

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 9

Issued by authority of the Minister for Superannuation and Corporate Law

Superannuation Industry (Supervision) Act 1993
Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 1)

Retirement Savings Accounts Act 1997
Retirement Savings Accounts Amendment Regulations 2008 (No. 1)

Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 1)

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

The *Superannuation Industry (Supervision) Regulations 1994*, inter alia, contain the conditions of release which apply to preserved benefits in regulated superannuation funds and approved deposit funds.

The Regulations create a new condition of release which allows persons suffering from a terminal medical condition to access the full amount of their superannuation benefits. Under the existing early release provisions a terminally ill member who has not ceased work is restricted in terms of the amount of the benefit they can access. The new condition of release allows a member suffering from a terminal medical condition to access their full benefit without restrictions.

The Regulations also make minor changes to the definition of *transition to retirement income stream* to clarify the intended operation of the transition to retirement rules. These rules allow persons who have reached their preservation age and are still working to access their benefits as a non-commutable income stream.

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

Retirement Savings Accounts Amendment Regulations 2008 (No. 1)

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*, inter alia, contain the conditions of release and the payment rules applying to benefits in Retirement Savings Accounts.

The Regulations create a new condition of release which allows persons suffering from a terminal medical condition to access the full amount of their benefits. Under the existing early release provisions a terminally ill RSA holder who has not ceased work is restricted in terms of the amount of the benefit they can access. The new condition of release allows an RSA holder suffering from a terminal medical condition to access their full benefit without restrictions.

The Regulations also make minor changes to the definition of *transition to retirement pension* to clarify the intended operation of the transition to retirement rules, and to the payment rules in the *Retirement Savings Accounts Regulations 1997* to ensure their consistency with the *Superannuation Industry (Supervision) Regulations 1994*.

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

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

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

Targeted consultation was undertaken on the regulations to create a new condition of release for persons with a terminal medical condition. No consultation was undertaken on the remaining amendments as the changes are considered to be of a technical nature.

ATTACHMENT A

Details of *Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 1)*

Regulation 1 specifies the name of the Regulations as the *Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 1)*.

Regulation 2 provides that the Regulations commence on the day after registration.

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

Schedule 1 Amendments**Item 1**

This item inserts a new definition of *terminal medical condition* into subregulation 6.01(2). The new term has the meaning given by new regulation 6.01A.

Items 2 and 3

These items substitute new subparagraphs (a)(ii) and (b)(ii) into the definition of *transition to retirement income stream* in subregulation 6.01(2) in order to clarify the intended operation of the transition to retirement rules.

The definition of a transition to retirement income stream includes a rule which limits the total amount of payments in a year to no more than 10 per cent of the income stream account balance on 1 July of the relevant year. The changes specify that the value of payments from an income stream which is taken into account for purposes of the 10 per cent limit excludes payments by way of commutation of the income stream (that is, payments made in the form of lump sums). This change ensures, for example, that commutations of a transition to retirement income stream which are permitted for the purpose of paying a superannuation contributions surcharge or to give effect to a release authority for tax on excess contributions are not constrained by the operation of the 10 per cent limit on annual payments.

The changes also specify that the 10 per cent limit on total annual payments from a transition to retirement income stream does not apply where the annuitant or pensioner has satisfied a condition of release with a 'Nil' cashing restriction. This change clarifies that the 10 per cent limit on total annual payments from a transition to retirement income stream is a temporary restriction which is lifted once the recipient of the income stream has satisfied a condition of release with a 'Nil' cashing restriction.

Item 4

This item inserts a new regulation 6.01A which sets out the meaning of *terminal medical condition*. Paragraphs 6.01A(a), (b) and (c) prescribe the circumstances which need to exist in order for a person to be considered to have a terminal medical condition for the purpose of the new condition of release which is created by items 6 and 7.

Item 5

This item amends the reference under the heading to Schedule 1 to include new regulation 6.01A.

Items 6 and 7

Schedule 1 to the SIS Regulations sets out the conditions of release for benefits in regulated superannuation funds and approved deposit funds. Items 6 and 7 insert a new condition of release into Schedule 1 entitled *terminal medical condition*. The new condition of release has a 'Nil' cashing restriction, meaning that it sets no restrictions on the form or amount of the benefit that can be paid out.

Where a member satisfies the new condition of release, benefits which they had accrued up to that point in time become unrestricted non-preserved and can be accessed at any time. Any additional benefits accrued by the member while the certification period is current also become unrestricted non-preserved. The certification period is the period referred to in new paragraph 6.01A(a) within which a registered medical practitioner has certified that the member is likely to die.

Benefits covered by the new condition of release retain their unrestricted non-preserved status even where they are not accessed by the member. Any benefits which are accrued after the certification period ends are not covered by the condition of release, and another condition of release would need to be satisfied in order for these benefits to be accessed.

ATTACHMENT B**Details of *Retirement Savings Accounts Amendment Regulations 2008 (No. 1)***

Regulation 1 specifies the name of the Regulations as the *Retirement Savings Accounts Amendment Regulations 2008 (No. 1)*.

Regulation 2 provides that the Regulations commence on the day after registration.

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

Schedule 1 Amendments**Items 1 and 2**

Subregulation 1.07(3E) provides that the terms and conditions of an RSA do not meet the standards for a pension in the RSA Regulations if the pension is transferred to a person who is ineligible to be paid a benefit in that form under subregulation 4.24(3A). Where an RSA holder dies on or after 1 July 2007, subregulation 4.24(3A) restricts the payment of death benefits in pension form to certain classes of dependants.

These items amend subregulation 1.07(3E) so that an RSA pension that is transferred to a child of the RSA holder following the death of the RSA holder must be cashed as a lump sum on the occurrence of a trigger event specified in subregulation 4.24(3B) – for example, when the child reaches age 25 (unless they are permanently disabled).

Corresponding changes were made to the SIS Regulations by the *Superannuation Industry (Supervision) Amendment Regulations 2007 (No.3)*. To ensure consistency with the SIS Regulations and with the policy intention, the Regulations replicate these changes in the RSA Regulations.

Item 3

This item inserts a new definition of *terminal medical condition* into subregulation 4.01(2). The new term has the meaning given by new regulation 4.01A.

Item 4

This item substitutes a new paragraph (b) into the definition of *transition to retirement pension* in subregulation 4.01(2) in order to clarify the intended operation of the transition to retirement rules.

The definition of *transition to retirement pension* includes a rule which limits the total amount of payments in a year to no more than 10 per cent of the pension account balance on 1 July of the relevant year. The amendments specify that the value of payments from a pension which is taken into account for purposes of the 10 per cent limit excludes payments by way of commutation of the pension (that is, payments made in the form of lump sums). This change ensures, for example, that commutations of a transition to retirement pension which are permitted for the purpose of paying a superannuation contributions surcharge or to

give effect to a release authority for tax on excess contributions are not constrained by the operation of the 10 per cent limit on annual payments.

The amendments also specify that the 10 per cent limit on total annual payments from a transition to retirement pension does not apply where the pensioner has satisfied a condition of release in respect of which the cashing restriction is 'Nil'. This change would clarify that the 10 per cent limit on total annual payments from a transition to retirement pension is a temporary restriction which is lifted once the recipient of the pension has satisfied a condition of release with a 'Nil' cashing restriction.

Item 5

This item inserts a new regulation 4.01A which sets out the meaning of *terminal medical condition*. Paragraphs 4.01A(a), (b) and (c) prescribe the circumstances which need to exist in order for a person to be considered to have a terminal medical condition for the purpose of the new condition of release which is created by item 7.

Item 6

This item amends the reference under the heading to Schedule 2 to include new regulation 4.01A.

Item 7

Schedule 2 to the RSA Regulations sets out the conditions of release for benefits in RSAs. Item 7 inserts a new condition of release into Schedule 2 entitled *terminal medical condition*. The new condition of release has a 'Nil' cashing restriction, meaning that it sets no restrictions on the form or the amount of the benefit that can be paid out.

Where the new condition of release is satisfied, benefits accrued by the RSA holder up to that point in time become unrestricted non-preserved and can be accessed at any time. Any additional benefits accrued by the RSA holder while the certification period referred to in proposed paragraph 4.01A(a) is current also become unrestricted non-preserved. Benefits covered by the new condition of release retain their unrestricted non-preserved status even where they are not accessed. Any benefits accrued after the certification period ends are not covered by the condition of release, and another condition of release would need to be satisfied in order for these benefits to be accessed.