

EXPLANATORY MEMORANDUM

Minute No. _____ of 2012 - Minister for Financial Services and Superannuation

Subject - *Superannuation Industry (Supervision) Act 1993*
Retirement Savings Accounts Act 1997

Superannuation Industry (Supervision) Amendment Regulation 2012
(No.)
Retirement Savings Accounts Amendment Regulation 2012 (No.)

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 will be able to electronically request the rollover or transfer of their benefits from their fund or RSA through the Australian Taxation Office (ATO) under the proposed 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 is accessible through the 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 the online service provided by the ATO to locate any lost or unclaimed benefits.

The proposed amendments will simplify and streamline the process for members and RSA holders to roll over or transfer their benefits, to locate and consolidate their benefits, and avoid paying unnecessary fees and charges on multiple accounts.

The proposed amendments to the regulations will 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 proposed amendments to the regulations will 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 proposed amendments to the SIS Regulations are set out in Attachment A and details of the proposed amendments to the RSA Regulations are set out in Attachment B.

The SIS Act and the RSA Act specify no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The proposed Regulations would be legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

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

The Minute recommends that the Regulation be made in the form proposed.

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

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

[Minister's initials]

ATTACHMENT A

Details of the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No.)*

Regulation 1 will specify the name_of the Regulation is the *Superannuation Industry (Supervision) Amendment Regulation 2012 (No.)*.

Regulation 2 will provide that the Regulation will commence on the day after it is registered.

Regulation 3 will provide that Schedule 1 will amend 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 5 will insert Part 6A into the SIS Regulations.

Proposed regulation 6A.01 of the SIS Regulations will prescribe the electronic portability request scheme, under which a fund member 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 will provide a simple and streamlined process for members to request the rollover or transfer of their benefits. Key differences between the proposed 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; 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 proposed subregulations 6.33(1) to (3) if they cannot use the scheme or do not wish to do so.

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

Proposed Part 6A of the SIS Regulations will be 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 will be able to 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); and
- the Commissioner holds information about the member's withdrawal benefit in the fund; and
- the request is to rollover or transfer of the whole of the member's withdrawal benefit;
- if the member's request is in respect of a benefit being paid as a pension, the pension is an allocated pension, an account-based pension or a market linked pension.

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.

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 and includes details of the member's accounts as reported by funds; any lost accounts reported by funds to the Commissioner; and any superannuation money held by the ATO for the member.

The electronic request to the Commissioner must be in the approved form and contain the information required by the Commissioner. In practice, the electronic request lodged through the online service provided by the ATO will satisfy subregulation 6A.02(2).

A member will not be able to make 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 is not displayed on the online service provided by the ATO;
- 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 that is not an allocated pension, an account-based pension or a market linked pension.

Commissioner's verification role

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

Upon receiving a request under the scheme the Commissioner must, as soon as practicable, confirm the member's identity and the member's ownership of the withdrawal benefit.

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; or information provided by the member, the fund trustee or another entity to the ATO in respect of the member.

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

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 proposed regulation 6.33A, consistent with the existing portability arrangements.

Commissioner may decline give request to trustee

The Commissioner may decline to give the request to the member's fund trustee in certain circumstances:

- the member does not provide their tax file number;
- the fund is unable to electronically receive the request;
- it is not practicable for the Commissioner to give the request to the trustee.

For example, the Commissioner may decline to give the request to the trustee of the 'from' fund if there is doubt about the status of the receiving or 'to' fund or RSA (the fund or RSA to which the member wishes to roll over or transfer their benefits).

As part of the verification process, the Commissioner will confirm the status of the 'to' fund or RSA. The Commissioner will confirm, for example, that the 'to' fund has an Australian Business Number (ABN), is a regulated superannuation fund and has not been wound up.

If the Commissioner declines to give the request to the trustee of the 'from' fund, the member still has the option of applying in writing to their fund for the rollover or transfer of their benefits under proposed subregulations 6.33(1) to (3) of the SIS Regulations.

Commissioner gives request to trustee

Item 3 will insert 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 will 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 APRA.

Existing portability arrangements

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

The proposed regulations will be 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 (R6.33);
- a trustee requesting further information or documentation from the member (R. 6.33A); and
- the trustee rolling over or transferring the benefit in accordance with the member's request (R. 6.34).

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

Paragraph 6.33A(2)(c) will allow 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. This paragraph will apply to the trustees of the 'to' fund and the 'from' fund.

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

Subregulation 6.34(3)(c) will refer 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, will be deleted, as it is now redundant.

Items 2 and 7 will substitute references to the regulations consequential upon the amendments made by item 3.

Minor amendments

Account-based income streams

Item 1 will amend 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 proposed amendment will include account-based pensions and market linked pensions in the portability arrangements, and ensure they are portable in the same manner as allocated pensions.

Time frame for rollovers and transfers

Items 4 and 8 will 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 proposed amendments will 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 will provide consistency between the portability regulations, the spouse contribution-splitting arrangements and the payment splitting provisions.

Application provisions

Item 6 will provide for the application of the proposed regulations.

Amendments made by items 2, 3 and 5 will 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 4 will apply 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 8 will apply 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 2012 (No.)*

Regulation 1 will specify the name of the Regulation is the *Retirement Savings Accounts Amendment Regulation 2012 (No.)*.

Regulation 2 will provide that the Regulation will commence on the day after it is registered.

Regulation 3 will provide that Schedule 1 will amend the *Retirements Savings Account 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 will insert Part 4AA into the RSA Regulations.

Proposed regulation 4AA.01 of the RSA Regulations will prescribe 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 will provide a simple and streamlined process for RSA holders to request the rollover or transfer of their benefits. Key differences between the proposed 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; 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 proposed subregulations 4.35C(1) to (3) if they cannot use the scheme or do not wish to do so.

Proposed Part 4AA of the RSA Regulations will be 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 will be able to make an electronic portability request where:

- the Commissioner holds information about the holder's RSA; and
- the request is to rollover or transfer of the whole of the RSA holder's withdrawal benefit.

Information that the Commissioner holds about a holder's benefits in an RSA is displayed on the online service provided by the ATO and includes details of the holder's accounts as reported by funds; any lost accounts reported by funds to the Commissioner; and any superannuation money held by the ATO for the holder.

The electronic request to the Commissioner must be in the approved form and contain the information required by the Commissioner. In practice, the electronic request lodged through the online service provided by the ATO will satisfy subregulation 4AA.02(2).

An RSA holder will not be able to make an electronic portability request if;

- the member's RSA is not displayed on the online service provided by the ATO;
- 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.

Commissioner's verification role

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

Upon receiving a request under the scheme the Commissioner must, as soon as practicable, confirm the RSA holder's identity and the holder's ownership of the withdrawal benefit.

The Commissioner confirms the RSA holder's identity and ownership of the withdrawal benefit by using information available to the Commissioner, such as the holder's tax file number and other personal information; details from correspondence between the ATO and the holder; or information provided by the holder, the RSA provider or another entity to the ATO in respect of the member.

Subject to the exceptions noted below, the Commissioner must give the request to the holder's RSA provider if the above matters are confirmed. The request is given to the RSA provider which holds the holder's benefits that are the subject of the request. That is, the Commissioner gives the request to the transferring or 'from' RSA provider.

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 proposed regulation 4.35CA, consistent with the existing portability arrangements.

Commissioner declines give request to RSA provider

The Commissioner may decline to give the request to the RSA holder's provider in certain circumstances:

- the holder does not provide their tax file number;
- the provider is unable to electronically receive the request;
- it is not practicable for the Commissioner to give the request to the RSA provider.

For example, the Commissioner may decline to give the request to the 'from' RSA provider if there is doubt about the status of the receiving or 'to' fund or RSA (the fund or RSA to which the RSA holder wishes to roll over or transfer their benefits).

As part of the verification process, the Commissioner will confirm the status of the 'to' fund or RSA. The Commissioner will confirm, for example, that the 'to' fund has an Australian Business Number (ABN), is a regulated superannuation fund and has not been wound up.

If the Commissioner declines to give the request to the provider of the 'from' RSA, the holder still has the option of applying in writing to their RSA for the rollover or transfer of their benefits under proposed subregulations 4.35C(1) to (3) of the RSA Regulations.

Commissioner gives request to RSA provider

Item 3 will insert 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 will 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 will re-arrange the provisions of former regulations 4.35C and 4.35D in Division 4.4A of the RSA Regulations to accommodate the proposed regulations.

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

- an RSA holder member making a request to roll over or transfer a withdrawal benefit (R4.35C);

- an RSA provider requesting further information or documentation from the holder (R. 4.35CA); and
- the RSA provider rolling over or transferring the withdrawal benefit in accordance with the holder's request (R. 6.34).

Item 3 will also amend 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 will 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 will 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 proposed amendments will 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 will provide consistency between the portability regulations, the spouse contribution-splitting arrangements and the payment splitting provisions.

Application provisions

Item 6 will provide for the application of the proposed regulations.

Amendments made by items 1, 2, 3 and 5 will 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 will apply 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 will apply in relation to an RSA interest that becomes subject to a payment split on or after the commencement of this regulation.