

**Explanatory Statement to Retirement Savings Accounts Modification
Declaration No. 2 of 2007**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority

Section 177 of the *Retirement Savings Accounts Act 1997*

Subsection 33(3) of the *Acts Interpretation Act 1901*

The purpose of the instrument is to vary Retirement Savings Accounts Modification Declaration No. 1 of 2007 made by APRA on 19 November 2007 (**MD1**) under section 177 of the *Retirement Savings Accounts Act 1997* (**RSA Act**). MD1 contained drafting errors. The instrument corrects those errors.

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* (**RSA Regulations**). Subsection 33(3) of the *Acts Interpretation Act 1901* enables APRA to vary a modification declaration.

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 RSA provider.
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 an RSA institution complies with these return arrangements the RSA institution is taken not to have breached the RSA Act or the RSA Regulations in relation to the acceptance of the amount or the return of the amount.
3. The ATO has identified a problem in relation to payment of government co-contributions. Co-contributions are classed as RSA holder 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

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

administrative burden for industry and for the ATO and, in addition, would act to limit the receipt by eligible RSA holders of their co-contributions.

4. While most 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 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 RSA institution 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 RSA institutions.

Purpose of the instrument

5. APRA has agreed to provide relief to 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 an RSA holder contribution, where the RSA holder 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 RSA holder 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. MD 1 of 2007 was intended to provide the relief.
6. The instrument varies MD1, which contains drafting errors by referring to "member" rather than "RSA holder" and by applying the modification to RSA providers rather than RSA institutions. The drafting errors have resulted in MD1 being ineffective in providing the relief agreed to by APRA. The instrument corrects this error.

Operation of the instrument

7. Granting relief as intended under MD1 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 was taken to provide RSA institutions with certainty by exercising the modification power in the RSA Act. Subregulation 5.03(4) is modified by MD1, as varied by this instrument, by inserting the following exception at the end of subparagraph (a)(ii):
 - “or
 - (iii) the amount was a government co-contribution payment in respect of an RSA holder contribution, where the RSA holder contribution was made prior to 1 July 2007; and”
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 would 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. Consultation in relation to this instrument to correct a drafting error was not considered necessary as the changes are of a minor or machinery nature.

Commencement

10. The instrument comes into force from the date of registration on the Federal Register of Legislative Instruments.