

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 202

Subject - *Retirement Savings Accounts Act 1997*

Retirement Savings Accounts Amendment Regulation 2012 (No. 2)

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

The purpose of these amendments is to support the refund of excess concessional contributions (the refund) measure. The refund measure provides that the Commissioner of Taxation (the Commissioner) may issue a 'release authority' to a superannuation provider under subsection 292-420(1) of the *Income Tax Assessment Act 1997* (the ITAA 1997). The release authority requires the superannuation provider to pay an amount in relation to the refund determination, made in accordance with subsection 292-467(1) of the ITAA 1997. The money released is then used to make a refund payment to the individual. These amendments allow superannuation providers to release monies to the Commissioner to comply with the release authority.

These amendments are required because superannuation benefits are preserved, which means a condition of release must be met before the benefits can be paid out. Provisions in the existing regulations do not currently allow the release of monies under the refund measure.

These amendments insert additional provisions in the *Retirement Savings Accounts Regulations 1997*. Similar amendments to the *Superannuation Industry (Supervision) Regulations 1994* are also before the Executive Council.

The refund measure is given effect by Schedule 4 to the *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012*, which commenced on 1 July 2011.

The refund measure is designed to give eligible individuals the option to have excess concessional contributions of \$10,000 or less effectively refunded to them. Excess concessional contributions ineligible for the refund measure are subject to the excess contributions tax. Excess concessional contributions are concessional contributions above the concessional contributions cap. Under the refund measure those excess concessional contributions covered by the refund measure will be assessed as income at the individual's marginal tax rate, rather than incurring the excess contributions tax.

Details of the regulation are set out in the Attachment.

The regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on the day after registration.

Public consultation on the draft regulation was conducted through the Treasury website.

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

Details of the Retirement Savings Accounts Amendment Regulation 2012 (No. 2)

Section 1 – Name of regulation

This section specifies that the title of the regulation is the *Retirement Savings Accounts Amendment Regulation 2012 (No. 2)*.

Section 2 – Commencement

This section provides for the regulation to commence on the day after it is registered.

Section 3 – Amendment of Retirement Savings Accounts Regulations 1997

This section provides that Schedule 1 to the regulation amends the *Retirement Savings Accounts Regulations 1997*.

Schedule 1 – Amendments

Item [1]

This item inserts the new item 112A as described in Item 3 below, so that it also applies to temporary residents.

Item [2]

This item amends paragraph 4.26(4)(a) to include reference to section 292-420 of the ITAA 1997. The amendments in Item 3 below allow superannuation providers to cash benefits for the purpose of the refund release authority, but the existing regulation does not allow these benefits to be paid to persons other than the individual or their legal representative. These amendments allow benefits to be paid to the Commissioner for the purpose of the refund release authority, where the trustee has received a release authority under subsection 292-420(1) of the ITAA 1997.

Item [3]

This item inserts the new item 112A to Schedule 2 to insert a new ‘condition of release’. Schedule 2 sets out the ‘conditions of release’ that must be satisfied to allow the payment of a member’s benefits from a fund, and the ‘cashing restrictions’ that apply to each conditions. These amendments allow the giving of a release authority to a superannuation provider under subsection 292-420(1) of the ITAA 1997 to be a prescribed ‘condition of release’, subject to the restrictions in subsections 292-420(4), (5) and (7) of the ITAA 1997.

Statement of Compatibility with Human Rights

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

Retirement Savings Accounts Amendment Regulation 2012 (No. 2)

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

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to allow superannuation providers to comply with the release authority, issued by the Commissioner of Taxation for the purpose of the refund of excess concessional contributions.

Human rights implications

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

Conclusion

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

William Richard Shorten

Minister for Financial Services and Superannuation