



Retirement Savings Accounts Amendment Regulation 2012 (No.)¹

Select Legislative Instrument 2012 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Retirement Savings Accounts Act 1997*.

Dated 2012

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]
Minister for Financial Services and Superannuation

DRAFT ONLY

1 Name of regulation

This regulation is the *Retirement Savings Accounts Amendment Regulation 2012 (No.)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Retirement Savings Accounts Regulations 1997*

Schedule 1 amends the *Retirement Savings Accounts Regulations 1997*.

Schedule 1 Amendments

(section 3)

[1] Regulation 4.35B, note

omit

subregulation 4.35C (2)

insert

regulation 4.35CA

[2] Regulation 4.35B, note

omit

subregulation 4.35D (3)

insert

subregulation 4.35CA (2)

[3] Regulations 4.35C and 4.35D

substitute

4.35C Request for rollover or transfer of withdrawal benefit

Request from RSA holder

- (1) An RSA holder may, in writing, ask the RSA provider to roll over or transfer an amount that is the whole or part of the RSA holder's withdrawal benefit.
- (2) A request under subregulation (1) to roll over or transfer an amount that is the whole of the RSA holder's withdrawal benefit may be made:
 - (a) using the request form; or
 - (b) in another manner.
- (3) A request under subregulation (1) to roll over or transfer an amount that is part of the RSA holder's withdrawal benefit may include:
 - (a) the information that would be required by the request form; and
 - (b) any other information that is reasonably required by the RSA provider to process the request.

Request through Commissioner of Taxation

- (4) The Commissioner of Taxation, under the scheme established under Part 4AA, may give to the RSA provider a request made by an RSA holder to roll over or transfer an amount that is the whole of the RSA holder's withdrawal benefit.

4.35CA RSA provider may request information or documentation

General

- (1) If:

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- (a) an RSA provider requires further information to roll over or transfer the RSA holder's withdrawal benefit after receiving a request under regulation 4.35C; and
 - (b) the request relates to the whole transfer of the RSA holder's withdrawal benefit; and
 - (c) the RSA provider requires further information that is mandatory information in the request form;
- the RSA provider must ask the member for the mandatory information within 10 working days after receiving the request.

(2) If:

- (a) an RSA provider requires further information to roll over or transfer the RSA holder's withdrawal benefit after receiving a request under regulation 4.35C; and
 - (b) the request relates to the partial transfer of the RSA holder's withdrawal benefit; and
 - (c) the RSA provider requires further information that is reasonably required to process the request;
- the RSA provider must ask the member for the information within 10 working days after receiving the request.

(3) If the RSA provider does not receive the information requested in subregulation (1) or (2) within 10 working days after making the request, the RSA provider must make reasonable further inquiries of the RSA holder to obtain the information.

Note If a request under 4.35C does not include all of the mandatory information in the request form (whether or not the request is made using the request form) the RSA provider may still roll over or transfer the amount without asking for the rest of the mandatory information.

Transfers to a self managed superannuation fund

(4) If:

- (a) a request under regulation 4.35C is made by an RSA holder (**holder 1**) to roll over or transfer an amount that is the whole or part of the RSA holder's withdrawal benefit to a self managed superannuation fund; and
- (b) the RSA provider of the transferring RSA institution is aware that:

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- (i) another request has been made to roll over or transfer an amount to the same self managed superannuation fund; and
 - (ii) the other request was made by another RSA holder who is not a relative, within the meaning of subsection 17A (9) of the SIS Act, of holder 1; and
 - (iii) the other request:
 - (A) has been processed; or
 - (B) is currently with the RSA provider of the transferring RSA institution to be processed;

the RSA provider may also require holder 1 to provide with the request a copy of documentation, complying with the requirements of certification in the request form, that shows that holder 1 is a member or trustee of the self managed superannuation fund before the RSA provider processes holder 1's request.

Examples of documents showing that an RSA holder is a member or trustee of a self managed superannuation fund

- 1 A trust deed.
- 2 The RSA holder's contribution statement.
- 3 The annual return of the self managed superannuation fund.

- (5) If an RSA provider of the transferring RSA institution requires a copy of documentation under subregulation (3):
 - (a) the RSA provider must, within 10 working days after receiving the request under regulation 4.35C, ask the RSA holder for a copy of the documentation; and
 - (b) if the RSA provider has not received a copy of the documentation within 10 working days after making the request, the RSA provider must make reasonable further inquiries of the RSA holder to obtain a copy of the documentation.

4.35D Rollover or transfer of withdrawal benefit

- (1) Subject to regulation 4.35E, if an RSA provider receives a request under regulation 4.35C, the RSA provider must roll over or transfer the amount in accordance with the request.

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- (2) Before the RSA provider rolls over or transfers an amount, the RSA provider must be satisfied that the RSA holder:
- (a) is aware that the RSA holder may ask the RSA provider for information that the RSA holder reasonably requires for the purpose of understanding any benefit entitlements that the RSA holder may have, including:
 - (i) information about any fees or charges that may apply to the proposed rollover or transfer; and
 - (ii) information about the effect of the proposed rollover or transfer on any benefit entitlements the RSA holder may have; and
 - (b) does not require such information.

Note Under section 1017C of the *Corporations Act 2001*, an RSA provider must, on request by an RSA holder, give the RSA holder the information and documents mentioned in subsections 1017C (3A) and (5). See also regulations 7.9.46 and 7.9.47 of the *Corporations Regulations 2001*.

- (3) The RSA provider must roll over or transfer the amount (or the part of the amount requested to be transferred) as soon as practicable, and in any case within 30 days, after:
- (a) the RSA provider receives a request under regulation 4.35C; or
 - (b) if the RSA provider requires further information or documentation—the time when the RSA provider receives all of the information or documentation in accordance with regulation 4.35CA.

[4] Subregulation 4.42 (2)

omit

90 days

insert

30 days

[5] **After Part 4**

insert

Part 4AA Portability Forms

4AA.01 Establishment of scheme

- (1) The purpose of this Part is to establish a scheme under which:
 - (a) an RSA holder may give the Commissioner of Taxation a request to roll over or transfer the RSA holder's withdrawal benefit held by an RSA provider; and
 - (b) the Commissioner of Taxation may pass the request mentioned in paragraph (a) to the RSA provider.
- (2) This Part is made under section 39A of the Act.

4AA.02 Request to rollover or transfer withdrawal benefit

- (1) An RSA holder may give the Commissioner of Taxation a request to roll over or transfer the RSA holder's withdrawal benefit held by the RSA provider if:
 - (a) the Commissioner of Taxation holds information about the holder's RSA; and
 - (b) the request is to roll over or transfer an amount that is the whole of the holder's withdrawal benefit.
- (2) The request to the Commissioner of Taxation must:
 - (a) be in the approved form; and
 - (b) contain the information required by the Commissioner.

4AA.03 Consideration of rollover or transfer request

- (1) As soon as practicable after receiving a request under regulation 4AA.02, the Commissioner of Taxation must:
 - (a) take reasonable steps to:
 - (i) confirm the identity of the RSA holder; and
 - (ii) confirm the ownership of the withdrawal benefit; and

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- (b) after taking reasonable steps to confirm the information mentioned in paragraph (a)—give the request to the RSA provider that holds the RSA holder’s withdrawal benefit.
- (2) Despite subregulation (1), the Commissioner may decline to give the request to the RSA provider if:
 - (a) the RSA holder fails to give the Commissioner his or her tax file number; or
 - (b) the request cannot be received electronically by the RSA provider; or
 - (c) the Commissioner is not satisfied that it is reasonably practicable to give the request to the RSA provider.

[6] After Part 6

insert

Part 7 Transitional matters

7.1 Amendments made by *Retirement Savings Accounts Amendment Regulation 2012 (No. 1)*

- (1) The amendments made by items [1], [2], [3] and [5] of Schedule 1 to the *Retirement Savings Accounts Amendment Regulation 2012 (No. 1)* apply in relation to a request to roll over or transfer an RSA holder’s withdrawal benefit made on or after the commencement of this regulation.
- (2) The amendment made by item [4] of Schedule 1 to the *Retirement Savings Accounts Amendment Regulation 2012 (No. 1)* applies in relation to an application that is accepted by an RSA provider under subregulation 4.42 (1) on or after the commencement of this regulation.
- (3) The amendment made by item [7] of Schedule 1 to the *Retirement Savings Accounts Amendment Regulation 2012 (No. 1)* applies in relation to an RSA interest that becomes subject to a payment split on or after the commencement of this regulation.

[7] Further amendments

The following provisions are amended by omitting ‘90 days’ and inserting ‘30 days’:

- subparagraph 4A.13 (2) (a) (i)
- paragraphs 4A.13 (2) (b) and (c)
- paragraph 4A.14 (2) (a)
- subparagraph 4A.23 (6) (a) (i)
- paragraphs 4A.23 (6) (b) and (c)
- paragraph 4A.24 (7) (a)
- paragraph 4A.27 (4) (a)
- subregulation 4A.28 (3).

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.