved deposit fund or from a deferred annuity (for example, from a former employer of the RSA holder upon termination of employment) may generally treat that payment as an unrestricted non-preserved benefit.

Unlike the calculations for preserved benefits and restricted non-preserved benefits, the calculation of unrestricted non-preserved benefits is identical, whether before or after the 'RSA changeover day'.

It should be noted that, as a result of the operation of regulation 4.15 and Subdivision 4.1.5, unrestricted non-preserved benefits in an RSA also include benefits transferred or rolled over to the RSA which the RSA provider knows were unrestricted nonpreserved benefits in the source from which they were received, whether this be another RSA, a regulated superannuation fund or an approved deposit fund (regulations 4.15 and 4.17).

The requirements of this regulation are generally the same as those for the calculation for unrestricted non-preserved benefits by regulated superannuation funds in regulation 6.10 of the SIS Regulations.

Regulation 4.14 - Movement of benefits between categories by satisfaction of conditions of release

Regulation 4.14 provides that the preserved and restricted non-preserved benefits of an RSA holder in an RSA may be reclassified as unrestricted non-preserved benefits if a condition of release specified in Schedule 2 is satisfied and the relevant cashing restriction is 'Nil'.

Subregulation 4.14(1) provides that, if:

- * an RSA holder satisfies a condition of release; and
- * the relevant cashing restriction in respect of preserved benefits is 'nil';

the RSA holder's preserved benefits in the RSA at that time cease to be preserved benefits and become unrestricted non-preserved benefits.

Subregulation 4.14(2) provides that, if.

- * an RSA holder satisfies a condition of release; and
- * the relevant cashing restriction in respect of restricted non-preserved benefits is 'nil';

the RSA holder's restricted non-preserved benefits in the RSA at that time cease to be restricted non-preserved benefits and become unrestricted non-preserved benefits.

Subregulation 4.14(3) provides that the regulation has effect subject to Subdivision 4.1.5. For example, under regulation 4.18 an RSA provider or the terms and conditions of the RSA may increase the preservation status of the unrestricted nonpreserved benefits to restricted nonpreserved benefits or preserved benefits.

Regulation 4.15 - Effect of rollover or transfer on unrestricted non-preserved benefits

Regulation 4.15 provides that unrestricted non-preserved benefits do not cease to be unrestricted non-preserved benefits merely by being rolled over or transferred. In other words, they maintain their character if they are received by way of a transfer or rollover from another RSA, a regulated superannuation fund, or an approved deposit fund.

This regulation is subject to Division 4.1.5. For example, the RSA provider must be satisfied that the benefits are unrestricted non-preserved benefits (regulation 4.17) and an RSA provider or the terms and conditions of the RSA may increase the preservation status of the unrestricted non-preserved benefits to restricted nonpreserved benefits or preserved benefits (regulation 4.18).

Subdivision 4.1.5 - Miscellaneous

Regulation 4.16 - Indexation

Regulation 4.16 provides that the benefits that are referred to in Division 4.1 as indexed may be aggregated for the purpose of that indexation.

Regulation 4.17 - Contributions and benefits taken to be preserved benefits

Regulation 4.17 provides that contributions made or benefits rolled over or transferred, to an RSA are taken to be preserved benefits unless and until the RSA provider is satisfied that they are not preserved benefits.

Regulation 4.18 - Redistribution of benefits by operation of terms and conditions or action of RSA provider

Regulation 4.18 allows the terms and conditions of an RSA, or the RSA provider, to prescribe a greater level of preservation than the RSA Regulations prescribe, but not a lesser level.

Specifically, subregulation 4.18(2) allows the terms and conditions of an RSA, or the RSA provider, to alter the preservation status of benefits provided:

- * the amount of the RSA holder's preserved benefits in the RSA is not decreased; and
- * the amount of the RSA holder's unrestricted non-preserved benefits in the RSA is not increased.

Subregulation 4.18(1) provides that the categories of benefits referred in subregulation 4.18(2) are those defined elsewhere in Part 4 of the Regulations.

Division 4.2 - Payment of benefits

Regulation 4.19 - Operating standards

Regulation 4.19 provides that a requirement set out in regulation 4.20 is an operating standard for the purposes of subsection 38(1) of the Act.

Regulation 4.20 - Restriction on payment

Regulation 4.20 is an operating standard that prescribes how and when payments of benefits in RSAs may and must be paid.

Specifically, it provides that benefits of a RSA holder may only be paid by being cashed, rolled over or transferred in accordance with the relevant Divisions and must not be paid except, and to the extent, that the RSA provider is required or permitted under this Part to pay them and must be paid when and to the extent that the RSA provider is required to pay them under Part 4.

Division 4.3 - Cashing of benefits

Outline

The rules on voluntary cashings vary depending upon whether benefits are classed as:

- * preserved benefits;
- * restricted non-preserved benefits; or
- * unrestricted non-preserved benefits.

It should be noted at the outset that the rules on voluntary cashings are subject to the terms and conditions of an RSA. That is, the terms and conditions need not allow payment of benefits in circumstances in which these standards allow payments to be made voluntarily. However, benefits, must not be paid unless such payment is permitted under the Payment Standards set out in this Part.

Regulation 4.21 - Voluntary cashing of preserved benefits

Regulation 4.21 prescribes how and when voluntary cashing of preserved benefits in RSAs may be made.

Subregulation 4.2 1 (1) provides that preserved benefits of an RSA holder may be cashed on or after the RSA holder has satisfied a condition of release. These conditions of release are prescribed in Schedule 2 of the Regulations.

Subregulation 4.21(2) provides that the amount of preserved benefits which may be cashed on or after the RSA holder has satisfied a condition of release must not exceed the sum of.

- * the amount of preserved benefits of the RSA holder in the RSA that had accrued at the time when the RSA holder satisfied the condition of release; and
- * the amount of any investment earnings accruing on those benefits from that time.

Subregulation 4.21(3) prescribes that the form in which preserved benefits may be cashed under this regulation, this being:

- * the form (if any) specified in the cashing restriction for preserved benefits set out in Schedule 2 in relation to the relevant condition of release; or
- * if that cashing restriction is 'Nil' - any one or more of the following forms: - a lump sum or two or more lump sums; - a pension or two or more pensions; - the purchase of an annuity or two or more annuities.

Subregulation 4.21(3) is subject to subregulation 4.21(4). Subregulation 4.21(4) provides that if preserved benefits are being paid in the form of a lump sum, then this lump sum must be payable not later than the time for the payment of a lump sum that is compulsorily cashed under paragraph 4.24(3)(a). In other words, a lump sum that is payable as a result of a voluntary cashing of preserved benefits must not be kept in an RSA past the date at which all of the RSA holder's benefits in the RSA must be compulsorily cashed.

Regulation 4.22 - Voluntary cashing of restricted non-preserved benefits

Regulation 4.22 prescribes how and when voluntary cashing of restricted nonpreserved benefits in RSAs may be made.

Subregulation 4.22(1) provides that restricted non-preserved benefits of an RSA holder may be cashed on or after the RSA holder has satisfied a condition of release. These conditions of release are prescribed in Schedule 2 of the Regulations.

Subregulation 4.22(2) provides that the amount of restricted non-preserved benefits which may be cashed on or after the RSA holder has satisfied a condition of release must not exceed the sum of.

- * the amount of restricted non-preserved benefits of the RSA holder in the RSA that had accrued at the time when the RSA holder satisfied the condition of release; and
- * the amount of any investment earnings accruing on those benefits from that time.

Subregulation 4.22(3) prescribes that the form in which restricted non-preserved benefits may be cashed under this regulation, this being:

- * the form (if any) specified in the cashing restriction for restricted non-preserved benefits set out in Schedule 2 in relation to the relevant condition of release; or

* if that cashing restriction is 'Nil' - any one or more of the following forms: - a lump sum or two or more lump sums; - a pension or two or more pensions; - the purchase of an annuity or two or more annuities.

Subregulation 4.22(3) is subject to subregulation 4.22(4). Subregulation 4.22(4) provides that if restricted non-preserved benefits are being paid in the form of a lump sum, then this lump sum must be payable not later than the time for the payment of a lump sum that is compulsorily cashed under paragraph 4.24(3)(a). In other words, a lump sum that is payable as a result of a voluntary cashing of restricted non-preserved benefits must not be kept in an RSA past the date at which all of the RSA holder's benefits in the RSA must be compulsorily cashed.

Regulation 4.23 - Voluntary cashing of unrestricted non-preserved benefits

Regulation 4.23 prescribes how and when voluntary cashing of unrestricted nonpreserved benefits in RSAs may be made.

Subregulation 4.23(1) provides that all or part of the unrestricted non-preserved benefits of an RSA holder in an RSA may be cashed at any time. This differs from the standards governing the voluntary cashing of preserved benefits and restricted non-preserved benefits (see regulations 4.21 and 4.22 respectively) because these types of benefits may only be cashed on or after the RSA holder has satisfied a condition of release prescribed in Schedule 2 of the Regulations.

Subregulation 4.23(3) prescribes that the form in which unrestricted non-preserved benefits may be cashed under this regulation, this being any one or more of the following forms:

- * a lump sum or two or more lump sums;
- * a pension or two or more pensions;
- * the purchase of an annuity or two or more annuities.

Subregulation 4.23(3) is subject to subregulation 4.23(4). Subregulation 4.23(4) provides that if unrestricted non-preserved benefits are being paid in the form of a lump sum, then this lump sum must be payable not later than the time for the payment of a lump sum that is compulsorily cashed under paragraph 4.24(3)(a). In other words, a lump sum that is payable as a result of a voluntary cashing of unrestricted non-preserved benefits must not be kept in an RSA past the date at which all of the RSA holder's benefits in the RSA must be compulsorily cashed.

Regulation 4.24 - Compulsory cashing of benefits

Regulation 4.24 prescribes how and when compulsory cashing of benefits (no matter what their preservation status) in RSAs must be made.

The general rule for the compulsory cashing of benefits is in subregulation 4.24(1). The general rule is that once an RSA holder:

- * is age 65 or more (but less than 70) and is no longer gainfully employed at least 10 hours per week; or
- * is age 70 or more and is no longer gainfully employed at least 30 hours per week; or
- * dies;

then generally the RSA holder's benefits must, as soon as is practicable, either be:

- * cashed; or
- * rolled over for immediate cashing (as provided for in subregulation 4.24(4)).

'Gainfully employed' is defined in regulation 1.03 as meaning employed or selfemployed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

Subregulation 4.24(2) provides an exception to this general rule in respect of 'post-65 employer-financed benefits' (as defined in subregulation 4.24(5)). These are benefits arising from award contributions made for an RSA holder in respect of the period after the RSA holder reaches age 65. This exception enables these 'post-65 employer-financed benefits' to be treated differently from an RSA holder's other benefits in circumstances where the RSA holder does not work the prescribed number of hours per week.

The exception provides that an RSA holder's 'post-65 employer-financed benefits' must be cashed (or rolled over for immediate cashing, as provided for in subregulation 4.24(4)) once the RSA holder dies or once:

- * the RSA holder is no longer gainfully employed at least: - 10 hours per week, if under age 70; or - 30 hours per week, if aged 70 or more; and
- * mandated employer contributions have ceased to be made for the RSA holder, and are not liable to be made for the RSA holder, either to the RSA, to another RSA or to a regulated superannuation fund.

If, when mandated employer contributions (as defined in subregulation 1.03(1)) cease to be made for an RSA holder, the RSA provider is aware that the RSA holder has ceased to be employed in the work for which the contributions were being made, the RSA provider should generally assume that these contributions are no longer liable to be made for the RSA holder. On the other hand, if the RSA provider believes that the employer has wrongfully suspended making the contributions, the RSA provider should generally assume that the contributions are liable to be made for the RSA holder.

Any benefits of the RSA holder in the RSA other than his or her 'post-65 employer-financed benefits' must be cashed in the circumstances prescribed in subregulation 4.24(1).

Subregulation 4.24(5) defines an RSA holder's 'post-65 employer-financed benefits' as being at a particular date

- * all mandated employer contributions made to the RSA for the RSA holder in respect of the period after the RSA holder attained age 65 and ending on that date;
- * all benefits that were rolled over or transferred to the RSA from another RSA or a regulated superannuation fund in the period after the RSA holder attained age 65 and ending on that date and which were 'post-65 employer-financed benefits' immediately before the rollover or transfer; and
- * investment earnings on the above amounts in respect of the period after the RSA holder attained age 65 and ending on that date;

less costs applicable to these amounts in respect of the period after the RSA holder attained age 65 and ending on that date.

The term 'mandated employer contributions' (as defined in subregulation 1.03(1)) refers to award-related contributions - that is, contributions which are made by or on behalf of the

employer to satisfy an obligation under an award made or agreement certified by an industrial authority. (The term also refers to Superannuation Guarantee contributions and shortfall payments, but these are not currently required to be made in respect of periods after a person has attained age 65.)

Subregulation 4.24(3) prescribes that the form in which benefits may be cashed under this regulation, this being any one or more of the following forms:

- * a single lump sum in respect of each person to whom benefits are cashed (for example, where benefits are cashed in favour of more than one person, for example on the death of a RSA holder, then each such person can receive a lump-sum payment);
- * a pension or two or more pensions;
- * the purchase of an annuity or two or more annuities.

It is not necessary for all of the RSA holder's benefits to be cashed simultaneously, but generally they must be cashed as soon as is practicable once one or other of the events described in subregulations 4.24(1) and (2) has occurred.

Subregulation 4.24(4) provides that it is sufficient for benefits, whether they be 'post65 employer-financed benefits' or otherwise, that it is sufficient if instead of being cashed, that they are rolled over as soon as practicable for immediate cashing. This allows benefits to be cashed from sources other than the particular RSA in which the obligation to cash all the RSA holder benefits arose (for example, this need may arise because the RSA does not offer pensions).

Regulation 4.25 - Effect of rollover or transfer on post-65 employer-financed benefits

Regulation 4.25 provides that 'post-65 employer-financed benefits' (as defined in subregulation 4.24(5)) do not cease to be 'post-65 employer-financed benefits' merely by being rolled over or transferred. In other words, they maintain their character if they are received by way of a transfer or rollover from another RSA or a regulated superannuation fund.

Regulation 4.26 - Limitation on cashing of benefits in favour of persons other than RSA holders or their legal personal representatives

Regulation 4.26 prescribes the circumstances where benefits may be cashed in favour of persons other than RSA holders or their legal personal representatives.

Subregulation 4.26(1) provides that unless the RSA holder has died, the RSA holder's benefits may only be cashed in favour of the RSA holder or the RSA holder's legal personal representative (if any) (for example, where a legal personal representative has been appointed because the RSA holder is of unsound mind).

Subregulation 4.26(2) provides that if the RSA holder has died, the benefits may only be cashed in favour of either or both of the following: the RSA holder's legal personal representative; one or more of the RSA holder's dependants.

A dependant is defined in section 20 of the Act and includes any person who is financially dependent on the RSA holder at the time of the RSA holder's death. Where the terms and conditions of the RSA provide for payment to such a person, it will be a matter for the RSA provider to decide whether a particular person was financially dependent on the RSA holder at the time of death.

Subregulation 4.26(3) provides that if the RSA holder has died and the RSA provider has not, after making reasonable inquiries, found either a legal personal representative or a dependant of the RSA holder, an RSA provider may only cash the RSA holder's benefits in favour of some other individual.

The alternatives outlined above are, of course, subject to the terms and conditions of an RSA. For example, these terms and conditions may prevent death benefits from being paid to nondependants (in which case a benefit could not be cashed in favour of a non-dependant even in the circumstances described above for subregulation 4.26(3)).

It should be noted that this regulation is subject to regulation 4.27.

Regulation 4.27 - Circumstances in which benefits may be cashed in favour of persons other than RSA holders

Regulation 4.27 provides that benefits may be cashed in favour of persons other than RSA holders in certain circumstances.

This circumstance is when the cashing is expressly permitted by an instrument of approval of provision of benefits made by the Insurance and Superannuation Commissioner under paragraph 15(4)(d) of the Act. These benefits can be cashed only to the extent allowed by that instrument of approval.

Regulation 4.28 - Effect of payment of benefits

Regulation 4.28 provides what the effect of a payment of benefits from an RSA is.

Subregulation 4.28(1) provides that if the benefits of an RSA holder are cashed in accordance with regulations 4.26 or 4.27 (that is, to a person other than the RSA holder), then the RSA provider is discharged from all further liability in relation to the benefits being cashed from the RSA. This provision is intended to bring certainty about the outcome of benefits being cashed from an RSA to a third party.

Subregulation 4.28(2) provides that if the benefits of an RSA holder are cashed in accordance with regulations 4.26 or 4.27 to a person other than the RSA holder, the benefits cashed from an RSA do not form part of the estate of the RSA holder. Again, this provision is intended to bring certainty about the outcome of benefits being cashed from an RSA to a third party.

Regulation 4.29 - Priority in cashing benefits in certain cases

Regulation 4.29 provides that if benefits in an RSA are to be cashed on the basis of an RSA holder satisfying a condition of release where the cashing restriction is not 'Nil' (for example, severe financial hardship) then in cashing benefits in accordance with the cashing restriction, benefits must be cashed in the following order:

- * first - unrestricted non-preserved benefits;
- * second - restricted non-preserved benefits; and
- * last - preserved benefits.

This aims to ensure that the benefits that the RSA holder would have most immediate access to in any case are taken from first, thus retaining, to the extent possible, the preserved benefits in the RSA.

Division 4.4 - Rollover and transfer of benefits

Regulation 4.30 - Interpretation

Regulation 4.30 provides that, for the purposes of the provisions in Division 4.4 which deal with the rollover and transfer of benefits, 'consent' from an RSA holder or a member of a superannuation entity can either be: written consent; or

any other form of consent determined by the Insurance and Superannuation Commissioner as sufficient in the circumstances.

Recent review of regulatory arrangements for superannuation has recognised the expanding role of electronic information transfer in the business community and the desire and need for superannuation providers to adopt and accommodate these practices in their administration activities. This included the use of electronic means for gaining instructions from clients and the authority to act in accordance with those instructions.

As such, this regulation gives the Commissioner a discretion to determine those arrangements which, while not being 'written consent', would constitute an appropriate form of authority or consent for a benefit to be rolled over or transferred. This is consistent with the view that the superannuation system should be flexible enough to cater for the expanding role of electronic means of communication and that this should extend to adopting practices which facilitate holders being able to instruct their RSA provider by electronic means.

The Commissioner's discretion to determine acceptable non-written forms of RSA holder and member authority or consent can be exercised both individually and on a class basis. It is a 'reviewable decision' under subregulation 1.03(1), and therefore may be subject to the provisions of Division 6.1.

Regulation 4.31 - Operating standards

Regulation 4.31 is an operating standard that prescribes that, subject to regulation 4.34, an RSA institution ('the receiving RSA institution') must not accept a rollover or transfer of a benefit from another RSA or a regulated superannuation fund or approved deposit fund ('the transferring entity') into an RSA if.

- * the receiving RSA institution has reasonable grounds to believe that the benefit being rolled over or transferred is being rolled over or transferred on the basis of a belief held by the RSA provider or trustee of the transferring entity (as applicable) that the receiving RSA institution has received the holder's or member's consent to the rollover or transfer; and
- * the receiving RSA institution has not in fact received that consent.

As explained above in regulation 4.30, this consent may either be written or in a form determined by Commissioner as sufficient in the circumstances.

This regulation is closely related to regulations 4.32 and 4.33. Under regulations 4.32 and 4.33 an RSA provider ('the transferring entity') will be able to rollover or transfer a holder's benefits from an RSA if the RSA provider has reasonable grounds to believe that the RSA institution or trustee of the superannuation entity into which the benefits will be rolled over or transferred ('the receiving entity') has received consent to the rollover or transfer from the holder. In this scenario, the importance of regulation 4.3 1 is that if:

- * the receiving entity has reasonable grounds to believe that the transferring entity is rolling over or transferring the benefit on the basis of a belief held by the transferring entity that has the receiving entity received the holder's or member's consent;

then regulation 4.31 (and its equivalent provision in the SIS regulations, regulation 4.12) will prevent the receiving entity from accepting that rollover or transfer unless;

- * the receiving entity does, in fact, have that consent.

As a result, regulation 4.31 will help preserve the requirement that a holder's benefits cannot normally be rolled over or transferred to another RSA or superannuation entity without the holder's consent.

As mentioned above, this regulation is subject to regulation 4.34.

Regulation 4.32 - Rollover

Regulation 4.32 provides that except as otherwise provided by the Act, benefits of a RSA holder in an RSA cannot be rolled over unless:

- * the RSA provider ('the transferring entity') has the holder's consent to the rollover; or
- * the transferring entity has reasonable grounds to believe that the RSA institution providing the RSA, or the trustee of the superannuation entity, into which the benefits are to be rolled over ('the receiving entity') has that consent.

It is intended that the circumstances in which the transferring entity would have reasonable grounds for believing the receiving entity has consent would include:

- * circumstances where the receiving entity advises the transferring entity that they have consent from the RSA holder; and
- * circumstances where the receiving entity may not formally advise the transferring entity that they have the RSA holder's consent, but where the receiving entity initiates a request (which may be by electronic means) for a rollover of the holder's benefits in a manner which the transferring entity considers shows that the receiving entity has the holder's consent.

Regulation 4.33 - Transfer

Regulation 4.33 provides that except as otherwise provided by the Act, benefits of a RSA holder in an RSA must not be transferred unless:

- * the RSA provider ('the transferring entity') received the holder's consent to the transfer; or
- * the transferring entity has reasonable grounds to believe that the RSA institution providing the RSA, or the trustee of the superannuation entity into which the benefits are to be transferred ('the receiving entity'), has that consent.

It is intended that the circumstances in which the transferring entity would have reasonable grounds for believing the receiving entity has consent would include:

- * circumstances where the receiving entity advises the transferring entity that they have consent from the RSA holder; and

* circumstances where the receiving entity may not formally advise the transferring entity that they have the RSA holder's consent, but where the receiving entity initiates a request (which may be by electronic means) for a transfer of the holder's benefit in a manner which the transferring entity considers shows that the receiving entity has the holder's consent.

Regulation 4.34 - When RSA holder's consent need not be given

Regulation 4.34 provides that the benefits of an RSA holder in an RSA may be transferred to another RSA provided by an RSA institution without the holder's consent in certain circumstances.

These circumstances are if the transfer is a direct result of.

- * a takeover of the RSA provider with which the person previously held an RSA by that RSA institution or a related corporation of the RSA institution;
- * a merger involving the RSA provider with which the person previously held an RSA and which results in the creation of the RSA institution; or
- * the transfer of any or all of the assets and liabilities of the RSA provider to the RSA institution under a provision of the *Banking Act 1959*, the *Life Insurance Act 1995* or any other law of the Commonwealth, a State or a Territory, under a voluntary transfer of engagements, or on the request of a prescribed regulatory agency.

The prescribed regulatory agencies in this context are outlined in regulation 6.12.

PART 5 - CONTRIBUTION STANDARDS

BACKGROUND

This Part sets out the rules relating to the circumstances in which contributions made by RSA holders or employers can be accepted by RSA institutions. The rules are consistent with the principle that superannuation is a means of redistributing income during a person's working life to their retirement years and are equivalent to those applying to contributions made to non-defined benefit funds in Part 7 of the SIS Regulations. It should be noted that contributions can only be paid to an RSA institution.

Regulation 5.01 - Interpretation

This regulation provides that expressions used in Part 5 that are defined for the purposes of Part 3 have the same meanings as in that Part.

Regulation 5.02 - Operating standards

Regulation 5.02 provides that it is an operating standard for RSA institutions that they must not accept contributions in respect of an RSA holder, except in accordance with this Part.

Regulation 5.03 - Acceptance of contributions

Regulation 5.03 sets out the circumstances in which RSA institutions may accept contributions in respect of an RSA holder. The circumstances in which contributions may be accepted vary depending on the age of the RSA holder. This reflects the broad policy intention that persons should only be allowed to contribute until retirement age (for example, 65 years), while

recognising that many people work past age 65, and also that many awards require employers to pay superannuation contributions in respect of employees aged 65 and over.

Subregulation 5.03(1) provides that an RSA institution may only accept contributions in respect of an RSA holder aged under 65 years if..

- * the contributions are mandated employer contributions. That is, the contributions are made by an employer under an industrial award or to satisfy Superannuation Guarantee requirements (including shortfall components); or
- * the contributions are not mandated employer contributions and the RSA holder is, or was, in the last two years gainfully employed for at least 10 hours per week; or
- * the contributions are not mandated employer contributions and the RSA holder is prevented by ill-health from engaging in employment of the kind that he or she engaged in at the onset of the ill-health, being gainful employment for at least 10 hours per week; or
- * the contributions are not mandated employer contributions and the RSA holder is on 'authorised leave' from their employer, for the purposes of raising children, and the holder has been on that leave for less than seven years consecutively. In addition, the RSA holder must have a statutory or contractual right to return to employment at the end of the leave. This provision ensures that people in such situations can continue to save for their retirement, provided that the person continues to be in an employment relationship.

A definition of 'authorised leave' is provided in subregulation 5.03(2). This leave must be: approved by the RSA holder's employer; or authorised by a Commonwealth, State or Territory law; or authorised by an award made, or agreement certified, by an industrial authority.

Subregulation 5.03(3) allows contributions to be accepted in respect of RSA holders who are between the age of 65 and 70, if the contributions are attributable to mandated employer contributions (that is, the contributions are being made by an employer under an industrial award) or the RSA holder is gainfully employed on a part-time or full-time basis (that is, they are at least gainfully employed for at least 10 hours a week). This amendment gives effect to the Treasurer's announcement of 20 August 1996, entitled "Age limit for superannuation contributions increased".

Subregulation 5.03(4) allows an RSA institution to accept contributions in respect of an RSA holder aged 70 or over only where the contributions are mandated employer contributions (that is, the contributions are being made by an employer under an industrial award). This subregulation allows the accommodation that was given by Modification Declaration No. 5 (No GN 49 of 14 December 1994) for mandated employer contributions made under industrial agreements or awards to regulated superannuation funds to extend to RSAs, on the grounds of competitive neutrality. (Modification Declaration No. 5 was inserted into the SIS Regulations using the Insurance and Superannuation Commissioner's modification powers under the SIS Act, and took effect from 1 December 1993). '

Subregulation 5.03(5) allows an RSA institution to accept contributions made after the periods specified in subregulations 5.03(1), (3) and (4) if the RSA institution is reasonably satisfied that the contribution concerned is in respect of such a period, even if it later transpires that the contribution was not in respect of such a period.

PART 6 - MISCELLANEOUS

BACKGROUND

This Part prescribes a number of miscellaneous regulations relating to the reconsideration and review of decisions, matters prescribed or specified in relation to RSA institutions or providers, information to be given to the Commissioner and to the Commissioner of Taxation and other matters.

Division 6.1 - Reconsideration and review of decisions

Regulation 6.01 - Notice of reviewable decisions and reasons for those decisions

Regulation 6.01 provides that the Commissioner must give notice of a 'reviewable decision' (defined in subregulation 1.03(1)), and the reasons for the decision, to the person at whose request the decision was made. This is to give effect to natural justice considerations.

The regulation requires that the notice also include a statement outlining the person's right to ask the Commissioner to reconsider the reviewable decision and, if the Commissioner confirms or varies the decision as a result of such a reconsideration, the person's right of appeal to the Administrative Appeals Tribunal. The validity of the original decision will not, however, be affected if the Commissioner fails to comply with these requirements.

Regulation 6.02 - Reconsideration of certain decisions

Regulation 6.02 provides that a person who is affected by a reviewable decision may give notice to the Commissioner to reconsider the decision. Such notice must be in writing, setting out the reasons for the request, and be given to the Commissioner within 21 days after the date on which the person first receives notice of the decision, or such longer period as the Commissioner allows.

The Commissioner must then reconsider the decision and may confirm, revoke or vary the decision. Where the Commissioner does not confirm, revoke or vary the decision within 60 days after receipt of a request to reconsider the decision, the decision is deemed to have been confirmed by the Commissioner.

Regulation 6.03 - Review by Tribunal of reconsidered decisions

Regulation 6.03 enables a person affected by a decision, that has been confirmed or varied by the Commissioner, to make an application to the Administrative Appeals Tribunal for a review of a decision.

Division 6.2 - Matters prescribed or specified in relation to RSA institutions and providers

Regulation 6.04 - Application for approval as an RSA institution

Section 23 of the Act provides for certain constitutional corporations (being a bank, building society, credit union, life insurance company or prescribed financial institution) to apply for approval as an RSA institution for the purposes of the Act and sets out requirements relating to an application.

The application must be in the approved form, contain the information required by the form and be accompanied by an application fee of the prescribed amount.

Regulation 6.04 provides that, for the purposes of paragraph 23(2)(c) of the Act, the prescribed application fee is \$500.

The application fee is intended to provide for full cost recovery of the Insurance and Superannuation Commission's assessment of applications by banks, building societies, credit unions, life insurance companies and prescribed financial institutions for approval as an RSA institution.

Regulation 6.05 - Circumstances in which a person may become RSA holder

Subsection 51 (1) of the Act provides that an RSA institution must not, intentionally or recklessly, allow a person to become an RSA holder unless that person, or the employer of that person, has made an eligible application or has applied in prescribed circumstances.

Regulation 6.05 outlines the circumstances in which a person will be taken to have applied in prescribed circumstances to become an RSA holder with an RSA institution and therefore need not provide an eligible application.

These prescribed circumstances include where a person becomes the holder of an RSA with an RSA institution as a direct result of.

- * a takeover of the RSA provider with which the person previously held an RSA by that RSA institution or a related corporation of the RSA institution;
- * a merger involving the RSA provider with which the person previously held an RSA and which results in the creation of the RSA institution; or
- * the transfer of any or all of the assets and liabilities of the RSA provider to the RSA institution under a provision of the *Banking Act 1959*, the *Life Insurance Act 1995* or any other law of the Commonwealth, a State or a Territory, under a voluntary transfer of engagements, or on the request of a prescribed regulatory agency.

The prescribed regulatory agencies in this context are outlined in regulation 6.12.

Regulation 6.06 - Requirements concerning how certain money to be dealt with

Section 61 of the Act requires an RSA provider to comply with the requirements of the regulations in relation to certain money. This includes where an RSA provider receives money in respect of an application but is not in a position to immediately open the RSA to which the application relates; and where an RSA provider receives an amount of money from the employer of an RSA holder which is intended as a contribution but which, if accepted as a contribution, would result in the RSA provider contravening sections 34 or 182 of the Act.

Regulation 6.06 provides that the RSA provider must pay the money into a suspense account (that need not be interest-bearing). A payment into the suspense account must be recorded in a register which shows payments to, and withdrawals from, the account. The suspense account should be guaranteed by the RSA provider. Only one suspense account is needed in respect of all money held under this regulation.

The regulation provides that where money is held in the suspense account because the RSA provider is not in a position to immediately open the RSA (that is, where subsection 61 (1) of the Act applies), the RSA provider must retain the money in the suspense account until the RSA is provided or until the money is refunded to the applicant or the employer at his or her request.

Alternatively, where subsection 61(2) of the Act applies, that is, the money is held in the suspense account because the RSA provider is unable to accept the contribution (as it would result in a contravention of section 34 or 182 of the Act), the regulation requires the RSA provider to pay that money to an eligible rollover fund (ERF) as soon as practicable.

This will ensure that where the RSA provider is unable to accept a contribution either because its approval has been suspended or revoked (section 34) or because it has been directed by the Commissioner not to accept contributions from a specified employer (section 182), that money intended as a contribution will be paid to an eligible rollover fund.

Where an employer intends the money to be a contribution to an RSA, even though the RSA provider will be unable to accept it as a contribution, because this money is paid by the RSA provider to an ERF, the employer will not incur a liability under the *Superannuation Guarantee Charge Act 1992* for failure to make those contributions. This will include situations in which an employer makes a contribution to an RSA before the Superannuation Guarantee deadline but, due to administrative processes for example, the money is not paid to an ERF by the RSA provider until after the deadline.

Regulation 6.07 - Statements by experts - keeping of written consents

Section 77 of the Act provides that, where a regulated document includes a statement made by or based on a statement of an expert, the written consent of that expert to the inclusion of that statement must be obtained and the consent, or copy of the consent, must be kept by the RSA provider for a prescribed period.

Regulation 6.07 provides that this consent, or copy of the consent, must be kept for a period of 10 years from the date on which it is received by the RSA provider. A copy of the consent may be kept in a physical form (that is, on paper) or in electronic form that is capable of being reproduced on paper.

Division 6.3 - Information to be given to Commissioner or Commissioner of

Taxation and related matters

Regulation 6.08 - Operating standards - disclosure of information to Commissioner

Regulation 6.08 prescribes as an operating standard that an RSA provider is to notify the Commissioner in writing as to any change in the name, address and contact details of the RSA provider within one month of the occurrence of the change.

This is to ensure that the Insurance and Superannuation Commission has accurate and current details in respect of the RSA provider at all times.

Regulation 6.09 - Operating standards - information regarding lost RSA holders

Regulation 6.09 requires RSA providers to give to the Commissioner of Taxation, a statement in the approved form containing specified information about RSA holders who became reportable as lost RSA holders, and those lost RSA holders who ceased to be lost RSA holders, during each half-year.

A lost RSA holder will become reportable to the Commissioner of Taxation if he or she is a lost RSA holder at the end of an RSA holder reporting period which ends after 1 July 1997.

A lost RSA holder will not be reportable if he or she ceased to be the holder of the RSA, ceased to be a lost RSA holder, or was previously reported and the RSA provider reasonably believes that the holder is recorded on the register of lost RSA holders.

The information regarding each holder who becomes reportable or each holder who ceased to be a lost RSA holder must be provided to the Commissioner of Taxation on or before the date specified in the regulations. The Commissioner of Taxation may extend this date, in relation to a

particular RSA or class of RSAs, at any time before or after the specified date. The ability of the Commissioner of Taxation to extend this date for an RSA provider who has already reported late, or who has not yet reported late but anticipates reporting later, will allow RSA providers who are experiencing genuine difficulty in meeting the deadline due to unforeseen problems additional time in which to report.

The Commissioner of Taxation may require or permit the statement to be electronically lodged.

Information provided by RSA providers in the lost RSA holder statements will be used by the Commissioner of Taxation to establish and maintain a register of Lost RSA holders which will form an important part of the process by which the benefits of compulsory superannuation arrangements are secured and eventually paid to the rightful owners.

Regulation 6.10 - Lodgment of annual returns

Section 44 of the Act requires an RSA provider to give to the Commissioner within the prescribed period after each year of income, a return and a certificate in the approved form, and a certified copy of the report given to the RSA provider by an approved auditor.

Regulation 6.10 prescribes that period as five months after the end of each year of income of the RSA provider.

Division 6.4 - Other matters

Regulation 6.11 - RSA holder benefits - specified age

Section 15 of the Act provides that one of the 'primary benefits' for which an RSA must be maintained is the provision of benefits for RSA holders on the attainment of the prescribed age (other events being retirement or death).

Regulation 6.11 prescribes this age as 65 years.

Regulation 6.12 - Prescribed regulatory agency

Regulation 6.12 prescribes the regulatory agencies for the purposes of specific provisions in the Act and regulations. The agencies prescribed are the relevant prudential supervisors, that is, in the case of banks - the Reserve Bank of Australia; and in the case of building societies and credit unions - the Australian Financial Institutions Commission and State Supervisory Authorities.

These agencies are prescribed for the following purposes:

- * subsection 26(2) of the Act which requires the prescribed regulatory agency to be consulted before the Commissioner may make a decision to refuse an application for approval as an RSA institution;
- * subsection 33(3) of the Act which requires the prescribed regulatory agency to be consulted before the Commissioner makes a decision to suspend or revoke the approval of an RSA institution;
- * paragraph 96(1)(c) of the Act which allows the Commissioner to appoint a member of staff of a prescribed regulatory agency as an inspector to conduct an investigation of an RSA provider;

- * paragraph 182(2)(b) of the Act which requires the prescribed regulatory agency to be consulted before the Commissioner issues a written notice directing an RSA institution not to accept any contributions made to an RSA by a specified employer;
- * regulation 2.07 which outlines when information need not be given to RSA holders;
- * regulation 4.34 which outlines when an RSA holder's consent need not be given for the transfer of benefits from the RSA to another RSA or superannuation entity; and
- * regulation 6.05 which outlines the circumstances in which a person will be taken to have applied in prescribed circumstances to become an RSA holder with an RSA institution.

Regulation 6.13 - Period to notify RSA holder or employer of suspension or revocation

Section 34 of the Act provides that, when the approval of an RSA institution is suspended or revoked, the RSA provider must notify all existing RSA holders and employers making contributions to an RSA of this occurrence within a prescribed period.

Regulation 6.13 prescribes this period as 28 days.

Regulation 6.14 - Orders etc of the Superannuation Complaints Tribunal to be complied with

Regulation 6.14 prescribes as an operating standard that an RSA provider must not fail, without lawful excuse, to comply with an order, direction or determination of the Superannuation Complaints Tribunal.

This will provide for direct action to be taken against an RSA provider that contravenes section 39 of the Act by intentionally or recklessly failing to comply with an order, direction or determination of the Tribunal.

Regulation 6.15 - Amount to be transferred

Section 50 of the Act provides that an RSA provider has a duty to transfer an RSA holder's balance in the RSA on the request of the RSA holder. The amount of the RSA to be transferred is to be worked out in accordance with the regulations.

Regulation 6.15 provides that the amount of the RSA is the RSA holder's withdrawal benefit in the RSA.

'Withdrawal benefit' is defined in subregulation 1.03(1) as the total amount of benefits that would be payable to the RSA holder, and in respect of the RSA holder, to another RSA or trustee of a superannuation entity, if the RSA holder voluntarily ceased to be an RSA holder.

Regulation 6.16 - Period within which audit report must be given

Section 65 of the Act requires an RSA provider to make necessary arrangements to enable an approved auditor to give the RSA provider, within the prescribed timeframe, a report as to the degree of its compliance with certain provisions of the Act and regulations.

Regulation 6.16 provides that such a report must be given within five months after the year of income to which it relates.

Regulation 6.17 - Payment of benefit to eligible rollover fund

Section 89 of the Act facilitates the payment of amounts in RSAs to eligible rollover funds (ERFs). RSA providers are given the power to apply to the trustee of an ERF, on behalf of the holder of an RSA, for the issue of a superannuation interest in the ERF. Consideration for the issue, which is equal to the amount ascertained in accordance with the regulations, is to be paid by the RSA provider on behalf of the RSA holder.

Regulation 6.17 prescribes the amount of such consideration. Except where the RSA provider has received an amount of money to which subsection 61(2) of the Act applies, the amount of consideration is the amount of the RSA holder's withdrawal benefit in the RSA.

'Withdrawal benefit' is defined in subregulation 1.03(1) as the total amount of benefits that would be payable to the RSA holder, and in respect of the RSA holder, to another RSA or trustee of a superannuation entity, if the RSA holder voluntarily ceased to be an RSA holder.

Where the RSA provider has received an amount of money to which subsection 61(2) of the Act applies (that is, the RSA provider receives an amount of money from an employer which is intended as a contribution, but which, if accepted would result in the RSA provider contravening sections 34 or 182 of the Act) the amount of the consideration should be the amount so received by the RSA provider.

Regulation 6.18 - Report of inspector - prescribed agencies

Section 114 of the Act provides, in part, that an inspector must prepare a report in respect of an investigation which is undertaken into the affairs of an RSA provider. The organisations to which a report may be given if it relates to a contravention of a law of the Commonwealth, a State or Territory are specified in the Act and includes a prescribed agency.

Regulation 6.18 prescribes those agencies to whom the Commissioner may give a copy of such an inspector's report.

Regulation 6.19 - Statements made at an examination - manner of authentication

Subsection 120(7) of the Act provides that if a written record of an examination of a person is signed by the person or authenticated in any other prescribed manner, the record is, in a proceeding, prima facie evidence of the statements it records.

Regulation 6.19 prescribes the manner in which a written record of an examination may be authenticated. The written record must be produced as soon as practicable after the examination is concluded and endorsed by a person (other than the person examined at the examination) who was present throughout the examination and reads and endorses the written record as soon as practicable after it is produced. The endorsement must indicate that the record is a true record of what was said in the examination and must be signed and dated by the endorser.

Regulation 6.20 - Definition of "financial sector supervisory agency"

Section 191 of the Act prohibits RSA standards officers from disclosing protected, information or producing protected documents, other than for the purposes of the Act or any other Act administered by the Commissioner, which have been acquired in the course of performing duties as an RSA standards officer.

A number of exceptions to this are, however, provided for in section 191 of the Act and include circumstances in which the protected information is disclosed to, or protected documents

produced to, a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers.

'Financial sector supervisory agency' is defined in subsection 191(20) of the Act as meaning 'a person or body declared by the regulations to be a financial sector supervisory agency for the purposes of this section'.

Regulation 6.20 prescribes the financial sector supervisory agencies for the purposes of subsection 191(20) of the Act and includes the relevant prudential supervisors, the Australian Securities Commission and the Commissioner of Taxation.

Regulation 6.21 - Definition of "law enforcement agency"

Section 191 of the Act prohibits RSA standards officers from disclosing protected information or producing protected documents, other than for the purposes of the Act or any other Act administered by the Commissioner, which have been acquired in the course of performing duties as an RSA standards officer.

A number of exceptions to this are, however, provided in section 191 of the Act and includes circumstances in which the protected information is disclosed to, or protected documents produced to, a law enforcement agency. This must be for the purposes of the performance by the agency of any of its functions in relation to an offence against a law of the Commonwealth, of a State or of a Territory.

'Law enforcement agency' is defined in subsection 191(20) of the Act as meaning 'a person or body declared by the regulations to be a law enforcement agency for the purposes of this section'.

Regulation 6.21 prescribes the law enforcement agencies for the purposes of subsection 191(20) of the Act.

SCHEDULE 1 - PAYMENT LIMITS

Schedule 1 determines the payment limits to be used for the purposes of subregulation 1.07(2).

Regulation 1.07 outlines the meaning of 'pension' for the purposes of section 16 of the Act, and provides that any pension payments in a year, except in the case of a commutation of any or all of the pension, must not be larger in total than the maximum limits calculated in accordance with Schedule 1 and must not be smaller in total than the minimum limits calculated in accordance with Schedule 1. The regulation also provides that before full commutation or transfer of the pension, a payment must be made which is at least equal to the minimum limits calculated in accordance with Schedule 1.

Pension payments in a year are restricted to fall within the maximum and minimum limits in order to ensure that the pension does not operate as an 'at call' product but instead as a genuine income stream product, offering a reasonable source of income during retirement. The maximum payment limit aims to ensure that payments from the pension last until at least age 80, thereby reducing 'double dipping' on the age pension. The minimum payment limit is aimed at ensuring a reasonable income is taken each year so as to limit tax deferral or possible estate planning.

The formula for determining the maximum and minimum limits are set out in Schedule 1 and are based on the maximum and minimum pension valuation factors (PVFs) respectively and the amount in the RSA. The PVFs and amount in the RSA to be used in calculating these limits are those on 1 July of the financial year in which the payments are made or, if it is the year in which

the pension payments commence, the commencement day (being the first day of the period to which the first payment of the pension relates). The maximum and minimum PVFs are set out in Table 1 of the Schedule and relate to the age of the beneficiary (or in the case of the death of the original beneficiary, the age of the reversionary beneficiary). Where the reversionary beneficiary is a child beneficiary (defined in clause 7 of Schedule 1) the alternative maximum and minimum PVFs provided in Table 2 are to be used.

In relation to the calculation of the maximum and minimum limits for reversionary benefits, the Schedule requires that these be calculated on or before the 1 July next after the death of the original beneficiary. If the death of the original beneficiary occurs between 1 April and 30 June, the recalculation may be extended beyond 1 July in that year to the earliest normal RSA recalculation date after the financial year in which the death occurs.

SCHEDULE 2 - CONDITIONS OF RELEASE AND CASHING RESTRICTIONS - PRESERVED BENEFITS AND RESTRICTED NONPRESERVED BENEFITS

Schedule 2 lists, for the purposes of Part 4 of the Regulations, the conditions of release which will trigger the release of benefits from an RSA and the cashing restrictions which may apply in respect of each condition of release.

Under the provisions of Part 4 of the Regulations, preserved and restricted nonpreserved benefits in an RSA may only be paid to the RSA holder upon satisfaction of a condition of release.

Regulation 4.01 defines the term 'condition of release' and provides that the holder of an RSA is taken to have satisfied a condition of release if the event specified in that condition has occurred in relation to the RSA holder.

The conditions of release specified in Schedule 2 include:

- * retirement;
- * death;
- * permanent incapacity;
- * permanent departure from Australia;
- * severe financial hardship;
- * attaining age 65;
- * termination of gainful employment with an employer who had, or any of whose associates had, at any time, contributed to the RSA in relation to the RSA holder;
- * temporary incapacity; and
- * any other condition, if expressed to be a condition of release, in an approval under paragraph 15(4)(d) of the Act.

ATTACHMENT B

REGULATION IMPACT STATEMENT FOR THE RETIREMENT SAVINGS ACCOUNTS REGULATIONS

Background

On 20 August 1996 the Treasurer announced that banks, building societies, credit union and life insurance companies will be allowed to offer Retirement Savings Accounts (RSAs) from 1 July 1997. RSAs will be another superannuation product, however, they differ from traditional superannuation products in that they will not be required to be offered under a trust structure.

Effectively, RSAs will be a deposit with a bank, building society, or credit union, or a life policy with a life insurance company which are held either on the balance sheet of the deposit taking institution, or statutory fund of the life insurance company. However, the Treasurer's announcement stated that "RSAs will generally be required to comply with the retirement income and other non-prudential superannuation standards currently outlined in the *Superannuation Industry Supervision Act 1993* [sic], income tax legislation and so on".

The introduction of RSAs will complement existing arrangements by increasing competition and expanding the range of products in the superannuation industry. This will put downward pressure on fees and charges and encourage better standards of service. RSAs will also provide a flexible product to accommodate and combine small and irregular contributions. This will be of significant benefit to employees with broken work patterns such as women and itinerant workers. They will also be attractive to people who are about to retire as a safe alternative to place their superannuation money.

Consistent with the Treasurer's announcement, the Retirement Savings Accounts Regulations (the Regulations) prescribe similar retirement income and non-prudential superannuation standards, as those which are imposed on superannuation funds by the Superannuation Industry (Supervision) Regulations (the SIS Regulations).

A Statement of the issues giving rise for the need for the proposed legislative instrument

The Regulations will complement the *Retirement Savings Accounts Act 1997* (the RSA Act) which provides the framework for the regulation of RSAs. In keeping with the superannuation nature of RSAs and the Treasurer's announcement, RSAs will be required to comply with similar regulations applying to superannuation funds. Without these requirements there will be inconsistencies and gaps in the regulation of RSAs and existing superannuation products. These inconsistencies would undermine the role perceived for RSAs in the Government's retirement incomes policy objectives (ie, providing a lower risk superannuation investment which will provide for the retirement of individuals).

The Regulations cover such matters as:

- * the disclosure of information to prospective RSA holders and annual information to current RSA holders;
- * the protection of amounts less than \$1,000 from erosion by fees and charges;
- * access by the RSA holder to money held in an RSA;
- * the form of payment of an RSA; and

- * who can contribute to an RSA.

B The objective of the instrument

The objects of the instrument are to:

- * prescribe requirements on RSAs which are consistent with the Government's retirement incomes policy by requiring RSAs to comply with similar requirements as existing superannuation products;
- * provide adequate supervision of these requirements; and
- * ensure that RSAs do not have an unfair competitive advantage over traditional superannuation products which must comply with similar requirements described above.

c Identification of alternatives

The following options were identified as being capable - at least partly - of achieving the objectives outlined above.

1. Proceed with proposed regulations

That the retirement incomes standards mentioned above be prescribed by Regulations.

2. No specific action

That no regulations be made for the purposes of the RSA Act and instead the Insurance and Superannuation Commission (ISC) use moral suasion to make RSA providers comply with similar requirements applying to superannuation funds.

3. Self Regulatory Codes

That the proposed requirements prescribed by the Regulations instead be prescribed under a self regulatory code agreed to by all RSA providers.

4. Information campaign for RSA providers

That the proposed regulations not proceed and instead the ISC educate RSA providers on best practices when dealing with RSAs.

D Impact analysis

The following stakeholders will be affected directly or indirectly by the proposed legislative instrument:

- * *RSA providers - banks, building societies, credit unions and life insurance companies* which offer RSAs will have to set up systems to comply with the regulations;
- * *Insurance and Superannuation Commission - the ISC* will have responsibility to regulate RSA providers to ensure that they are complying with the retirement income standards;
- * *RSA holders - the regulations* help protect small account holders and provide information on their benefits in the RSA;

* *Current superannuation providers - the regulations will ensure a level playing field between RSAs and other superannuation products.*

1 Proceed with proposed regulations

COSTS

The Regulations impose certain requirements on RSAs and RSA providers. An RSA provider who is found to have breached any of the Regulations may be liable for a penalty of up to 100 penalty units. As such, RSA providers will need to put in place internal systems to ensure compliance with the RSA Act and the Regulations, and staff training processes on the requirements of the Act and Regulations. This will involve some initial establishment costs and ongoing monitoring costs to ensure that the RSA provider is complying with the Regulations.

It is difficult to quantify the costs of compliance by the RSA providers with the Regulations. For example, we are aware that the Credit Union Services Corporation (Australia) Limited is designing a system which can be outsourced to credit unions to ensure compliance with the RSA Act and Regulations. They will also produce staff training manuals. Other RSA providers may choose to redesign existing systems, or use the system of a subsidiary company which sells superannuation funds. The overall cost of each of these options will vary.

It is also difficult to determine the total cost to the RSA industry as we are unaware of how many RSA providers there will be. This will not be known until sometime after 1 July 1997.

RSA providers will also incur costs in complying with the disclosure rules prescribed by the Regulations. This is also difficult to quantify as some RSA providers provide information either in a glossy paper version, or via electronic printouts. Each option has different costs with the glossy paper version being the most expensive. However, in keeping with their simple capital guaranteed nature, the disclosure rules for RSAs are significantly less detailed (and less costly) than the disclosure rules applying to traditional 'balanced portfolio' superannuation products.

The majority of these administration costs are likely to be passed onto the RSA holders. The nearest existing product to RSAs are cash based superannuation products offered by fund managers. It has been estimated that the costs of managing these products range from 1% to 2.5% of the amount in the fund each year.⁽¹⁾ However, RSA holders will receive some benefits from the RSA provider complying with the Regulations. These are outlined below.

(1) Taken from evidence given by " Richard Gilbert, Executive Director, Investment Funds Association of Australia, to the Senate Select Committee on Superannuation hearings on the RSA legislation (Hansard, Canberra Tuesday, 11 February 1997).

There will also be a cost to the ISC in supervising the compliance of RSA providers with the Regulations. The cost of administering the supervisory framework for RSAs has been calculated as \$132,000 in the 1996/1997 financial year, \$495,000 in the 1997/1998 financial year and \$396,000 in the 1998/1999 financial and for each subsequent financial year. These costs, however, will be fully recovered by a supervisory levy imposed on RSA providers under the *Retirement Savings Accounts (Supervisory Levy) Act 1996*. Therefore, there will be no direct cost to the Government.

BENEFITS

As mentioned, the Regulations impose requirements on RSA providers to provide information to prospective RSA holders and annual information to current RSA holders. This information has a very important role in ensuring that consumers are well informed.

The capital guaranteed nature of RSAs will suit certain individuals, such as, those nearing retirement, or itinerant or casual workers who wish to combine their superannuation. However, given the long term nature of superannuation, it may not be suitable for those just starting in the workforce to maintain an RSA for their entire working lives and they may be better served by being in a traditional superannuation fund which may provide the person greater returns over the longer term. The provision of the information prescribed by the Regulations will allow prospective RSA holders and RSA holders to make an informed decision as to opening an RSA, or continuing to be an RSA holder.

The Regulations will also protect those consumers with less than \$ 1,000 in their account from erosion by fees and charges. This is highly beneficial to RSA holders as it will allow them to accumulate an amount in an RSA which is substantial enough to withstand erosion by fees and charges.

The Regulations also allow for the ISC to effectively supervise RSAs to ensure compliance with the retirement income standards and to make sure that RSAs play an important role in the Government's retirement incomes policy. By prescribing the rules in subordinate legislation, RSA providers will be legally obligated to comply and there is greater certainty that RSAs will be used for genuine retirement purposes. This is especially important given that RSAs will be eligible for the concessional taxation treatment available to other superannuation products. The failure to properly regulate these requirements may result in abuse of these tax concessions, for example, providing the concessions to people who are currently not eligible for the concessions.

The Regulations will also promote a competitively neutral environment between RSAs and superannuation funds as they will require RSAs to comply with similar requirements imposed on the more traditional superannuation products supervised under the SIS legislation. For example, without the Regulations, an RSA provider may structure an RSA so that a person can access their superannuation money at an earlier age than persons in a superannuation fund can.

This option meets the stated objectives of creating a 'level playing field' between RSAs and other (trust-based) superannuation products, enabling the ISC to effectively enforce these requirements and ensuring that RSAs are used for genuine retirement purposes consistent with the Government's broader retirement incomes policy.

2 *No specific action*

COSTS

This option would require the ISC to issue non-enforceable best practice guidelines as to operation of RSAs. The costs associated with this option for RSA providers would be dependent on the level of compliance with the guidelines.

However, a high level of non-compliance could have substantial costs for the Government in the form of increased tax concessions and increased old-age pension outlays. To encourage people to save for their retirement, the Government has made superannuation a taxed advantaged investment. To ensure that this tax advantaged money is used for genuine retirement purposes, superannuation funds must comply with the retirement incomes standards which include a requirement that superannuation funds generally cannot pay out benefits until a person has reached age 65, or has reached age 55 and retired from the workforce.

Without similar enforceable requirements placed on RSAs, an RSA provider may pay out benefits before this time, therefore providing superannuation tax concessions to short term investment vehicles. This will cause a loss in Government revenue as people take advantage of the concessional status of RSAs for non-superannuation purposes.

Also, the absence of any restrictions on when a person can get access to their superannuation benefits could have the effect of increasing Government outlays for old-age pensions. Unfettered payments from an RSA will reduce the amount of benefits available on retirement thereby increasing the Government's liability in providing for that person's retirement.

The payment standards are also important as they ensure that superannuation money is used for retirement purposes. The standards require payments to be made after a person has attained age 65 and has stopped working. These standards protect against 'estate planning' where a person uses the tax concessions provided to superannuation as a tax effective means of providing something for their dependents when they die, rather than providing for their retirement.

There are also restrictions placed on who can contribute to superannuation funds and therefore, take advantage of the tax concessions. By not enforcing these requirements, RSAs could open up the tax concessions to those people who currently cannot contribute to a superannuation fund (eg, those who have retired, or are not gainfully employed). This would again cause a loss in Government revenue.

Non-enforceable guidelines may not be sufficient to protect benefits less than \$ 1,000 from erosion by fees and charges. This may cause a cost to the RSA holder as their superannuation money will not have the same protection as other superannuation money. Nor would they guarantee consistent outcomes in respect of disclosure, as there may not be adequate sanctions for contravention of the guidelines. There could be an uneven distribution of information about the product amongst prospective consumers, and a higher potential for marketing abuses and sale misconduct by RSA providers.

BENEFITS

This option will lower the cost to RSA providers of complying with the RSA legislation. However, how much these costs will be reduced cannot be quantified as the RSA provider will have to have systems in place to comply with the requirements of the RSA Act. The cost of producing disclosure may also be decreased to the extent that RSA providers use existing systems. To the extent the competitive pressures reduced compliance with the ISC guidelines to minimal, lowest common denominator practices, compliance costs would be further reduced.

This option may have the advantage of reducing compliance costs for RSA providers however this would be more than outweighed by the possible cost to the Government through the early dissipation of superannuation benefits and increased pension outlays. The option also does not meet the objectives of providing adequate supervision of the superannuation standards, ensuring prospective and existing RSA holders are adequately informed, or creating a 'level playing field' with other (trust-based) superannuation products.

Option 3: Self Regulatory Codes

COSTS

A self regulatory code may actually result in more costs to the industry than proceeding with the Regulations. On top of setting up the systems to implement the code, the institutions offering RSAs would also have to bear the costs of establishing the code. As RSAs will be offered by banks, building societies, credit unions and life insurance companies, it is likely that these institutions will have differing views on how the code would be developed to meet the retirement incomes policy of the Government. Therefore, it may be difficult to gain a consensus view on the code leading to a long and costly process.

It is also unlikely that a consensus view could be reached in time to have RSAs on the market from 1 July 1997. This would result in lost opportunities for RSA providers in that they may not be able to sell RSAs until the code has been developed. It would also deprive the superannuation market of the new RSA product in the original timeframe announced by the Treasurer.

A self regulatory code may also provide an unfair competitive advantage for RSAs over other superannuation products which are regulated under the SIS legislation. This may result in a cost to the existing superannuation providers as they may lose members to what is perceived as a more relaxed RSA system.

Also, if the code is not properly regulated, or certain institutions decide not to follow the code, then the costs to the Government outlined under option 2 may also occur.

BENEFITS

A self regulatory code gives RSA providers the ability to treat RSAs in the same manner as their existing products, such as deposits. However, this may have the result of removing the superannuation characteristic from RSAs and make them more like a tax advantaged deposit than a superannuation product.

It may also provide RSA providers with an unfair competitive advantage over other superannuation providers if the code is considered to be more lenient than the requirements that superannuation funds comply with.

Any perceived benefits of a self regulatory code would be outweighed by the costs of developing and implementing the code, and also the possible costs to Government of the code not meeting the Government's retirement incomes policy, a possible lack of vigour on the part of enforcing compliance with the code, or institutions, in a highly competitive environment, deciding not to comply with the code more generally.

This option does not effectively meet the objectives of the instrument proposal as it may result in a code which does not meet the Government's retirement incomes policy and it may not provide an adequate system of supervision. It may also be more costly for the RSA providers to go down this route than merely complying with the Regulations.

4. Information campaign for RSA providers

COSTS

The costs of such an information campaign would have to be borne by the Government. The actual cost of such a campaign cannot be quantified as the number of RSA providers will not be known until sometime after 1 July 1997. The cost would also depend on how the campaign was organised and the target outcomes. For example, a set of 'best practice' circulars may be reasonably inexpensive but it may not have the desired outcome of achieving voluntary compliance. A more expensive and effective means of running a campaign would be for the ISC to run 'best practice' sessions with each RSA provider. For full effect these campaigns would have to be run on a regular and on-going basis.

The costs associated with this option for RSA providers would be equivalent to those under option 2 in that some RSA providers may comply with the spirit of voluntary compliance while others may not. The costs to an RSA provider of complying voluntarily with a set of requirements would be equivalent to complying with the regulations.

A lack of compliance would also place the same costs on the Government as option 2 due to loss of revenue through increased tax concessions, dissipation of retirement income and increased pension outlays.

Non-compliance with the spirit of the requirements would also cost consumers with amounts of less than \$1,000, by not providing the same protection from fees and charges as applies to other consumers in currently existing superannuation products or RSA providers who did comply with the requirements. Nor would an education campaign guarantee consistent outcomes in respect of disclosure, as there may not be adequate sanctions for contravention of the guidelines. There could be an uneven distribution of information about the product amongst prospective consumers, and a higher potential for marketing abuses and sales misconduct by RSA providers.

BENEFITS

The overall cost of compliance with the 'best practice' guidelines may be cheaper for some RSA providers than compliance with a set of regulations. However, as stated above this will depend on the level of compliance of the individual RSA provider.

Like option 2 this option may have the advantage of reducing possible compliance costs for RSA providers, however, this would be more than outweighed by the possible cost to the Government through the early dissipation of superannuation benefits and increased pension outlays. The option also does not meet the objectives of providing adequate supervision of the superannuation standards, ensuring that prospective and existing RSA holders are adequately informed, or creating a 'level playing field' with other superannuation products.

E Recommendation

Given the importance that the proposed retirement income standards have in relation to the Governments' retirement incomes policy, Option 1 is the preferred option. Option 1 also provides for compliance of the standards to be most effectively regulated by the ISC. Any possible benefits to RSA providers or RSA holders of Options 2 or 3, will be outweighed by the cost of a higher likelihood of a loss of Government revenue, by providing superannuation tax concessions to products which may not meet the standards, increased Government outlays on old age pensions, and reduced consumer protection.

Also, Option 1 best meets the objective' of ensuring RSAs are 'competitively neutral' in relation to other trust-based superannuation products regulated under the SIS Act and Regulations.

F Other issues

Consultation

A wide ranging consultative process was undertaken in the drafting of the Regulations with the relevant industry organisations representing the interests of the affected stakeholders. The consultation involved the release of two discussion papers (the first on 20 August 1996 by the Treasurer and the second in September 1996 by the ISC under the authority of the former Assistant Treasurer); inviting comments on the drafting instructions of the Regulations; inviting comments on drafts of the Regulations; and a meeting with stakeholders in Canberra on the draft Regulations in March 1997. The organisations consulted were the:

- * Association of Superannuation Funds of Australia;
- * Australian Association of Permanent Building Societies;

- * Australian Bankers Association;
- * Australian Consumers' Association;
- * Credit Union Services Corporation (Australia) Limited;
- * Investment Funds Association of Australia Limited;
- * Life, Investment and Superannuation Association of Australia;
- * National Credit Union Association; and
- * representatives of Philips Fox Solicitors.

The Treasury, Reserve Bank and the Australian Financial Institutions Commission were also consulted.

There is a general acceptance by these organisations of the requirements prescribed by the regulations.

Review

In accordance with the Commonwealth Government's policy of a five year sunset clause for new regulations the proposed legislation will be formally reviewed in five years. However, given that RSAs are a new product, the Regulations will be under constant review by the ISC for their appropriateness to RSA providers, their responsiveness to trends and developments in the emerging RSA market and to ensure that they remain consistent with the Government's retirement incomes policy.

Impact on competition

It is expected that Option 1 will not impact on the competitiveness of RSAs with other superannuation products. Nor will it give RSAs an unfair competitive advantage over such products. Both Options 2 and 3 may result in RSAs gaining a substantial unfair competitive advantage over other traditional superannuation products regulated under the SIS legislation.