

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 13**

#### **Issued by authority of the Minister for Financial Services and Superannuation**

*Superannuation Industry (Supervision) Act 1993*  
*Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)*

*Retirement Savings Accounts Act 1997*  
*Retirement Savings Accounts Amendment Regulation 2013 (No. 1)*

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the SIS Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the SIS Act.

Subsection 200(1) of the *Retirement Savings Accounts Act 1997* (RSA Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the RSA Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the RSA Act.

#### **Electronic portability request scheme**

Section 34A of the SIS Act and section 39A of the RSA Act provide that the respective regulations may prescribe a scheme, referred to in this Explanatory Memorandum as the electronic portability request scheme.

The purpose of the amendments is to prescribe the details of the electronic portability request scheme. Superannuation fund members and retirement savings account (RSA) holders may electronically request the rollover or transfer of their superannuation benefits from their fund or RSA through the Australian Taxation Office (ATO) under the scheme.

Currently, a fund member or RSA holder must apply in writing to their fund trustee or RSA provider to request the rollover or transfer of their benefits.

The electronic portability request scheme is accessible through an online service provided by the ATO, available on the ATO website. This online service provides fund members and RSA holders with information that is held by the ATO about their superannuation benefits. Members and RSA holders may also search online to locate any lost or unclaimed benefits.

The amendments simplify and streamline the process for members and RSA holders to initiate a rollover or transfer of their benefits, to locate and consolidate their benefits, and avoid paying unnecessary fees and charges on multiple accounts.

The amendments also make minor amendments to the portability regulations in the SIS Regulations and the RSA Regulations to accommodate the electronic portability request scheme.

## Minor amendments

The amendments to the regulations also make minor amendments relating to certain account-based income streams, and to the time frame in which trustees are required to roll over or transfer a member's benefits in certain circumstances.

Details of the amendments to the SIS Regulations are set out in Attachment A and details of the amendments to the RSA Regulations are set out in Attachment B. A statement of compatibility with human rights for the amendments to the SIS Regulations and RSA Regulations is also provided.

The SIS Act and the RSA Act specify no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Public consultation on the draft regulations was conducted through the Department of the Treasury website between 18 September and 28 September 2012. Six submissions were received.

Authority: Subsection 353(1) of the  
*Superannuation Industry (Supervision) Act 1993*

Subsection 200(1) of the  
*Retirement Savings Accounts Act 1997*

**ATTACHMENT A****Details of the *Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)***

**Section 1** specifies the name of the Regulation is the *Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)*.

**Section 2** provides that the Regulation commences on the day after it is registered.

**Section 3** provides that Schedule 1 amends the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations).

**Schedule 1 Amendments****Electronic portability request scheme**

Division 6.5 of the SIS Regulations provides for the compulsory rollover and transfer of superannuation benefits in regulated superannuation funds and approved deposit funds (the portability arrangements).

***Introduction of the electronic portability request scheme***

**Item 7** inserts Part 6A into the SIS Regulations.

Regulation 6A.01 of the SIS Regulations prescribes the electronic portability request scheme, under which a member of a regulated superannuation fund or approved deposit fund may give the Commissioner of Taxation a request to roll over or transfer the member's withdrawal benefits held in the fund, and the Commissioner may give the request to the fund's trustee.

The scheme is given effect by section 34A of the SIS Act.

The scheme provides a simple and streamlined process for members to initiate the rollover or transfer of their benefits. Key differences between the scheme and the existing portability arrangements include:

- the member applies electronically to the Commissioner, rather than in writing to the trustee of their fund;
- the Commissioner verifies the member's identity, instead of the member providing certified copies of identity documents to the fund trustee;
- The Commissioner also confirms the ownership of the benefits and fund membership details; and
- the Commissioner gives the request electronically to the fund trustee.

It is not compulsory for members to electronically request the rollover or transfer of their benefits under the scheme. Members may continue to apply in writing to their fund under subregulations 6.33(1) to (3) if they do not wish to use the scheme or their request cannot be completed electronically.

Definitions used in Part 6 of the SIS Regulations also apply to Part 6A.

Part 6A of the SIS Regulations is administered by the Commissioner under subparagraph 6(1)(g)(i) of the SIS Act.

***Scheme criteria***

Regulation 6A.02 sets out the criteria for a member to make an electronic request.

A member may make an electronic portability request where:

- the member's withdrawal benefit is held in a regulated superannuation fund or an approved deposit fund, and is not held in an exempted fund or is an exempted interest (see below);
- the Commissioner holds information about the member's withdrawal benefit in the fund;
- the request is to roll over or transfer of the whole of the member's withdrawal benefit to a complying superannuation fund of which they are a member; and
- the electronic request is in the approved form and contains the information required by the Commissioner.

The electronic portability request scheme does not apply to withdrawal benefits held in an unfunded public sector superannuation scheme, a self managed superannuation fund, or in respect of a defined benefit component of an interest in a superannuation fund if the member who holds the interest is an employee of an employer-sponsor of the fund.

If the member's request is in respect of a benefit being paid as a pension, the pension must be an allocated pension, an account-based pension or a market linked pension for it to be rolled over or transferred under the scheme.

The exemption of these entities and interests from the scheme is consistent with the current portability arrangements.

Information that the Commissioner holds about a member's benefits in a fund is displayed on the online service provided by the ATO. Broadly, this service displays details about a member's active and lost accounts. Superannuation funds are required to report these details to the ATO on Member Contribution Statements and Lost Members' Statements.

An electronic request lodged through the ATO's online service is an approved form and contains the information required by the Commissioner.

A member may not be able to complete an electronic portability request if;

- the member's withdrawal benefit is held in a fund exempted from the scheme;
- the member's withdrawal benefit is an interest exempted from the scheme;
- details of the member's withdrawal benefit in a fund are not displayed on the ATO's online service;
- the request is for the rollover or transfer of part of the member's benefit;
- the information required on the electronic request is not provided;

- the request is in respect of a benefit that the member is receiving as a pension other than an allocated pension, an account-based pension or a market linked pension.

If a request cannot be completed electronically, the member may print the form and post it to their fund.

### ***Commissioner's verification role***

Regulation 6A.03 sets out the Commissioner's role in the scheme.

Under the scheme the Commissioner must confirm the member's identity and the member's ownership of the withdrawal benefit. The Commissioner must also confirm the member's membership in the complying superannuation fund to which the rollover or transfer is to be made. The Commissioner must also identify the account in the complying superannuation fund to which the rollover or transfer is to be made.

The Commissioner confirms these matters using information available to the Commissioner, such as the member's tax file number and other personal information; details from correspondence between the ATO and the member; information held by the ATO in respect of the member; and statements lodged with the Commissioner by funds about their members.

If these matters are confirmed, the Commissioner must give the request to the member's fund trustee, subject to the exceptions noted below. The request is given to the trustee of the fund which holds the member's benefits that are the subject of the request.

It is expected that after the Commissioner has confirmed the member's identity and given the request to the fund, the trustee will not usually need to seek further verification. If the trustee has specific concerns about a particular request, the trustee may seek further information or documentation from the member under regulation 6.33A, consistent with the existing portability arrangements.

The Commissioner may decline to give the request to the member's fund trustee if the request does not comply with the requirements of Regulation 6A.02; or it appears to the Commissioner that the way in which the fund is conducted is likely to adversely affect the values of the interests of beneficiaries of that fund; or the trustee cannot electronically receive the request.

The request may not comply with the requirements of Regulation 6A.02 if, for example, it does not contain the required information, such as the member's tax file number or sufficient details of the receiving fund.

Conduct that would appear to be likely to adversely affect the values of the interests of beneficiaries of a fund would include the possible involvement of the fund in the illegal early release of superannuation benefits.

If the request cannot be completed electronically, the member may print the form and post it to their fund.

***Commissioner gives request to trustee***

Item 3 inserts subregulation 6.33(4), which provides that the Commissioner may give to the trustee a request made by the member under the electronic portability request scheme.

This provision has the effect of including an electronic portability request, received by the trustee from the Commissioner under Part 6A, in the portability arrangements in Division 6.5.

Upon receiving the request from the Commissioner, the fund trustee must roll over or transfer the member's withdrawal benefits in accordance with the request under the portability arrangements of Division 6.5 of the SIS Regulations.

The portability arrangements in Division 6.5 of the SIS Regulations continue to be administered by the Australian Prudential Regulation Authority (APRA).

***Existing portability arrangements***

**Item 3** re-arranges the provisions of former regulations 6.33 and 6.34 in Division 6.5 of the SIS Regulations to accommodate the regulations.

The regulations are arranged into a more logical sequence, grouping together the provisions relating to:

- a member making a request to roll over or transfer a withdrawal benefit (regulation 6.33);
- a trustee requesting further information or documentation from the member (regulation 6.33A); and
- the trustee rolling over or transferring the benefit in accordance with the member's request (regulation 6.34).

Item 3 also makes minor amendments to the re-arranged regulations.

Paragraph 6.33A(2)(c) allows the trustee to request further information from the member that is reasonably required to process the member's request to roll over or transfer part of the member's withdrawal benefit.

The reference to Regulation 7.9.83 of the *Corporations Regulations*, in the Note to paragraph 6.34(2)(b), has been removed, as this regulation was repealed in 2003.

Subregulation 6.34(3)(c) refers to 'a suspension or variation', as regulations 6.36 and 6.37 deal with APRA's suspension or variation of a trustee's obligation to roll over or transfer amounts.

The former subparagraph 6.34(6)(b)(ii), which deals with illiquid investments made before 1 July 2007, has been removed, as it is now redundant.

**Items 2 and 9** substitute references to the regulations consequential upon the amendments made by item 3.

Item 2 also includes a reference to section 6.34A (amended by the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 5)*), to ensure that subregulation 6.31(3) continues to operate correctly when the superannuation data and payment regulations commence on 1 July 2013.

## **Minor amendments**

### ***Account-based income streams***

**Item 1** amends paragraph 6.30(2)(d) to insert ‘account-based pension’ and ‘market linked pension’.

The portability arrangements of the SIS Regulations currently apply to allocated pensions. When the portability arrangements were introduced in 2004, an allocated pension was the only account-based income stream available.

Since 2004, two new types of account-based income streams have been developed, that is account-based pensions and market linked pensions. These types of pensions are not currently covered by the portability arrangements.

The amendment includes account-based pensions and market linked pensions in the portability arrangements, and ensures they are portable in the same manner as allocated pensions.

**Items 4 and 5** insert a new circumstance when a trustee may refuse to roll over or transfer an amount, where the amount is a superannuation death benefit in the form of a pension and the rollover or transfer would be inconsistent with the governing rules of the fund applying in respect of the benefit.

The governing rules of some superannuation funds provide for nominations in favour of a beneficiary, such as a minor child of a member, which compel the trustee to pay an account-based pension to the child upon the member’s death. This can allow members, who wish to ensure that the superannuation benefits they pass on cannot be accessed inappropriately, to impose restrictions in relation to minimum payments and access to lump sum payments or commutations, which are binding on the trustee under the rules of the fund. For superannuation death benefits paid to minor children, such restrictions can ensure that neither the child nor the child’s guardian or legal personal representative can access the benefits before the time the deceased intended.

### ***Time frame for rollovers and transfers***

**Items 6 and 10** reduce the time in which a trustee is required to complete rollovers or transfers.

When the portability arrangements were introduced in 2004, fund trustees were required to complete rollovers and transfers within 90 days of receiving a completed application. From 1 July 2007, this time frame was shortened to 30 days.

The time frames for the spouse contributions-splitting provisions under Division 6.7 and the family law payment splitting provisions under Part 7A of the SIS Regulations were not amended when the 2007 changes were made.

The amendments reduce the time frame, in which fund trustees are required to roll over, transfer or allot an amount, from 90 days to 30 days.

These amendments provide consistency among the portability regulations, the spouse contribution-splitting arrangements and the payment splitting provisions.

### **Application provisions**

**Item 8** provides for the application of the regulations.

Amendments made by items 2, 3 and 7 apply to a member's request, to roll over or transfer their withdrawal benefits, made on or after the commencement of this regulation.

The amendment made by item 6 applies in relation to an application accepted by the trustee, under the spouse contribution-splitting provisions, on or after the commencement of this regulation.

The amendment made by item 10 applies in relation to a superannuation interest that becomes subject to a payment split on or after the commencement of this regulation.



**ATTACHMENT B****Details of the *Retirement Savings Accounts Amendment Regulation 2013 (No. 1)***

**Section 1** specifies the name of the Regulation is the *Retirement Savings Accounts Amendment Regulation 2013 (No. 1)*.

**Section 2** provides that the Regulation will commence on the day after it is registered.

**Section 3** provides that Schedule 1 will amend the *Retirements Savings Accounts Regulations 1997* (RSA Regulations).

**Schedule 1 Amendments****Electronic portability request scheme**

Division 4.4A of the RSA Regulations provides for the compulsory rollover and transfer of benefits in RSAs (the portability arrangements).

***Introduction of the electronic portability request scheme***

**Item 5** inserts Part 4AA into the RSA Regulations.

Regulation 4AA.01 of the RSA Regulations prescribes the electronic portability request scheme, under which an RSA holder may give the Commissioner a request to roll over or transfer the whole of the RSA holder's withdrawal benefits held by the RSA provider, and the Commissioner may give the request to the RSA provider.

The scheme is given effect by section 39A of the RSA Act.

The scheme provides a simple and streamlined process for RSA holders to initiate the rollover or transfer of their benefits. Key differences between the scheme and the existing portability arrangements include:

- the RSA holder applies electronically to the Commissioner, rather than in writing to their RSA provider;
- the Commissioner verifies the RSA holder's identity, instead of the holder providing certified copies of identity documents to the RSA provider;
- The Commissioner also confirms the ownership of the benefits and membership details; and
- the Commissioner gives the request electronically to the holder's RSA provider.

It is not compulsory for RSA holders to electronically request the rollover or transfer of their benefits under the scheme. RSA holders may continue to apply in writing to their RSA provider under subregulations 4.35C(1) to (3) if they do not wish to use the scheme or their request cannot be completed electronically.

Part 4AA of the RSA Regulations is administered by the Commissioner under subparagraph 3(1)(e)(i) of the RSA Act.

***Scheme criteria***

Regulation 4AA.02 sets out the criteria for an RSA holder to make an electronic portability request.

An RSA holder may make an electronic portability request where:

- the Commissioner holds information about the holder's RSA;
- the request is to roll over or transfer of the whole of the RSA holder's withdrawal benefit to a complying superannuation fund of which they are a member; and
- the electronic request is in the approved form and contains the information required by the Commissioner.

Information that the Commissioner holds about a holder's benefits in an RSA is displayed on the online service provided by the ATO. Broadly, this service displays details about a member's active and lost accounts. RSA providers are required to report these details to the ATO on Member Contribution Statements and Lost Members' Statements.

An electronic request lodged through the ATO's online service is an approved form and contains the information required by the Commissioner.

An RSA holder may not be able to complete an electronic portability request if;

- the member's RSA is not displayed on the ATO's online service;
- the request is for the rollover or transfer of part of the holder's benefit;
- the information required on the electronic request is not provided.

If a request cannot be completed electronically, the holder may print the form and post it to their provider.

***Commissioner's verification role***

Regulation 4AA.03 sets out the Commissioner's role under the scheme.

Under the scheme the Commissioner must confirm the RSA holder's identity, the holder's ownership of the withdrawal benefit and their membership of the receiving fund.

The Commissioner confirms these matters using information available to the Commissioner, such as the member's tax file number and other personal information; details from correspondence between the ATO and the member; information held by the ATO in respect of the member; and statements lodged with the Commissioner by providers about their members.

If these matters are confirmed, the Commissioner must give the request to the holder's RSA provider, subject to the exceptions noted below. The request is given to the RSA provider which holds the holder's benefits that are the subject of the request.

It is expected that after the Commissioner has confirmed the RSA holder's identity and given the request to the RSA provider, the provider will not usually need to seek further verification. If the RSA provider has specific concerns about a particular request, the provider may seek further information or documentation from the holder under regulation 4.35CA, consistent with the existing portability arrangements.

The Commissioner may decline to give the request to the RSA holder's provider if the request does not comply with the requirements of Regulation 4AA.02; or it appears to the Commissioner that the way in which the fund is conducted is likely to adversely affect the values of the interests of the beneficiaries of that fund; or the provider cannot electronically receive the request.

The request may not comply with the requirements of Regulation 4AA.02 if, for example, it does not contain the required information, such as the holder's tax file number or sufficient details of the receiving fund.

Conduct that would appear to be likely to adversely affect the values of the interests of beneficiaries of a fund would include the possible involvement of the fund in the illegal early release of superannuation benefits.

If the request cannot be completed electronically, the holder may print the form and post it to their fund.

### ***Commissioner gives request to RSA provider***

Item 3 inserts subregulation 4.35C(4), which provides that the Commissioner may give to the RSA provider a request made by the holder under the electronic portability request scheme.

This provision has the effect of including an electronic portability request, received by the provider from the Commissioner under Part 4AA, in the portability arrangements in Division 4.4A of the RSA Regulations.

Upon receiving the request from the Commissioner, the RSA provider must roll over or transfer the holder's withdrawal benefits in accordance with the request under the portability arrangements of Division 4.4A of the RSA Regulations.

The portability arrangements in Division 4.4A of the RSA Regulations continue to be administered by APRA.

### ***Existing portability arrangements***

**Item 3** re-arranges the provisions of former regulations 4.35C and 4.35D in Division 4.4A of the RSA Regulations to accommodate the regulations.

The regulations are arranged into a more logical sequence, grouping together the provisions relating to:

- an RSA holder making a request to roll over or transfer a withdrawal benefit (regulation 4.35C);
- an RSA provider requesting further information or documentation from the holder (regulation 4.35CA); and

- the RSA provider rolling over or transferring the withdrawal benefit in accordance with the holder's request (regulation 4.35D).

Item 3 also amends paragraph 4.35CA(2)(c) to allow the RSA provider to request further information from the RSA holder that is reasonably required to process the holder's request to roll over or transfer part of the holder's withdrawal benefit.

**Items 1 and 2** substitute references to the regulations consequential upon the amendments made by item 3.

### **Minor amendments**

#### *Time frame for rollovers and transfers*

**Items 4 and 7** reduce the time in which an RSA provider is required to complete rollovers or transfers.

When the portability arrangements were introduced in 2004, RSA providers were required to complete rollovers and transfers within 90 days of receiving a completed application. From 1 July 2007, this time frame was shortened to 30 days.

When the 2007 changes were made, the spouse contributions-splitting provisions under Division 4.5 and the family law payment splitting provisions under Part 4A.4 of the RSA Regulations were not amended.

The amendments reduce the time frame, in which RSA providers are required to roll over, transfer or allot an amount, from 90 days to 30 days.

These amendments provide consistency among the portability regulations, the spouse contribution-splitting arrangements and the payment splitting provisions.

### **Application provisions**

**Item 6** provides for the application of the regulations.

Amendments made by items 1, 2, 3 and 5 apply to an RSA holder's request, to roll over or transfer their withdrawal benefits, made on or after the commencement of this regulation.

The amendment made by item 4 applies in relation to an application accepted by an RSA provider, under the spouse contribution-splitting provisions, on or after the commencement of this regulation.

The amendment made by item 7 applies in relation to an RSA interest that becomes subject to a payment split on or after the commencement of this regulation.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1)**

#### **Retirement Savings Account Amendment Regulation 2013 (No. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The purpose of the Legislative Instrument is to prescribe the details of the electronic portability request scheme. The scheme allows superannuation fund members and retirement savings account (RSA) holders to electronically request the rollover or transfer of their benefits from their fund or RSA through the Australian Taxation Office.

The scheme provides a streamlined electronic alternative to the current paper-based process, where a member or RSA holder applies in writing to their fund or provider to roll over or transfer their benefits.

It is not compulsory for members or RSA holders to electronically request the rollover or transfer of their benefits under the scheme. Members and holders may continue to apply in writing to their fund or provider if they do not wish to use the scheme or their request cannot be completed electronically.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**William Richard Shorten**

**Minister for Financial Services and Superannuation**