

**Explanatory Statement to Retirement Savings Accounts Modification
Declaration No. 1 of 2007**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority
Section 177 of the *Retirement Savings Accounts Act 1997*

This explanatory statement accompanies Retirement Savings Accounts Modification Declaration No. 1 of 2007 (**MD 1 of 2007**) made by APRA under section 177 of the *Retirement Savings Accounts Act 1997 (the RSA Act)*. Section 177 of the RSA Act provides that APRA may, in writing, declare that a modifiable provision of the RSA 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 section 38 of the RSA Act and therefore include regulation 5.03 of the *Retirement Savings Accounts Regulations 1997 (the RSA Regulations)*.

Background

1. Regulation 5.03 of the RSA Regulations sets out the conditions for an RSA institution to accept contributions. Retirement Savings Accounts Amendment Regulations 2007 (No. 1) made substantial changes to regulation 5.03, effective from 1 July 2007. Subregulation 5.03(2) of the RSA Regulations now provides that an RSA institution must not accept any RSA holder contributions or contributions made in respect of the RSA holder (contributions which are not employer contributions) if the RSA holder's tax file number (TFN) has not been quoted (for superannuation purposes) to the trustee of the fund.
2. Subregulation 5.03(4) provides that RSA institutions are required to return the relevant RSA holder contribution amounts within 30 days of becoming aware that the amounts do not satisfy the regulations. The RSA institution is not required to return this amount if the RSA holder's TFN is quoted to the RSA institution within 30 days of receipt of the amount. New subregulation 5.03(5) provides that if a fund complies with these return arrangements the fund is taken not to have breached these regulations.
3. The ATO has identified a problem in relation to payment of government co-contributions. Co-contributions are classed as member contributions. Under the RSA Regulations, a co-contribution would have to be returned to the ATO if the RSA institution does not have a TFN for the RSA holder 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.
4. While most APRA regulated RSA institutions would be affected, only a small number of RSA holders in each RSA institution would be impacted. This is a transitional issue only, as a TFN must be given in respect of RSA holder

¹ Modifiable provision is defined in section 173 of the RSA Act.

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 RSA 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

5. APRA has agreed to provide relief to APRA regulated RSA institutions from the requirement to return RSA holder contributions within 30 days if a TFN has not been quoted to the RSA institution. 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.
6. MD 1 of 2007 applies only to regulated RSA institutions 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

7. Granting relief in these circumstances will enable RSA institutions to retain, in the RSA institution, co-contributions made by the ATO for RSA holders after the end of the 30 day period. Accordingly, the decision has been taken to provide RSA institutions with certainty by exercising the modification power in the RSA Act. Subregulation 5.03(4) is modified by deletion of 'and' inserting the following exception at the end of paragraph (a):
 “or
 (iii) 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”
8. 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 1 of 2007 extends indefinitely a prescribed period by the end of which RSA institutions, without the modification, are obliged to comply with a specific requirement in the RSA regulations, in respect of a certain category of contributions, and does not impose additional obligations or costs on RSA institutions. Without the relief, the administrative burden and costs of both RSA institutions and the ATO could be expected to increase in the transitional year.

Consultation

9. APRA consulted the main industry bodies on the similar draft instrument (Modification Declaration No. 3 of 2007) prepared under the *Superannuation Industry (Supervision) Act 1993*. No problems with the drafting or the overall approach adopted by APRA were identified in that consultation process.

Commencement

10. MD 1 of 2007 comes into force from the date of registration on the Federal Register of Legislative Instruments.