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Document 1

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 74

Issued by authority of the Minister for Revenue and Assistant Treasurer

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 1)

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* and related Acts give effect to the Simplified Superannuation reforms, announced in the Government's 5 September 2006 statement *A Plan to Simplify and Streamline Superannuation – Outcomes of Consultation* , making superannuation easier to understand, improving incentives to work and save, and providing greater flexibility over how superannuation savings can be drawn down in retirement.

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) provides 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.

The *Superannuation Industry (Supervision) Regulations 1994* set out the contribution acceptance and payment rules for superannuation providers, the operating standards in relation to the disclosure of certain information, the standards for pensions, annuities, and benefit accruals, and the rules relating to the roll-over and transfer of benefits.

The purpose of the Regulations is to amend the *Superannuation Industry (Supervision) Regulations 1994* to:

- allow superannuation funds to cash a member's benefits to give effect to an excess contributions tax release authority;
- prohibit a superannuation fund from accepting member contributions where a tax file number is not quoted or the amount of the contribution exceeds the non-concessional contributions cap;
- amend the work test for a transitional period to allow certain people to make personal contributions;
- allow superannuation funds to accept non-mandated employer contributions for persons aged 70 to 74;
- align the provisions relating to spouse contributions splitting with the new terminology introduced as part of the simplified superannuation reforms;
- require a trustee of a self managed superannuation fund to notify the Commissioner of Taxation of certain fund changes;

- prescribe a standard portability form to be used when a member seeks to transfer superannuation benefits between funds, as well as reduce the time a superannuation fund has to action a member's request to transfer benefits;
- introduce new pension and annuity standards; and
- update references as a result of the consolidation of superannuation taxation laws.

Details of the Regulations are set out in the Attachment A.

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

The Regulations commence on registration, on 5 April 2007 and on 1 July 2007.

Commencement on registration is required for certain transitional amendments to the work test as these amendments allow certain contributions to be made only until 30 June 2007.

Commencement of the spouse contributions splitting amendments on 5 April 2007 is necessary to ensure that the changes, introduced as an integrity measure, are in force soon after the regulations are registered.

Commencement on 1 July 2007 corresponds with the commencement of the related amendments in the *Tax Laws Amendment (Simplified Superannuation) Act 2007* and related Acts.

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

The draft Regulations amending the contribution and acceptance rules, the operating standards in relation to the disclosure of certain information, the standards for pensions, annuities, and benefit accruals, and the rules relating to the roll-over and transfer of benefits were made available on the Simpler Super website for public consultation.

ATTACHMENT A

Details of the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 1)*

Regulation 1 specifies the name of the Regulations as the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 1).*

Regulation 2 provides that Regulations 1, 2 and 3 and Schedule 1 commence the day after registration, Regulation 4 and Schedule 2 commence on 5 April 2007 and Regulation 5 and Schedule 3 commence on 1 July 2007.

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

Regulation 4 provides that Schedule 2 amends the SIS Regulations.

Regulation 5 provides that Schedule 3 amends the SIS Regulations.

Schedule 1 – Amendments commencing after registration

Commutation of income streams

Items 1 to 14

Where an individual is given a release authority under section 292-405 of the *Income Tax Assessment Act 1997* (ITAA 1997), the person must withdraw an amount equal to their excess non-concessional contributions tax liability from the superannuation system by providing the release authority given to them by the Commissioner of Taxation to their superannuation provider. Where such a person fails to withdraw the required amount, the Commissioner of Taxation is able to present a release authority directly to the superannuation provider of that person.

Some income streams have restrictions placed on when commutations can occur and the maximum payments that can be made from them. **Items 1 to 14** make it possible to remove excess amounts which have been used to start a non-commutable income stream.

Regulations 1.05 and 1.06 of the SIS Regulations set out the standards which must be met by a pension or annuity, including when a pension or annuity may be commuted.

Items 1 to 12 amend paragraphs 1.05(2)(f), 1.05(9)(h), 1.05(10)(d), 1.06(2)(e), 1.06(7)(g) 1.06(8)(d) which provide the exceptions when a non-commutable income stream may be commuted, to also allow commutation in accordance with a release authority.

Items 13 and 14 amend the definition of a non-commutable allocated annuity and non-commutable allocated pension to ensure that where a non-commutable income stream is commuted to meet a release authority the pension or annuity still satisfies the annuity and pension standards in the SIS Regulations.

New Minimum Pension Standards

Item 15

This item inserts a new regulation 6.17C into the payment standards in Part 6 of the SIS Regulations. The new provision requires that the trustee of a regulated superannuation fund providing a pension under subregulation 1.06(2), (7) or (8) must not pay the pension, or allow the pension to be commuted, except in accordance with the relevant subregulation.

Pensions provided under subregulations 1.06(2), (7) or (8) are commonly referred to as 'complying pensions'. The rules for these pensions require that commutation can only occur in limited circumstances, including where the commutation amount is applied to commence another 'complying' income stream.

Cashing in ADFs

Item 16

Item 16 amends the limitation on trustees of approved deposit funds on cashing benefits only to close an account that is less than $500, to also allow for the cashing of benefits in accordance with a release authority.

Definition of 'gainfully employed'

Items 17 and 18

Items 17 and 18 amend the meaning of 'gainfully employed on a part-time basis' in subregulation 7.01(3) of the SIS Regulations so that a person must be gainfully employed (that is, self-employed or employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment) for at least 40 hours in a period of not more than 30 consecutive days during a financial year. This is a technical amendment to give effect to the original intent for application in the SIS Regulations.

Transitional arrangements for acceptance of contributions

Items 19 to 22

Regulation 7.04 of the SIS Regulations outlines the conditions for accepting contributions. Once a person turns age 65 they must satisfy a work test before they can make contributions to a superannuation fund. Once they turn age 75 they are generally unable to make any superannuation contributions. As a result of the timing of the Simplified Superannuation announcements about caps for non-concessional contributions, some people may have inadvertently missed the opportunity to take advantage of the higher transitional cap of $1 million for non-concessional contributions made before 30 June 2007.

Items 19 to **22** insert new subregulation 7.04(1E) to provide an exception to the acceptance of contributions rules that relate to an individual who was age 64 at any time between 10 May 2006 and 5 September 2006. These people will be able to contribute to a regulated superannuation fund during the period 10 May 2006 to

30 June 2007 without having to satisfy the work test (that is, gainfully employed on at least a part-time basis during the financial year). **(Item 22)**

New subregulation 7.04(1E) also provides an exception to the acceptance of contributions rules that relate to an individual who was age 74 at any time between 10 May and 5 September 2006. These people will be able to contribute to a regulated superannuation fund during the period 10 May 2006 to 30 June 2007 if the person has been gainfully employed on at least a part-time basis in either the 2005-06 or 2006-07 financial years. **(Item 22)**

These exceptions only apply to contributions made by the member.

Conditions of release

Items 23 and 24

Items 23 and **24** insert new items into Schedule 1, Parts 1 and 2 of the SIS Regulations. These new items provide that a new condition of release for regulated superannuation funds and approved deposit funds is triggered when a member or the Commissioner of Taxation has given the fund a release authority under section 292-410 of the ITAA 1997 or a transitional release authority under section 292-80A of the *Income Tax (Transitional Provisions) Act 1997* (Transitional Act).

A superannuation provider that only holds a defined benefit interest for the person cannot be given a release authority under section 292-410 of the ITAA 1997 or section 292-80A of the Transitional Act.

The amendments also provide that the restriction on cashing, once such a condition of release is satisfied, is that the payment is subject to the restrictions contained in subsection 292-415(1) of the ITAA 1997 and subsection 292-80C(1) of the Transitional Act. These restrictions relate to timeframes and amounts that can be released.

Schedule 2 – Amendments commencing on 5 April 2007

Spouse Contributions Splitting

Under the Simplified Superannuation reforms, from 10 May 2006 there is a cap on the amount of non-concessional contributions that can be made for a person. Contributions in excess of the cap are subject to tax at the rate of 46.5 per cent, which is levied on the individual who must withdraw an amount equal to their tax liability from their superannuation fund.

This ensures the excess contributions are removed from the superannuation system and do not continue to benefit from the concessional tax treatment afforded to investment earnings generated by a superannuation fund.

Currently, Division 6.7 of the SIS Regulations provides that certain contributions may be split between spouses superannuation accounts. Allowing people to continue to split non-concessional contributions with their spouse would require the implementation of a complex mechanism to allow for the retrieval of contributions

from the non-member spouse's account to prevent a potential circumvention of the cap.

Therefore, **item 1** amends the definition of an 'untaxed splittable contribution' in regulation 6.41(3) of the SIS Regulations, to prevent the splitting of non-concessional contributions contributed after 5 April 2006 and updates the definition to include concepts introduced by the *Tax Laws Amendment (Simplified Superannuation) Act 2007*.

However, members will still be able to split contributions made prior to that date**.**

Schedule 3 – Amendments commencing on 1 July 2007

New Minimum Pension Standards

Item 1

Item 1 inserts into the SIS Regulations a new definition of 'account-based pension'. This is a pension for which there is an account balance attributable to the recipient and which meets the standards of new subregulation 1.06(9A).

Item 5

Currently, a member of a superannuation fund can be classified as being lost where the fund has not received a contribution or rollover in respect of the member within the last two years. **Item 5** increases this period to five years.

Items 8 and 14

Items 8 and **14** insert into the SIS Regulations new provisions describing the meaning of annuity and pension for purposes of the SIS Act. An annuity or pension is a benefit which meets the standards of new subregulations 1.05(11A) and 1.06(9A) respectively, and which does not permit the capital supporting the income stream to be added to by way of contribution or rollover once it has commenced. The income stream also needs to meet rules requiring a minimum payment to be made prior to a commutation.

The existing provisions containing the meaning of annuity and pension will remain in the SIS Regulations as new subregulations 1.05(1A) and 1.06(1A). These provisions will relate to annuities and pensions which commence before 20 September 2007. Annuities and pensions which commence in the period between 1 July 2007 and 20 September 2007 will be able to meet either the new standards or the existing standards.

Items 8 and **14** also insert new subregulations 1.05(1B) and 1.06(1B) into the SIS Regulations. The new provisions clarify that the meaning of annuity or pension includes a complying life expectancy or market-linked income stream that commences on or after 20 September 2007 from the commutation of another complying income stream, provided that the new income stream also meets the standards of subregulation 1.05(11A) or 1.06(9A).

In the case of a new market-linked pension, for example, this involves meeting the standards of both existing subregulation 1.06(8) and new subregulation 1.06(9A). In practice, this means that the allowable term of the new market-linked pension has to be chosen such that the total value of payments in each year is at least equal to the minimum payment amounts in Schedule 7 of the SIS Regulations.

Items 12 and 18

These items set out the new minimum standards for annuities and pensions.

Under the new standards, income streams effectively fall into two classes – those where there is an account balance attributable to the recipient and those where there is not.

Account-based income streams must meet the minimum payment rules set down in new Schedule 7 of the SIS Regulations.

Non account-based income streams can meet the new standards in either of two ways.

The first is by meeting the minimum payment rules in clause 2 of Schedule 7 of the SIS Regulations. The formula in clause 2 can only be used in cases where the terms of the income stream do not provide for a residual capital value, commutation value or withdrawal benefit of greater than 100 per cent of the purchase price of the income stream.

The second is by meeting the requirements set out at subparagraphs 1.05 (11A)(b)(ii) and 1.06 (9A)(b)(ii).

Lifetime annuities and pensions which meet the standards of existing subregulations 1.05 (2) or 1.06 (2) of the SIS Regulations will also meet the new standards.

The new minimum standards will not be restricted to income streams which commence on or after 20 September 2007. This means that existing allocated pensions will be able to operate under the new minimum payment rules from 1 July 2007 without the need to commute and restart a new pension.

Items 12 and **18** also add new subregulations 1.05(11B) and 1.06(9B) which limit the ability to transfer an annuity or pension to another person where the recipient dies on or after 1 July 2007. The effect of these new provisions is to prevent an annuity or pension from being transferred to a person who is ineligible to be paid a benefit in that form under new subregulation 6.21(2A) (see **item 51**).

Items 13 and 19

These items add a new definition of ‘indexation arrangement’ for the purpose of the rules contained in proposed new subregulations 1.05(11A) and 1.06(9A). An indexation arrangement is defined as an arrangement that results in the amount of annuity or pension payments increasing by the same percentage each year, or which results in the amount of annuity or pension payments in each year being adjusted in line with the consumer price index or a measure of average weekly earnings published by the statistician. Unless the Australian Prudential Regulation Authority otherwise

approves, the indexation arrangement must result in payments from the annuity or pension being adjusted at least annually.

Items 20 and 22

SIS Regulations 1.07A and 1.07C contain rules which require a minimum pro-rata payment to be made from an income stream prior to a commutation. An exception to this rule applies where the income stream account balance, immediately after the commutation, is equal to or greater than the required minimum payment for the year as reduced by the amount of income payments already made in the year (existing paragraphs 1.07A (2)(ba) and 1.07C (2)(ba)). **Items 20** and **22** amend these provisions to substitute the words "payments to the annuitant or pensioner" for "income payments". The effect of the change is that any payments already made from the income stream (either as income or by way of commutation) to the recipient in the relevant year count for purposes of determining whether the exception to the pro-rata minimum payment rule applies.

Item 21

SIS Regulation 1.07B contains integrity rules which require a minimum payment to be made prior to the commutation of certain types of income streams. **Item 21** adds references to the relevant provisions in the new pension and annuity standards, and also amends references to existing provisions where these references have been altered by the new regulations.

Item 23

This item inserts a new regulation 1.07D into the SIS Regulations which sets out a minimum payment condition that must be satisfied prior to the commutation of an account-based income stream. The condition requires that the annuity or pension must pay an amount, in the financial year in which the commutation is to take place, of at least the pro-rata of the minimum annual payment amount that is required under new Schedule 7. This rule is closely based on the existing integrity rules for allocated income streams and market-linked income streams.

The minimum payment condition in regulation 1.07D does not apply to a commutation resulting from the death of the recipient of the income stream. It also does not apply to a commutation for the sole purpose of paying a superannuation contributions surcharge, giving effect to an entitlement of a non-member spouse under a payment split or meeting the rights of a client to return a financial product under the cooling-off period provisions in the *Corporations Act 2001*.

The formula for calculating the pro-rata minimum payment amount is as follows.

Minimum annual amount x days in payment period ÷ days in financial year

The minimum annual amount for the pro-rata calculation is worked out in accordance with the formula for calculating the minimum annual payment amount in new Schedule 7.

For income streams that commence in the year in which they are commuted, the pro-rata minimum payment amount is calculated using the number of days in the

payment period from the commencement day of the income stream to the day on which the commutation takes place. For commutations in subsequent years, the pro-rata minimum payment amount is calculated using the number of days in the payment period from 1 July in the financial year in which the commutation takes place to the day on which the commutation takes place.

Example

Jaylee commences an account-based pension on 1 July 2007 at age 60. She decides to commute the pension on 31 July 2008. The account balance of the pension on 1 July 2008 is $100,000.

The minimum required payment from the pension in 2008-09 is $4,000 (4 per cent of $100,000). The pro-rata minimum payment amount for the pension will be $4,000 × 31 ÷ 365 = $339.73. As no payments have been made from the pension in 2008-09, the pension needs to pay Jaylee a minimum payment of $339.73 prior to the commutation.

Item 24

This item amends regulation 1.08 to clarify that this provision does not have application to account-based income streams. To this end, the meaning of 'prescribed pension' in subregulation 1.08(3) is amended to exclude an account-based pension, an allocated pension and a market linked pension.

Item 25

This item amends Part 6 of the SIS Regulations to remove the requirement for compulsory age-based cashing for benefits in a deferred annuity. As a result of the changes, the payment of a deferred annuity must commence as soon as practicable after the annuitant dies, or if the annuitant dies before age 65, when they would have attained that age.

Item 27

This item inserts a new definition of 'cashing restriction' into the SIS Regulations. In relation to a condition of release this term means a cashing restriction specified in column 3 of the relevant item in Schedule 1.

Item 35

This item inserts a new definition of 'transition to retirement income stream' into subregulation 6.01(2). A transition to retirement income stream is defined as an account-based income stream that meets the standards of subregulations 1.05(11A) or 1.06(9A) and which limits the total amount of payments in any year to no greater than 10 per cent of the account balance at the start of each year.

The definition also requires the income stream to meet certain restrictions on commutation which currently apply to non-commutable allocated annuities and pensions. These restrictions ensure that if the annuity or pension is commuted, the proceeds of the commutation cannot be cashed as a lump sum unless the annuitant or pensioner has satisfied a condition of release with a 'nil' cashing restriction, or the

commutation is for certain specified purposes. The specified purposes are: to cash an unrestricted non-preserved benefit; to pay a superannuation contributions surcharge; or to give effect to a payment split under family law.

Because annuity providers are not subject to the payment standards under the SIS Regulations, the new Regulations also include a requirement for the payment of transition to retirement benefits in the form of an annuity meeting the new minimum standards to be made in accordance with the standards that apply to regulated superannuation funds under SIS Regulations 6.16, 6.18, 6.19 and 6.22A.

Item 37

This item inserts a new paragraph 6.01(7)(b) into the SIS Regulations to extend the meaning of 'retirement' for a person who has reached age 60.

Currently, a person who has reached age 60 is taken to have retired if an arrangement under which the person was gainfully employed has come to an end on or after they attained that age. Under the new regulations, a person in this age group will also be taken to have retired where they have left an employment arrangement and the trustee is reasonably satisfied that the person has no intention of ever working again.

Item 37 is designed to avoid an anomalous outcome which would otherwise arise when the superannuation preservation age increases to 60. In the absence of this change, persons who leave an employment arrangement before age 60, but choose not to access their benefits until after that age, would not be covered by the existing definition of retirement.

Items 42 to 44

These items amend the provisions relating to the voluntary cashing of superannuation benefits to make it clear that these provisions do not have application to cashing of benefits in the event of the death of a member. Cashing in consequence of the death of a member will be covered by regulation 6.21.

Items 47 to 49

Currently, the SIS Regulations require that a member's benefits in a regulated superannuation fund must be cashed if the member has reached age 65 and does not meet a work test. **Items 47** and **48** remove the provisions in the SIS Regulations which impose this requirement. As a result of the changes, compulsory cashing of a member's benefits is only required where a member has died. **Item 49** makes a consequential change.

Items 50 and 51

These items place limits on the ability to cash death benefits in the form of an annuity or a pension where a member dies on or after 1 July 2007. New subregulation 6.21(2A) (inserted by **item 51**) requires that a deceased member's benefits can only be cashed in annuity or pension form in favour of the classes of recipients described. Under new subregulation 6.21(2B), death benefits being paid in the form of an annuity or pension to a child of a deceased member under subregulation 6.21(2A) have to be cashed as a lump sum no later than the time at which the child attains the age of 25, unless the child has a permanent disability.

Item 52

Subregulation 6.21(1A) is omitted from the regulations by **item 48**. **Item 52** removes a reference to this subregulation in subregulation 6.21(3).

Item 53

This item removes subregulations 6.21(3A), (4), (5) and (6) which are made redundant by the removal of the work test for compulsory cashing.

Items 57 and 58

Subregulation 6.25(1) of the SIS Regulations requires that the benefits of a member in an approved deposit fund must be cashed as soon as practicable after the member reaches age 65 or dies. **Items 57** and **58** amend subregulation 6.25(1) to remove compulsory age-based cashing of benefits in approved deposit funds. As a result of the change, compulsory cashing is only required where a member dies.

Items 82 and 83

These items amend the definition of a 'defined benefit pension' in regulation 9.04E of the SIS Regulations to enable funds with less than 50 members to pay an account-based pension. The term 'account-based pension' is defined at **Item 1**.

Item 95

Schedule 1 of the SIS Regulations sets out the conditions of release and associated cashing restrictions for benefits in regulated superannuation funds and approved deposit funds. This item inserts a heading to Schedule 1 for the purpose of identifying the content of the Schedule.

Items 96 and 98

These items amend the cashing restriction for the 'attaining preservation age' condition of release in Schedule 1 to include a 'transition to retirement income stream'.

Items 97 and 99

These items create a new condition of release which allows the benefits of a lost fund member to be paid out to the member where their benefit in the fund at the time of release is less than $200.

Item 102

This item inserts into the regulations a new Schedule 7 containing the payment rules for annuities and pensions that apply under new subregulations 1.05(11A) and 1.06(9A).

The minimum annual payment amount for an account-based income stream will be determined under the formula contained in clause 1 of Schedule 7. Under this formula the minimum payment amount is calculated by multiplying the account balance of the income stream on 1 July of the relevant year (or the commencement day in the case of the first year of the income stream where that is a day other than 1 July) by the percentage factor in column 3 of the table that corresponds to the beneficiary's age on 1 July in the financial year (or on the commencement day in the case of the first year of the income stream).

In cases where an income stream commences on a day other than 1 July, clause 3 requires the minimum payment amount for the first year of the income stream to be applied proportionately to the number of days remaining in the financial year that include and follow the commencement day.

Clause 4 states that, where the commencement day of an annuity or pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.

The minimum annual payment amount for a non-account based income stream will be determined under the formula contained in clause 2 of Schedule 7. Under this formula the minimum payment amount is calculated by multiplying the purchase price of the income stream by the percentage factor in column 3 of the table that corresponds to the beneficiary's age on the commencement day (in the case of the first year of the income stream) or on the anniversary of the commencement day.

Clause 5 provides that minimum payment amounts determined under Schedule 7 are to be rounded to the nearest 10 whole dollars.

Cashing in favour of the Commissioner of Taxation

Items 54, 55, 59 and 60

Items 54, 55, 59 and **60** amend regulations 6.22 and 6.26 of the SIS Regulations which limit the cashing of benefits, to allow a trustee who has received a release authority in respect of a member under section 292-410 of the ITAA 1997 to cash the member's benefits in favour of the Commissioner of Taxation in accordance with the authority in satisfaction of the member's tax liability.

Amendments relating to portability

Items 61 to 64 and 101

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

The Government announced in *A Plan to Simplify and Streamline Superannuation* its intention that it be easier for people to transfer their superannuation by reducing the time frame within which a transfer request must be processed from 90 days to 30 days and to set out a standard form to request the transfer of benefits.

Item 62 inserts a definition of 'illiquid investment' into the SIS Regulations at new subregulation 6.31(3). The definition of 'illiquid investment' is intended to cover investments that have low liquidity and investments in more complex asset types that undertake pricing on a monthly basis or longer. An illiquid investment may prevent a regulated superannuation fund from processing a transfer request within the maximum timeframe of 30 days as required under proposed subregulation 6.34(5). Examples of illiquid investments may include:

i) private equity;

ii) certain property funds;

iii) hedge funds;

iv) capital guaranteed funds; and

v) structured funds.

Item 61 inserts the heading *Defined benefit component*, as a result of the inclusion of the definition of illiquid investment.

Item 101 inserts at Schedule 2A a standard portability form, including standard proof of identity requirements, for requests to transfer the whole amount of a member's superannuation benefits in a fund.

Item 63 inserts new subregulations 6.33(2), (3) and (4) which require the trustee of a superannuation fund to seek further information from the member, as provided for in these regulations to action the member's portability request, within 10 working days of receiving the request. If the trustee has not received the information within 10 working days, the trustee must make further inquiries with the member**.**

For a whole balance transfer request, the trustee may only require further information that is mandatory information in the prescribed form in Schedule 2A (whether the form in schedule 2A is used or not). Once the fund has a correctly completed standard portability form (with all mandatory information provided) or alternatively does not have a standard form but has all the information that is mandatory on the form, the fund will have 30 days to transfer the benefits. However, the trustee may roll over or transfer an amount even if the trustee does not have all the mandatory information (which includes the proof of identity requirements).

For a partial transfer request, the trustee may ask for further information that was specified as necessary under paragraph 6.34(2)(b) for the transfer.

For a transfer request to an SMSF, if the trustee decides that further documentation is required under subregulation 6.34(3), the trustee may ask for that documentation.

Item 64 inserts a new regulation 6.34 – Rollover or transfer of withdrawal benefit – into the SIS Regulations.

New paragraph 6.34(2)(a) provides that a whole balance transfer request may be made using the prescribed form in Schedule 2A or in another manner.

New paragraph 6.34(2)(b) provides where a member wants to request the transfer of a partial amount of their superannuation benefits, the member will need to contact their fund to find out the information that is necessary to enable the transfer of the partial amount. For example, required information may include the mandatory information specified in the standard form, the amount of the member's benefit to be transferred and the type of benefits to be transferred.

New subregulation 6.34(3) provides in the case of a request to transfer benefits to a self managed superannuation fund (SMSF), in limited circumstances certified documentation showing the member making the request is a member of the SMSF may be required. In particular, if the trustee is aware of another member (who is unrelated to the member making the request) who has transferred benefits to the same SMSF, the trustee may decide that the additional documentation will be required before transferring the benefits.

New subregulation 6.34(5) reduces the time in which a transfer must be made from 90 days to 30 days from receipt of all the information required in accordance with new subregulations 6.34(2), (3) and (4).

The new Regulations allow an exception from the requirement to transfer benefits within 30 days in the case of an 'illiquid investment'. New subregulation 6.34(6) provides an exception from the 30 day rule for an 'illiquid investment' entered into before 1 July 2007. New subregulation 6.34(7) provides an exception to the 30 day rule for an 'illiquid investment' that is entered into on or after 1 July 2007 where certain requirements are met, including a signed agreement that the member understands and accepts the impact on portability of the 'illiquid investment' and the member makes an investment choice under SIS Regulation 4.02.

Spouse Contributions Splitting

Items 65 to 79

Items 65, 66, 69, 70 and **71** remove definitions of repealed terms and insert definitions of terms introduced as part of the Simplified Superannuation reforms.

Item 67 amends the definition of 'maximum splittable amount' to restrict the amount of taxed splittable contributions (that is, contributions included in the assessable income of the fund) that can be split to the lesser of:

a) 85 per cent of the concessional contributions for a financial year; and

b) the concessional contributions cap for the financial year.

Example 1

Nick has taxed splittable contributions of $75,000 in the 2007-08 financial year. The maximum he can split with his spouse is $50,000, which is the lesser of 85% of his concessional contributions (being $63,750) and the cap (being $50,000) for the financial year.

Example 2

Tim has taxed splittable contributions of $35,000 in the 2007-08 financial year. The maximum he can split with his spouse is $29,750, which is the lesser of 85% of his concessional contributions (being $29,750) and the cap (being $50,000) for the financial year.

Example 3

Richard, aged 52, has taxed splittable contributions of $115,000 in the 2007-08 financial year. The maximum he can split with his spouse is $97,750, which is the lesser of 85% of his concessional contributions (being $97,750) and the cap (being $100,000 as he qualifies for the higher transitional concessional contributions cap) for the financial year.

As excess concessional contributions are included in the definition of the non-concessional contributions these amendments are necessary to support the administrative arrangements for the tax on excess non-concessional contributions.

Item 68 also amends the definition of 'maximum splittable contribution' to restrict the amount of untaxed splittable employer contributions (that is, contributions by the Commonwealth, a State or Territory to a public sector superannuation scheme that is not included in the assessable income of the fund) that can be split to 100 per cent of the concessional contribution cap for the financial year.

Items 72 to **79** remove concepts that cease to apply from 1 July 2007 and update references and terms introduced as part of the Simplified Superannuation reforms.

Acceptance of contributions and accrual of benefits

Item 80

Item 80 inserts new regulation 7.04 which amends the existing acceptance of contributions contained in the SIS Regulations to give effect to various measures outlined in the Simplified Superannuation reforms. Regulation 7.05 is also amended to extend the circumstances when a defined benefit fund may grant an accrual of benefits to people who are aged between 70 and 75.

The maximum age limit for deductibility of an employer contribution has been increased from age 70 to 75 (new section 290-80 of ITAA 1997). New regulations 7.04 and 7.05 provide for an increase in the age for which such contributions can be accepted and benefits can be accrued. That is, from the current age of 70 to a day that is on or before the day that is 28 days after the end of the month in which the employee turns age 75.

Non-personal member contributions (such as spouse contributions) will continue to not be allowed to be accepted into a fund for any person who has reached age 70.

To help prevent a person from inadvertently contributing more than the non-concessional contributions cap, new subregulation 7.04(3) provides that superannuation funds will be required to return an amount of certain member contributions that exceed the cap.

For the purposes of this new cap, the member contributions that are subject to these new Regulations are those given meaning by subregulation 5.01(1) of the SIS Regulations, but do not include a contribution that meets the requirements of section 292-95 or 292-100 of the ITAA 1997 (contributions arising from structured settlements or orders made for personal injuries, and, relating to the sale of certain small business assets), payments from the Commissioner of Taxation in relation to superannuation guarantee shortfall components, transfers from the Superannuation Holding Account, Government co-contributions, and contributions covered by a valid and acknowledged notice under section 290-170 of the ITAA 1997. These contributions are known as fund-capped contributions and are defined in new subregulation 7.04(7).

Superannuation funds will not be required to aggregate the total of member contributions received for a person either within the fund or across other funds. The rule applies on a contribution-by-contribution basis, not a yearly basis or any other basis. This measure will reduce the instances of inadvertent breaches where the contribution is a one-off in a financial year.

New subregulation 7.04(2) requires superannuation funds to return member contributions where the member's tax file number has not been quoted (for superannuation purposes) to the trustee of the superannuation fund. This prevents a person from avoiding the non-concessional contributions cap and tax. The Australian Taxation Office will find it difficult to match a person to their contributions and apply the contribution caps, if the person's tax file number is not quoted.

New subregulation 7.04(4) provides that superannuation funds are required to return the relevant member contribution amounts within 30 days of becoming aware that the amounts do not satisfy the regulations. The fund is not required to return this amount if the member's tax file number is quoted to the fund trustee within 30 days of receipt of the amount. The fund also does not have to return the amount if the fund receives a valid notice that the member is intending to claim a deduction on the member contribution during this time.

New subregulation 7.04(5) provides that if a fund complies with these return arrangements the fund is taken not to have breached these regulations.

Example 1

Donna, aged 31, deposits $500,000 in a superannuation fund on 27 June 2008 as a personal contribution. Donna has previously provided her tax file number to the fund. Donna intends to claim a tax deduction under section 290-170 of the ITAA 1997 in relation to $50,000 of that contribution however did not provide a notice of intent to claim such a deduction at the time of contribution. However, on 7 July 2008 Donna gives a valid notice to the fund that she intends to claim this deduction. The fund-capped contribution is only $450,000 and as a result the fund is able to accept the $500,000 member contribution in full and does not have to return any amount to Donna.

Example 2

Lucy deposits $50,000 in a superannuation fund on 31 December 2007 as a personal contribution. On 2 January 2008 the fund becomes aware that Lucy has not provided her tax file number to the fund. Even though Lucy has also provided a valid notice under section 290-170 of the ITAA 1997 in relation to this amount the fund must return the amount (as outlined in the regulations) to Lucy by 1 February 2008 unless Lucy's tax file number is quoted to the fund trustee. Luckily for Lucy, this occurs on 25 January 2008. As a result the fund does not have to return this amount.

Example 3

Hamish deposits $100,000 in a superannuation fund on 2 February 2008 as a personal contribution. Hamish has an existing account balance of $250,000 from contributions made in earlier years. On 3 February 2008, Hamish requests that the fund roll over his total balance in the fund, including this amount, to another superannuation fund. Hamish has not provided his tax file number to the fund. The fund can rollover the balance of Hamish's account in the fund (that is, the $250,000) into the new fund. However, the amount that was an attempted contribution on 2 February 2008 cannot be rolled over unless his TFN is quoted. This amount must be returned to Hamish by 4 March 2008.

In order to avoid causing member equity and pricing issues within funds new subregulation 7.04(4) also provides that the amount that is required to be returned will be adjusted in arrangements that are similar to those which apply to financial products in Part 7.9 of the *Corporations Regulations 2001*.

Amendments relating to self managed superannuation funds (SMSF)

Items 84 to 88

Item 84 would insert a new heading for SIS Regulation 11.07.

Items 85 and **87** amend regulation 11.07 of the SIS Regulations so that the current operating standard relating to the disclosure of certain information by a trustee of a superannuation entity applies only to funds other than SMSFs.

Item 86 amends paragraph 11.07(2)(b) to provide that a trustee must notify the Commissioner of Taxation (as regulator) of any change in the entity's contact details within 28 days of the change occurring instead of one month.

Item 88 amends subregulation 11.07A(3) so that the trustee must notify the Commissioner of Taxation of any change in the entity's status within 28 days of the change occurring.

The new regulations at **items 86** and **88** ensure that the periods for notifying the Commissioner of Taxation of certain changes are consistent for trustees of all superannuation entities and the notification period which applies for changes in relation to corporations.

Item 87 inserts new regulation 11.07AA into the SIS Regulations which prescribes an operating standard relating to the disclosure of certain information by a trustee of an SMSF. As well as notifying the Commissioner of Taxation of any change in the fund's name, address or details of the fund's contact person (as required under existing SIS Regulation 11.07), the trustee of an SMSF must also notify the Commissioner of Taxation, in writing, of any change in:

- the membership of the SMSF;
- the trustees of the fund; or
- the directors of the fund's corporate trustee.

The trustee must notify the Commissioner of Taxation using the approved form within 28 days of the change occurring. The trustee must notify the Commissioner of Taxation of any changes which occur on or after 1 July 2007.

The Regulations ensure that the Commissioner of Taxation has up-to-date details of the fund's members and trustees, so that the Commissioner of Taxation may assist the trustees in meeting their obligations under the superannuation laws.

Consequential Amendments

Item 2

Item 2 amends the definition of 'capital gains tax exempt component' in subregulation 1.03(1) of the SIS Regulations to reflect the repeal of subsection 27A(1) of the *Income Tax Assessment Act 1936* (ITAA 1936)from 1 July 2007. Given that the definition applies to contributions made before July 1999, it is appropriate to refer to the existing definition in the ITAA 1936.

Item 3

Item 3 amends the definition of 'eligible spouse contribution' in subregulation 1.03(1) of the SIS Regulations as the existing definition refers to

provisions in the ITAA 1936 that have been repealed and rewritten into the ITAA 1997.

Item 28

Item 28 amends the definition of 'indexed' in subregulation 6.01(2) of the SIS Regulations to reflect the repeal of section 159SG of the ITAA 1936 from 1 July 2007.

Item 34

Item 34 inserts a new definition of 'permanent incapacity' at subregulation 6.01(2) to extend the operation of the condition of release to people who have never worked or who were not working at the time they were incapacitated.

Item 36

Item 36 amends the definition of 'undeducted contributions' as the existing definition refers to provisions in the ITAA 1936 that have been repealed and replaced by revised concepts in the ITAA 1997.

Items 38 and 40

Items 38 and **40** amend paragraphs 6.08(2)(a) and 6.10(3)(a) of the SIS Regulations to reflect that section 82AAT of the ITAA 1936 is repealed.

Items 39 and 41

Items 39 and **41** amend paragraphs 6.10(2)(a) and 6.11(3)(a) to reflect the repeal of section 27D of the ITAA 1936 from 1 July 2007.

Items 4, 6, 7, 9, 10, 11, 15, 16, 17, 26, 29, 30, 31, 32 and 33

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* replaces the concept of an 'eligible termination payment' in the ITAA 1936 with the concepts of an 'employment termination payment' and 'superannuation lump sum' in the ITAA 1997. These items update references to 'eligible termination payments' in the SIS Regulations to refer to both new concepts or where it is clearly intended to only apply to certain types of 'eligible termination payments', only the relevant term is substituted.

Item 32 and 33 also amends subregulation 6.01(2) to re-locate the definition of 'non-commutable income stream' in correct alphabetical order within the provision.

Items 45, **46 and 56**

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* inserts a definition of 'departing Australia superannuation payment' into the ITA Act 1997. **Items 45**, **46** and **56** amend the notes after subregulation 6.20A(5), 6.20B(4) and 6.24A(5) to replace the references to the ITAA 1936, with references to the ITAA 1997.

Item 81

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* replaces the concept of a 'death benefit eligible termination payment' in the ITAA 1936 with the concept of a 'superannuation death benefit' in the ITAA 1997.

Item 81 amends subregulation 7A.14(2) to update the reference 'death benefit eligible termination payment' to refer to a 'superannuation death benefit' in the ITAA 1997.

Items 89 to 94

Under the Simplified Superannuation reforms, the provisions relating to the use of pre-1 July 88 funding credits will be simplified and moved from the ITAA 1936 (sections 275A and 275B) to the ITAA 1997 (section 295-265) with effect from 1 July 2007. As a result, a number of consequential amendments are required to provisions in Part 12 of the SIS Regulations which relates to pre-July 1988 funding credits and debits.

The new Regulations replace the concept of "pre-1 July 88 funding credit balance" in the SIS Regulations with the revised concept of "pre-1 July 88 funding credits available" (**Items 91 to 94**) and update the definition in regulation 12.01 and subregulation 12.10(2) to refer to the new provisions in the ITAA 1997 **(Items 89** and **90)**.

Item 100

Item 100 updates the reference to 'Australian Society of Certified Practising Accountants' in item 1 of Schedule 1AAA to reflect the new registered business name of the organisation – 'CPA Australia Limited'.

FOI 3148
Document 2

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 104

Issued by the authority of the Minister for Revenue and Assistant Treasurer

Retirement Savings Accounts Act 1997

Retirement Savings Accounts Amendment Regulations 2007 (No. 1)

The purpose of these regulations is to support the implementation of the Government's Simplified Superannuation reforms announced in the 5 September 2006 statement *A Plan to Simplify and Streamline Superannuation – Outcomes of Consultation*. These regulations complement other regulations supporting the reforms which were registered on 2 April 2007 and 13 April 2007.

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* and related Acts give effect to the Simplified Superannuation reforms, making superannuation easier to understand, improving incentives to work and save, and providing greater flexibility over how superannuation savings can be drawn down in retirement.

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.

The *Retirement Savings Accounts Regulations 1997* set out the contribution and payment rules for RSA providers, standards relating to the rollover and transfer of benefits, and pension standards.

The Regulations allow RSA providers to cash a member's benefits to give effect to an excess contributions tax release authority, prohibit an RSA provider from accepting RSA holder contributions where a tax file number is not quoted or the amount of a contribution exceeds the non-concessional contributions cap, amend the work test for a transitional period to allow certain people to make personal contributions, allow RSA providers to accept non-mandated employer contributions for persons 70 to 74, and update the provisions relating to spouse contributions splitting to provide for the new contributions caps.

The Regulations also refer to a standard portability form to be used when a member seeks to transfer benefits between superannuation entities, as well as reduce the time an RSA provider has to action an RSA holder's request to transfer benefits.

The Regulations also ensure a consistent legislative basis for portability for superannuation providers and RSA providers. In particular, the Regulations insert the portability requirements for RSA providers into the RSA Regulations. These requirements were previously set out in the RSA Act.

The Regulations also set out new minimum pension standards.

Details of the Regulations are set out in the **Attachment**.

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

The Regulations commence on the day after registration, 30 April 2007 and 1 July 2007.

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

ATTACHMENT

Details of the *Retirement Savings Accounts Amendment Regulations 2007 (No. 1)*

Regulation 1 specifies the name of the regulations as the *Retirement Savings Accounts Amendment Regulations 2007 (No. 1).*

Regulation 2 provides that regulations 1, 2 and 3 and Schedule 1 commence on the day after registration. Regulation 4 and Schedule 2 commence on 30 April 2007. Regulation 5 and Schedule 3 commence on 1 July 2007.

Regulation 3 provides that Schedule 1 amends the *Retirement Savings Accounts Regulations 1997* (RSA Regulations).

Regulation 4 provides that Schedule 2 amends the RSA Regulations.

Regulation 5 provides that Schedule 3 amends the RSA Regulations.

Schedule 1 Amendments commencing on day after registration

Commutation of income streams

Items 1 to 5

Where an individual is given a release authority under section 292-405 of the *Income Tax Assessment Act 1997* (1997 Tax Act), the person must withdraw an amount equal to their excess non-concessional contributions tax liability from the superannuation system by providing the release authority given to them by the Commissioner of Taxation to their RSA institution. Where such a person fails to withdraw the required amount, the Commissioner of Taxation is able to present a release authority directly to the RSA institution of that person.

An individual may also be provided with a transitional release authority under section 292-80A of the *Income Tax (Transitional Provisions) Act 1997* (Transitional Act) which they are also able to present to an RSA institution.

Some income streams have restrictions placed on when commutations can occur and the maximum payments that can be made from them. The Regulations make it possible to remove excess amounts which have been used to start a non-commutable income stream.

The changes to regulations 1.07, 1.08 and 4.01 of the RSA Regulations made by items 1 to 5 set out the standards which must be met by a pension, including when a pension may be commuted to also allow commutation in accordance with a release authority and ensure that where an income stream is commuted to meet a release authority, the pension still satisfies the pension standards in the RSA Regulations.

New Minimum Pension Standards

Item 6

This item inserts a new regulation 4.20A into the payment standards in Part 4 of the RSA Regulations. The new provision requires that an RSA provider providing a pension under subregulation 1.07(3A) must not pay the pension, or allow the pension to be commuted, except in accordance with that subregulation.

Pensions provided under subregulations 1.07(3A) are referred to as 'market-linked pensions'. The rules for these pensions require that commutation can only occur in limited circumstances, including where the commutation amount is applied to commence another 'complying' income stream.

Item 7

Item 7 updates the reference to the Department of Immigration and Multicultural and Indigenous Affairs to also refer to the other names the Department is known by, which are the Department of Immigration and Multicultural Affairs and the Department of Immigration and Citizenship.

Definition of 'gainfully employed'

Items 12 and 13

Items 12 and 13 amend the meaning of 'gainfully employed on a part-time basis' in subregulation 5.03(6) of the RSA Regulations so that a person must be gainfully employed (that is, self-employed or employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment) for at least 40 hours in a period of not more than 30 consecutive days during a financial year. This is a technical amendment to give effect to the original intent for application in the RSA Regulations.

Transitional arrangements for acceptance of contributions

Items 8 to 11

Regulation 5.03 of the RSA Regulations outlines the conditions for accepting contributions. Once a person turns age 65 they must satisfy a work test before they can make contributions to an RSA. Once they turn age 75 they are generally unable to make any superannuation contributions. As a result of the timing of the Simplified Superannuation announcements about caps for non-concessional contributions, some people may have inadvertently missed the opportunity to take advantage of the higher transitional cap of $1 million for non-concessional contributions made before 30 June 2007.

Items 8 to **10** amend subregulations 5.03(3), 5.03(4) and 5.03(4A) to insert a reference to new subregulation 5.03(4B).

Item 11 inserts a new subregulation 5.03(4B) to provide an exception to the acceptance of contributions rules that relate to an individual who was age 64 at any

time between 10 May 2006 and 5 September 2006. These people are able to contribute to an RSA during the period 10 May 2006 to 30 June 2007 without having to satisfy the work test (that is, gainfully employed on at least a part-time basis during the financial year).

New subregulation 5.03(4B) also provide an exception to the acceptance of contributions rules that relate to an individual who was age 74 at any time between 10 May and 5 September 2006. These people are able to contribute to an RSA during the period 10 May 2006 to 30 June 2007 if the person was gainfully employed on at least a part-time basis in either the 2005-06 or 2006-07 financial years.

These exceptions only apply to RSA holder contributions made by the RSA holder.

Conditions of release

Item 14

Item 14 inserts new items into Schedule 2 to the RSA Regulations. These new items provide that a new condition of release for RSAs is triggered when an RSA holder or the Commissioner of Taxation has given the RSA provider a release authority under section 292-410 of the 1997 Tax Act or a transitional release authority under section 292-80A of the *Income Tax (Transitional Provisions) Act 1997* (Transitional Act).

The amendments also provide that the restriction on cashing, once such a condition of release is satisfied, is that the payment is subject to the restrictions contained in subsection 292-415(1) of the 1997 Tax Act and subsection 292-80C(1) of the Transitional Act. These restrictions relate to timeframes and amounts that can be released.

Schedule 2 Amendment commencing on 30 April 2007

Spouse Contributions Splitting

Under the Simplified Superannuation reforms, from 10 May 2006 there is a cap on the amount of non-concessional contributions that can be made for a person. Contributions in excess of the cap are subject to tax at the rate of 46.5 per cent, which is levied on the individual who must withdraw an amount equal to their tax liability from their RSA.

This ensures the excess contributions are removed from the superannuation system and do not continue to benefit from the concessional tax treatment afforded to investment earnings generated by an RSA.

Division 4.5 of the RSA Regulations provides that certain contributions may be split between spouses' accounts in RSAs. Allowing people to continue to split non-concessional contributions with their spouse would require the implementation of a complex mechanism to allow for the retrieval of contributions from the non-member spouse's account to prevent a potential circumvention of the cap.

Therefore, **item 1** amends the definition of an 'untaxed splittable contribution' in subregulation 4.38(3) of the RSA Regulations, to prevent the splitting of non-concessional contributions contributed after 30 April 2007 and update the

definition to include concepts introduced by the *Tax Laws Amendment (Simplified Superannuation) Act 2007*.

However, RSA holders are still able to split contributions made prior to that date**.**

Schedule 3 Amendments commencing on 1 July 2007

Item 1

Item 1 inserts a definition of 1997 Tax Act (being the *Income Tax Assessment Act 1997*) into subregulation 1.03(1).

Item 1 also inserts a definition of an account based pension as a pension that meets the terms and conditions as set out in subregulation 1.07(3D).

New Minimum Pension Standards

Item 7

Currently, an RSA holder can be classified as being lost where the RSA provider has not received a contribution or rollover in respect of the person within the last two years. **Item 6** increases this period to five years.

Item 8

Item 8 inserts into the RSA Regulations a new provision describing the meaning of a pension for the purposes of the RSA Act at 1.07(1). A pension is a benefit which meets the standards of new subregulation 1.07(3D) and which does not permit the capital supporting the income stream to be added to by way of contribution or rollover once it has commenced. The income stream also needs to meet rules requiring a minimum payment to be made prior to a commutation.

The existing provisions containing the meaning of a pension remain in the RSA Regulations as new subregulation 1.07(1A). These provisions relate to pensions which commence before 20 September 2007. Pensions which commence in the period between 1 July 2007 and 20 September 2007 are able to meet either the new standards or the existing standards.

Item 8 also inserts new subregulation 1.07(1B) into the RSA Regulations. The new provision clarifies that the meaning of a pension includes a market-linked pension that commences on or after 20 September 2007 from the commutation of another complying income stream, provided that the new pension also meets the standards of subregulation 1.07(3D).

This involves a new market-linked pension meeting the standards of both existing subregulation 1.07(3A) and new subregulation 1.07(3D). In practice, this means that the allowable term of the new market-linked pension have to be chosen such that the total value of payments in each year is at least equal to the minimum payment amounts in Schedule 5 of the RSA Regulations.

Item 10

This item sets out the new minimum standards for pensions.

Under the new standards, the total amount of payments in any year must meet the minimum payment rules set down in new Schedule 5 to the RSA Regulations.

The new minimum standards are not restricted to income streams which commence on or after 20 September 2007. This means that existing allocated pensions are able to operate under the new minimum payment rules from 1 July 2007 without the need to commute and restart a new pension.

Item 10 also adds new subregulation 1.07(3E) which limits the ability to transfer a pension to another person where the recipient dies on or after 1 July 2007. The effect of the provisions is to prevent a pension from being transferred to a person who is ineligible to be paid a benefit in that form under new subregulation 4.24(3A) (see **item 33**).

Item 11

Regulation 1.08 contains rules which require a minimum pro-rata payment to be made from a market linked pension prior to commutation. An exception to this rule applies where the income stream account balance, immediately after the commutation, is equal to or greater than the required minimum payment for the year as reduced by the amount of income payments already made in the year (existing paragraph 1.08 (2)(ba)). **Item 11** amends this provision to substitute the words "payments to the RSA holder already made" for "income payments". The effect of the change is that any payments already made from the income stream (either as income or by way of commutation) to the recipient in the relevant year count for purposes of determining whether the exception to the pro-rata minimum payment rule applies.

Item 12

This item inserts a new regulation 1.08A into the RSA Regulations which sets out a minimum payment condition that must be satisfied prior to the commutation of an account-based pension. The condition requires that the pension must pay an amount, in the financial year in which the commutation is to take place, of at least the pro-rata of the minimum annual payment amount that is required under new Schedule 5. This rule is closely based on the existing integrity rule for market-linked pensions.

The minimum payment condition in regulation 1.08A does not apply to a commutation resulting from the death of the recipient of the income stream. It also does not apply to a commutation for the sole purpose of paying a superannuation contributions surcharge, giving effect to an entitlement of a non-member spouse under a payment split or meeting the rights of a client to return a financial product under the cooling-off period provisions in the *Corporations Act 2001*.

The formula for calculating the pro-rata minimum payment amount are as follows.

Minimum annual amount x days in payment period ÷ days in financial year

The minimum annual amount for the pro-rata calculation is worked out in accordance with the formula for calculating the minimum annual payment amount in Schedule 5.

For income streams that commence in the year in which they are commuted, the pro-rata minimum payment amount is calculated using the number of days in the payment period from the commencement day of the income stream to the day on which the commutation takes place. For commutations in subsequent years, the pro-rata minimum payment amount is calculated using the number of days in the payment period from 1 July in the financial year in which the commutation takes place to the day on which the commutation takes place.

Example: Jaylee commences an account-based pension on 1 July 2007 at age 60. She decides to commute the pension on 31 July 2008. The account balance of the pension on 1 July 2008 is $100,000.

The minimum required payment from the pension in 2008-09 is $4,000 (4 per cent of $100,000). The pro-rata minimum payment amount for the pension will be $4,000 × 31 ÷ 365 = $339.73. As no payments have been made from the pension in 2008-09, the pension would need to pay Jaylee a minimum payment of $339.73 prior to the commutation.

Item 14

This item inserts a new definition of ‘cashing restriction’ into the RSA Regulations. In relation to a condition of release, this term means a cashing restriction specified in column 3 of the relevant item in Schedule 2.

Item 18

This item inserts a new definition of ‘transition to retirement pension’ into subregulation 4.01(2). A transition to retirement pension is defined as a pension that meets the standards of subregulation 1.07(3D) and which limits the total amount of payments in any year to no greater than 10 per cent of the account balance at the start of each year.

The definition also requires that the income stream meets certain restrictions on commutation which currently apply to non-commutable allocated pensions. These restrictions ensure that if the pension is commuted, the proceeds of the commutation cannot be cashed as a lump sum unless the pensioner has satisfied a condition of release with a ‘nil’ cashing restriction, or the commutation is for certain specified purposes. The specified purposes are: to cash an unrestricted non-preserved benefit; to pay a superannuation contributions surcharge; or to give effect to a payment split under family law.

Item 20

This item inserts a new paragraph 4.01(4)(b) into the RSA Regulations to extend the meaning of ‘retirement’ for a person who has reached age 60.

Currently, a person who has reached age 60 is taken to have retired if an arrangement under which the person was gainfully employed has come to an end on or after they attained that age. Under the amendment, a person in this age group will also be taken

to have retired where they have left an employment arrangement and the RSA provider is reasonably satisfied that the person has no intention of ever working again.

Item 20 avoids an anomalous outcome which would otherwise arise when the superannuation preservation age increases to 60. In the absence of this change, persons who leave an employment arrangement before age 60, but choose not to access their benefits until after that age, would not be covered by the existing definition of retirement.

Items 25, 26 and 27

These items amend the provisions relating to the voluntary cashing of benefits in a retirement savings account to make it clear that these provisions do not have application to cashing of benefits in the event of the death of the RSA holder. Cashing in consequence of death will be exclusively covered by regulation 4.24.

Items 29 and 30

Currently, the RSA Regulations require that an RSA holder's benefits in a retirement savings account must be cashed if the RSA holder has reached age 65 and does not meet a work test. **Items 29** and **30** remove the provisions in the RSA Regulations which impose this requirement. As a result of the changes, compulsory cashing of an RSA holder's benefits are only required where the RSA holder has died.

Items 31 and 32

These items place limits on the ability to cash death benefits in the form of an annuity or a pension where an RSA holder dies on or after 1 July 2007. New subregulation 4.24(3A) (inserted by **item 32**) requires that a deceased RSA holder's benefits can only be cashed in annuity or pension form in favour of the classes of recipients described. Under new subregulation 4.24(3B) (also inserted by **item 32**), death benefits being paid in the form of an annuity or pension to a child of a deceased RSA holder under subregulation 4.24(3A) have to be cashed as a lump sum no later than the time at which the child attains the age of 25, unless the child has a permanent disability.

Item 33

Subregulation 4.24(2) is omitted from the regulations by **item 30**. **Item 32** removes a reference to this subregulation in subregulation 4.24(4).

Item 34

This item removes subregulations 4.24(5) and (6) which are made redundant by the removal of the work test for compulsory cashing.

Item 53

This item amends the cashing restriction for the 'attaining preservation age' condition of release in Schedule 2 to include transition to retirement benefits provided under the new minimum standards for pensions.

Item 54

This item creates a new condition of release which allows the benefits of a lost RSA holder to be paid out to the RSA holder where their benefit in the RSA at the time of release is less than $200.

Item 55

This item inserts into the RSA Regulations a new Schedule 5 containing the payment rules for pensions that apply under subregulation 1.07(3D).

The minimum annual payment amount for an account-based pension will be determined under the formula contained in clause 1 of Schedule 5. Under this formula the minimum payment amount is calculated by multiplying the account balance of the income stream on 1 July of the relevant year (or the commencement day in the case of the first year of the income stream where that is a day other than 1 July) by the percentage factor in column 3 of the table that corresponds to the beneficiary's age on 1 July in the financial year (or on the commencement day in the case of the first year of the income stream).

In cases where an income stream commences on a day other than 1 July, clause 2 would require the minimum payment amount for the first year of the income stream to be applied proportionately to the number of days remaining in the financial year that include and follow the commencement day.

Clause 3 states that, where the commencement day of the pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.

Clause 4 provides that minimum payment amounts determined under Schedule 5 are to be rounded to the nearest 10 whole dollars.

Cashing in favour of the Commissioner of Taxation

Items 35 and 36

Items 35 and 36 amend regulation 4.26 of the RSA Regulations which limit the cashing of benefits, to allow an RSA institution who has received a release authority in respect of an RSA holder under section 292-410 of the 1997 Tax Act to cash the RSA holder's benefits in favour of the Commissioner of Taxation in accordance with the authority in satisfaction of the RSA holder's tax liability.

Compulsory rollover and transfer of benefits in RSAs

Item 24 replaces the reference to section 50 of the RSA Act with a reference to new Division 4.4A, which provides for the compulsory rollover and transfer of benefits in RSAs, in subparagraph 4.20(1)(a)(ii) of the RSA Regulations.

Item 37

Item 37 – New Division 4.4A

The legislative basis for the portability requirements of superannuation funds and RSA providers is inconsistent. In particular, the portability requirements for superannuation funds are specified in the SIS Regulations where as the requirements for RSA providers are specified in the RSA Act. **Item 37** inserts Division 4.4A into the RSA Regulations and therefore inserts the requirements for portability of benefits into the RSA Regulations to ensure consistency between superannuation providers and RSA providers in relation to the arrangements for portability of benefits.

Division 4.4A provides for the compulsory rollover and transfer of benefits in RSAs (portability of superannuation benefits). It includes the changes to portability arrangements announced by the Government as part of its Simpler Superannuation reforms. In particular, referring to a standard portability form to be used when a member seeks to transfer benefits between superannuation entities, as well as reducing the time an RSA provider has to action an RSA holder's request to transfer benefits from 90 days to 30 days.

Item 37 inserts new regulations 4.35 to 4.35E which set out the requirements for portability of benefits into the RSA Regulations.

Regulation 4.35 provides that new Division 4.4A applies to all RSAs.

Regulation 4.35A provides that portability of benefits is a standard applicable to the operation of RSAs.

Regulation 4.35B refers to the prescribed standard portability form set out in Schedule 2A of the SIS Regulations. The standard portability form includes standard proof of identity requirements and can be used for requests to transfer the whole amount of a member's superannuation benefits in a fund. This form may be used for transfers from RSAs with any relevant modifications. For example, reference to superannuation fund may need to be changed to RSA provider.

Subregulation 4.35C(1) allows an RSA holder to request, in writing, a transfer of an amount that is whole or part of the RSA holder's benefit.

Subregulations 4.35C(2), (3) and (4) require the RSA provider to seek further information from the RSA holder, as provided for in these regulations to action the RSA holder's portability request, within 10 working days of receiving the request. If the RSA provider has not received the information within 10 working days, the RSA provider is required to make further inquiries with the RSA holder.

For a whole balance transfer request, the RSA provider may only require further information that is mandatory information in the prescribed form in Schedule 2A (whether the form in Schedule 2A is used or not). Once the RSA provider has a correctly completed standard portability form (with all mandatory information provided) or alternatively does not have a standard form but has all the information that is mandatory on the form, the RSA provider will have 30 days to transfer the benefits. However, the RSA provider may roll over or transfer an amount even if the RSA provider does not have all the mandatory information (which includes the proof of identity requirements).

For a partial transfer request, the RSA provider may ask for further information that was specified as necessary under new paragraph 4.35D(2)(b) for the transfer.

For a transfer request to a self managed superannuation fund (SMSF), if the RSA provider decides that further documentation is required under subregulation 4.35D(3), the RSA provider may ask for that documentation.

New subregulation 4.35D(1) requires an RSA provider to rollover or transfer an amount of the RSA holder's benefit, when a request is received under regulation 4.35C.

New paragraph 4.35D(2)(a) provides that a whole balance transfer request may be made using the prescribed form in Schedule 2A or in another manner.

Paragraph 4.35D(2)(b) provides where an RSA holder wants to request the transfer of a partial amount of their superannuation benefits, the RSA holder will need to contact their RSA provider to find out the information that is necessary to enable the transfer of the partial amount. For example, required information may include the mandatory information specified in the standard form, the amount of the RSA holder's benefit to be transferred and the type of benefits to be transferred.

New subregulation 4.35D(3) provides in the case of a request to transfer benefits to a SMSF, in limited circumstances certified documentation showing that the RSA holder making the request is a member of the SMSF may be required. In particular, if the RSA provider is aware of another member (who is unrelated to the RSA holder making the request) who has transferred benefits to the same SMSF, the RSA provider may decide that the additional documentation will be required before transferring the benefits.

New subregulation 4.35D(4) requires RSA providers to be satisfied that the RSA holder is aware they can request further information from the RSA provider. This information includes the effect the roll over may have on the RSA provider's benefit entitlements, and any fees and charges that may apply to the roll over or transfer. This subregulation provides consistency between RSA providers and superannuation providers.

New subregulation 4.35D(5) reduces the time in which a transfer must be made from 90 days to 30 days from receipt of all the information required in accordance with new subregulations 4.35C(2), (3) and (4).

New regulation 4.35E allows the RSA provider grounds for refusing to roll over or transfer an amount under regulation 4.35C. This subregulation provides consistency between RSA providers and superannuation providers.

Subregulation 4.35E(1) allows the RSA provider to refuse to rollover an amount under regulation 4.35C if:

- the RSA holder has made a request to transfer an amount under regulation 4.35C, and the RSA or superannuation fund to which the RSA holder has requested the rollover will not accept the amount;
- the RSA holder requests a part transfer of their interest in the RSA, if the RSA holder's remaining interest in the RSA after the rollover is less than $5,000; or
- the RSA provider has rolled over an amount of the RSA holder's interest within 12 months before the request is received.

New subregulation 4.35E(2) requires an RSA provider to notify the RSA holder in writing of a refusal to rollover an amount under subregulation 4.35E(1).

Spouse Contributions Splitting

Items 38 to 50

Items 38-49, 41-50 removes definitions of repealed terms and concepts that cease to apply and insert definitions and update references of terms introduced as part of the Simplified Superannuation reforms.

Item 40 amends the definition of ‘maximum splittable amount’ to restrict the amount of taxed splittable contributions (that is, contributions included in the assessable income of the fund) that can be split to the lesser of:

a) 85 per cent of the concessional contributions for a financial year; and

b) the concessional contributions cap for the financial year.

Example 1

Nick has taxed splittable contributions of $75,000 in the 2007-08 financial year. The maximum he can split with his spouse is $50,000, which is the lesser of 85% of his concessional contributions (being $63,750) and the cap (being $50,000) for the financial year.

Example 2

Tim has taxed splittable contributions of $35,000 in the 2007-08 financial year. The maximum he can split with his spouse is $29,750, which is the lesser of 85% of his concessional contributions (being $29,750) and the cap (being $50,000) for the financial year.

Example 3

Richard, aged 52, has taxed splittable contributions of $115,000 in the 2007-08 financial year. The maximum he can split with his spouse is $97,750, which is the lesser of 85% of his concessional contributions (being $97,750) and the cap (being $100,000 as he qualifies for the higher transitional concessional contributions cap) for the financial year.

As excess concessional contributions are included in the definition of the non-concessional contributions these amendments are necessary to support the administrative arrangements for the tax on excess non-concessional contributions.

Acceptance of contributions and accrual of benefits

Item 52

Item 52 inserts new regulation 5.03 which amends the existing acceptance of contributions contained in the RSA Regulations to give effect to various measures outlined in the Simplified Superannuation reforms.

The maximum age limit for deductibility of an employer contribution has been increased from age 70 to 75 (new section 290-80 of 1997 Tax Act). New regulation 5.03 will provide for an increase in the age for which such contributions can be accepted and benefits can be accrued. That is, from the current age of 70 to a day that is on or before the day that is 28 days after the end of the month in which the employee turns age 75.

Non-personal RSA holder contributions (such as spouse contributions) continue to not be allowed to be accepted into an RSA for any person who has reached age 70.

To help prevent a person from inadvertently contributing more than the non-concessional contributions cap, subregulation 5.03(3) provide that RSAs are required to return an amount of certain RSA holder contributions that exceed the cap.

For the purposes of this new cap, the RSA holder contributions that are subject to the Regulations are those given meaning by subregulation 1.03(1) of the RSA Regulations, but do not include a contribution that meets the requirements of section 292-95 or 292-100 of the 1997 Tax Act (contributions arising from structured settlements or orders made for personal injuries, and, relating to the sale of certain small business assets), payments from the Commissioner of Taxation in relation to superannuation guarantee shortfall components, transfers from the Superannuation Holding Account, Government co-contributions, and contributions covered by a valid and acknowledged notice under section 290-170 of the 1997 Tax Act. These contributions are known as RSA-capped contributions and are defined in new subregulation 5.03(7).

RSAs are not required to aggregate the total of RSA holder contributions received for a person either within the RSA or across other RSAs. The rule applies on a contribution-by-contribution basis, not a yearly basis or any other basis. This measure will reduce the instances of inadvertent breaches where the contribution is a one-off in a financial year.

New subregulation 5.03(2) require RSA institutions to return RSA holder contributions where the RSA holder's tax file number has not been quoted (for superannuation purposes) to the RSA institution. This prevents a person from avoiding the non-concessional contributions cap and tax. The Australian Taxation Office would find it difficult to match a person to their contributions and apply the contribution caps, if the person's tax file number was not quoted.

New subregulation 5.03(4) provides that RSAs are required to return the relevant holder amounts within 30 days of becoming aware that the amounts do not satisfy the regulations. The RSA provider will not be required to return this amount if the RSA holder's tax file number was quoted to the RSA provider within 30 days of receipt of the amount. The RSA provider does not have to return the amount if the RSA provider receives a valid notice that the RSA holder is intending to claim a deduction on the RSA holder contribution during this time.

New subregulation 5.03(5) provides that if an RSA provider complies with these return arrangements the RSA provider is taken not to have breached these regulations.

Example 1

Donna, aged 31, deposits $500,000 in an RSA on 27 June 2008 as a personal RSA holder contribution. Donna has previously provided her tax file number to the RSA. Donna intends to claim a tax deduction under section 290-170 of the 1997 Tax Act in relation to $50,000 of that contribution however did not provide a notice of intent to claim such a deduction at the time of contribution. However, on 7 July 2008 Donna gives a valid notice to the RSA that she intends to claim this deduction. The RSA-capped contribution is only $450,000 and as a result the RSA is able to accept the $500,000 RSA holder contribution in full and does not have to return any amount to Donna.

Example 2

Lucy deposits $50,000 in a RSA on 31 December 2007 as a personal RSA holder contribution. On 2 January 2008 the RSA becomes aware that Lucy has not provided her tax file number to the RSA. Even though Lucy has also provided a valid notice under section 290-170 of the 1997 Tax Act in relation to this amount the RSA must return the amount (as outlined in the regulations) to Lucy by 1 February 2008 unless Lucy's tax file number is quoted to the RSA provider. Luckily for Lucy, this occurs on 25 January 2008. As a result the RSA does not have to return this amount.

Example 3

Hamish deposits $100,000 in a RSA on 2 February 2008 as a personal RSA holder contribution. Hamish has an existing account balance of $250,000 from contributions made in earlier years. On 3 February 2008, Hamish requests that the RSA roll over his total balance in the RSA, including this amount, to another RSA. Hamish has not provided his tax file number to the RSA. The RSA can rollover the balance of Hamish's

account in the RSA (that is, the $250,000) into the new RSA. However, the amount that was an attempted contribution on 2 February 2008 cannot be rolled over unless his TFN is quoted. This amount must be returned to Hamish by 4 March 2008.

In order to avoid causing RSA holder equity and pricing issues within RSAs new subregulation 5.03(4) will also provide that the amount that is required to be returned is adjusted in arrangements that are similar to those which apply to financial products in Part 7.9 of the *Corporations Regulations 2001*.

Consequential Amendments

Item 2

Item 2 amends the definition of 'capital gains tax exempt component' in subregulation 1.03(1) of the RSA Regulations to reflect the repeal of subsection 27A(1) of the *Income Tax Assessment Act 1936* (1936 Tax Act) from 1 July 2007. Given that the definition applies to contributions made before July 1999, it is appropriate to refer to the existing definition in the 1936 Tax Act.

Item 3

Item 3 amends the definition of 'eligible spouse contribution' in subregulation 1.03(1) of the RSA Regulations as the existing definition refers to provisions in the 1936 Tax Act that have been repealed and rewritten into the 1997 Tax Act.

Item 4

Item 4 omits the definition of 'eligible termination payment' from the RSA Regulations. The definition is no longer required as the concept is removed from the 1936 Tax Act by the Simplified Superannuation reforms.

Item 5

Item 5 inserts a definition of 'superannuation lump sum' in the RSA Regulations. This concept replaces the concept of an 'eligible termination payment' under the Simplified Superannuation reforms.

Item 6

Item 6 updates the reference to 'Australian Society of Certified Practising Accountants' in paragraph 1.05(b) to reflect the new registered business name of the organisation – 'CPA Australia Limited'.

Items 9, 14, 15 and 16

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* replaces the concept of an 'eligible termination payment' in the 1936 Tax Act with the concepts of an 'employment termination payment' and 'superannuation lump sum' in the 1997 Tax Act. These items update references to 'eligible termination payments' in the RSA Regulations to refer to both new concepts or where it is clearly intended to

only apply to certain types of 'eligible termination payments', only the relevant term is substituted.

Item 17

Item 17 inserts a new definition of 'permanent incapacity' in subregulation 4.01(2) to extend the operation of the condition of release to people who have never worked or who were not working at the time they were incapacitated.

Item 19

Item 19 amends the definition of 'undeducted contributions' in subregulation 4.01(3) as the existing definition refers to provisions in the 1936 Tax Act that have been repealed and replaced by revised concepts in the 1997 Tax Act.

Items 21 and 23

Items 21 and **23** amends paragraphs 4.10(2)(a) and 4.13(3)(a) of the RSA Regulations to reflect that section 82AAT of the 1936 Tax Act is repealed.

Item 22

Item 22 amends paragraphs 4.13(2)(a) to reflect the repeal of section 27D of the 1936 Tax Act from 1 July 2007.

Item 28

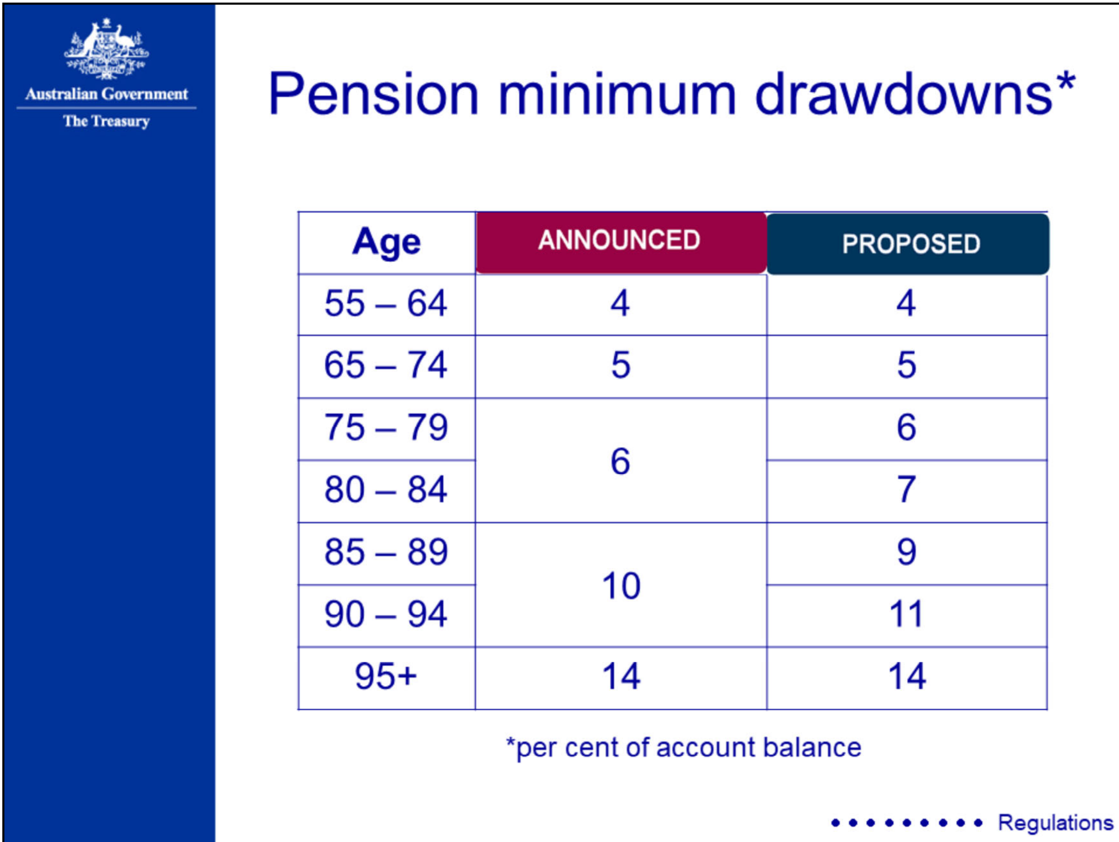
The *Tax Laws Amendment (Simplified Superannuation) Act 2007* inserts a definition of 'departing Australia superannuation payment' into the 1997 Tax Act. **Item 28** amends the note after subregulation 4.23A(5) to replace the reference to the 1936 Tax Act, with a reference to the 1997 Tax Act.

Item 51

The *Tax Laws Amendment (Simplified Superannuation) Act 2007* replaces the concept of a 'death benefit eligible termination payment' in the 1936 Tax Act with the concept of a 'superannuation death benefit' in the 1997 Tax Act.

Item 51 amends subregulation 4A.25(2) to update the reference to 'death benefit eligible termination payment' to refer to a 'superannuation death benefit' in the 1997 Tax Act.

FOI 3148
Document 3



Age	ANNOUNCED	PROPOSED
55 – 64	4	4
65 – 74	5	5
75 – 79	6	6
80 – 84		7
85 – 89	10	9
90 – 94		11
95+	14	14

- Under the new simplified pension rules, a pension will have to make a minimum payment each year.
  - The minimum payments are expressed as a percentage of the pension account balance at the start of each year.
- The purpose of these revised drawdown percentages is to reduce the size of the gap between the minimum payment percentages when moving between age brackets.
  - For example, under the announced rules, a person's minimum pension payment would increase from 6 per cent to 10 per cent of their account balance when they reach age 85 – this is an increase of nearly 70 per cent.
  - Under the proposal, the increase at age 85 would only be from 7 per cent to 9 per cent.
- The detailed regulations for the new pension rules will also clarify that the minimum drawdown that will apply below age 55 is 4 per cent.
- The revised minimum drawdown percentages were well-received when we showed them to the technical reference group earlier in the year.