

## **Explanatory Statement to Superannuation Industry (Supervision) Modification Declaration No. 2 of 2007**

### **EXPLANATORY STATEMENT**

#### **Prepared by the Australian Prudential Regulation Authority**

1. This Explanatory Statement accompanies Superannuation Industry (Supervision) Modification Declaration No.2 of 2007 (*MD2 of 2007*) made by APRA under section 332 of the *Superannuation Industry (Supervision) Act 1993 (the SIS Act)*. Section 332 of the SIS Act provides that APRA may, in writing, declare that a modifiable provision of the SIS Act is to have effect, in relation to a particular person or class of persons, as if it were modified as specified in the declaration. The modifiable provisions<sup>1</sup> include regulations made for the purposes of Part 3 of the SIS Act and therefore include regulation 7.04 of the *Superannuation Industry (Supervision) Regulations 1994 (the SIS Regulations)*.

#### **Background**

2. Regulation 7.04 of the SIS Regulations sets out the conditions for a regulated superannuation fund to accept contributions. Subregulation 7.04(2) provides that a fund must not accept member contributions (contributions which are not employer contributions) where the member's tax file number (TFN) has not been quoted for superannuation purposes to the trustee of the fund. Where a fund has received member contributions without having the member's TFN, sub subparagraph (4)(a)(i) of regulation 7.04 requires the fund to return the contributions within 30 days of becoming aware that the contributions do not satisfy the regulations unless the member's TFN is quoted to the fund trustee within 30 days of the fund receiving the contributions.
3. APRA was approached by industry with concerns about the impact of the TFN rule on members whose only interest in a superannuation fund was an insurance risk interest – an entitlement to a benefit on death or disability. Members with an insurance risk only interest do not maintain an account balance in the fund and do not have an investment component to their membership. Instead, member contributions to the fund are used by the trustee to meet the cost of the premiums for the insurance cover for the death and disability benefits. If the trustee is not able to accept a member's contributions due to not being able to obtain the member's TFN within 30 days, there will be no money to pay the insurance premiums due under an existing policy and the member's insurance cover may be cancelled by the insurer. Industry sought transitional relief to allow a further period of time for the trustee to obtain the member's TFN.

#### **Purpose of the instrument**

4. MD2 of 2007 applies only to regulated superannuation funds under the trusteeship of Registrable Superannuation Entity Licensees and has no application to trustees

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<sup>1</sup> *Modifiable provision* is defined in section 327 of the SIS Act.

of self managed superannuation funds regulated by the Australian Taxation Office. MD2 of 2007 provides RSE licensees with temporary relief from the obligation to return contributions within 30 days where the only interest that a member has in the fund is an insurance risk interest. MD2 of 2007 modifies regulation 7.04 to allow up to 31 December 2007 for the member to quote their TFN to the trustee or for the trustee to return the contributions to the person or entity that paid them.

### **Operation of the instrument**

5. MD2 of 2007 replaces subparagraph (4)(a)(i) of regulation 7.04. Sub-subparagraph 4(a)(i)(A) maintains the current provision whereby member contributions received without the member's TFN having been quoted for superannuation purposes are required to be returned within 30 days of the trustee becoming aware that no TFN is held unless the member's TFN is quoted within 30 days of the fund receiving the contributions.
6. Sub-subparagraph (4)(a)(i)(B) provides transitional relief where the member's only interest in the fund is an insurance risk interest. For these members, the trustee has up until 31 December 2007 to obtain the member's TFN or return the contributions to the person or entity that paid them.
7. The existing subparagraph (4)(b)(v) of regulation 7.04 applies to the return of contributions where the member has a risk insurance interest in the fund. It allows the amount of the contributions to be returned to be reduced to take into account the period of cover provided by the insurer prior to the refund of the premium.

### **Consultation**

8. APRA consulted the main industry bodies on the draft instrument. No problems with the drafting or the overall approach adopted by APRA were identified in the consultation process.

### **Commencement**

9. MD2 of 2007 comes into force from the date of registration on the Federal Register of Legislative Instruments.