

**Explanatory Statement to Superannuation Industry (Supervision) Modification
Declaration No. 3 of 2007**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority

Subregulation 7.04 of the *Superannuation Industry (Supervision) Regulations 1994*

1. This explanatory statement accompanies Superannuation Industry (Supervision) Modification Declaration No.3 of 2007 (**MD 3 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 provisions¹ 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. From 1 July 2007, subregulation 7.04(2) of the SIS Regulations provides that a trustee of a regulated superannuation fund must not accept any member contributions (contributions which are not employer contributions) if the member's tax file number (TFN) has not been quoted (for superannuation purposes) to the trustee of the fund.
3. New subregulation 7.04(4) provides that superannuation funds are required to return the relevant member contribution amounts within 30 days of becoming aware that the amounts do not satisfy the regulations. The fund is not required to return this amount if the member's TFN is quoted to the fund trustee within 30 days of receipt of the amount. New subregulation 7.04(5) provides that if a fund complies with these return arrangements the fund is taken not to have breached these regulations.
4. The ATO has identified a problem in relation to payment of government co-contributions. Co-contributions are classed as member contributions. Under the SIS Regulations, a co-contribution would have to be returned to the ATO if the fund does not have a TFN for the member and cannot obtain one within 30 days. This would be expected to result in an increased administrative burden for industry and for the ATO and, in addition, would act to limit the receipt by eligible fund members of their co-contributions.
5. While most APRA regulated funds would be affected, only a small number of members in each fund would be impacted. This is a transitional issue only, as a TFN must be given in respect of member contributions made from 1 July 2007 and which will qualify for future co-contributions. Further, the ATO has indicated it will be seeking to supply TFNs to the fund under relevant provisions in the SIS

¹ *Modifiable provision* is defined in section 327 of the SIS Act.

Act but will be unable to do this prior to completion of the payment of the 2006-07 financial year co-contributions to the funds.

Purpose of the instrument

6. APRA has agreed to provide relief to trustees of APRA regulated funds from the requirement to return member contributions within 30 days if a TFN has not been quoted to the fund. The relief would apply only in relation to government co-contribution payments in respect of a member contribution, where the member contribution was made prior to 1 July 2007 (when the requirement to quote a TFN commenced). This relief will be ongoing, to accommodate any late payment of co-contributions triggered by late lodgement of member contribution data or individual's income tax returns to the ATO in respect of contributions made prior to 1 July 2007. It will also allow for adjustments of co-contributions already paid where information is corrected or income tax assessments are amended.
7. MD 3 of 2007 applies only to regulated superannuation funds under the trusteeship of registrable Superannuation Entity Licensees and has no application to trustees of self managed superannuation funds regulated by the ATO. As each member of such a fund is also required to be a trustee, or director of the corporate trustee of the fund, the circumstances where a trustee cannot contact a member to request a TFN should be less significant.

Operation of the instrument

8. Granting relief in these circumstances will enable trustees to retain, in the fund, co-contributions made by the ATO for fund members after the end of the 30 day period. Accordingly, the decision has been taken to provide trustees with certainty by exercising the modification power in the SIS Act. Subregulation 7.04(4), as modified by Modification Declaration No. 2 of 2007, is modified by inserting the following exception at the end of paragraph (a):

“(C) the amount was a government co-contribution payment in respect of a member contribution, where the member contribution was made prior to 1 July 2007; or”
9. Although there are costs involved in keeping abreast of regulatory requirements and keeping records up to date, these costs are not expected to change as a result of this proposal. MD 3 of 2007 extends indefinitely a prescribed period by the end of which trustees, without the modification, are obliged to comply with a specific requirement in the SIS regulations, in respect of a certain category of contributions, and does not impose additional obligations or costs on trustees. Without the relief, the administrative burden and costs of both funds and the ATO could be expected to increase in the transitional year.

Consultation

10. 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

11. MD 3 of 2007 comes into force from the date of registration on the Federal Register of Legislative Instruments.