

## **EXPLANATORY STATEMENT**

### **SELECT LEGISLATIVE INSTRUMENT NO. 91, 2015**

#### **Issued by authority of the Assistant Treasurer**

*Australian Prudential Regulation Authority Act 1998*

*Banking Act 1959*

*Corporations Act 2001*

*Electronic Transactions Act 1999*

*Retirement Savings Act 1997*

*Superannuation Industry (Supervision) Act 1993*

*Treasury Laws Amendment (First Home Saver Accounts) Regulation 2015*

Section 60 of the *Australian Prudential Regulation Authority Act 1998*, section 71 of the *Banking Act 1959*, section 1364 of the *Corporations Act 2001*, section 16 of the *Electronic Transactions Act 1999*, section 200 of the *Retirement Savings Act 1997* and section 353 of the *Superannuation Industry (Supervision) Act 1993* (Principal Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Principal Acts.

The purpose of the *Treasury Laws Amendment (First Home Saver Accounts) Regulation 2015* (Regulation) is to amend the *Australian Prudential Regulation Authority Regulations 1998*, *Corporations Regulations 2001*, *Electronic Transactions Regulations 2000*, *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* (Principal Regulations) to remove references to First Home Saver Accounts (FHSA) Scheme.

In 2008, the former Government established FHSAs to assist individuals saving for their first home. Broadly, individuals saving using a FHSA are entitled to Government contributions (17 per cent of the first \$6,000 contributed in a year) and tax concessions on any interest earned, but may only withdraw amounts from the FHSA to use for the purchase of a home (or contribute to superannuation).

Take up of FHSAs was been very low, with only around 47,000 in existence as of September 2014.

On 13 May 2014, the Government announced as part of the 2014-15 Budget that it intended to close the FHSA Scheme. To give effect to this decision, Schedule 1 to the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015, which is currently before Parliament, would repeal the Acts providing for the FHSA Scheme, with effect from 1 July 2015.

The Principal Regulations contained a number of references to FHSA and other concepts and provisions that would cease to exist or be repealed should Schedule 1 to the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015 become law.

The Regulation amends the Principal Regulations to remove references to concepts and provisions that will cease to exist as a result of the proposed repeal.

To ensure that these changes do not remove these references before the primary legislation ceases to be operative, the amendments made by the proposed regulation commence from the later of 1 July 2015 or the day Schedule 1 to the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015 commences. Further details of the amendments are set out in the Attachment.

The Principal Acts specify no conditions that must be met for the making of the Regulation.

No consultation was undertaken on the Regulation as the amendments are minor and purely consequential in nature, with their only effect being the removal of inoperative references.

The amendments made by the Regulation have no impact on revenue over the forward estimates.

All of the changes made by the Regulation are both minor and machinery in nature and have no impact on compliance costs.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**Details of the *Treasury Laws Amendment (First Home Saver Accounts) Regulation 2015***

**Section 1 – Name of Regulation**

This section provides that the name of the Regulation is the *Treasury Laws Amendment (First Home Saver Accounts) Regulation 2015* (Regulation).

**Section 2 – Commencement**

This section provides that the Regulation commences on the later of 1 July 2015 and the day Schedule 1 to the *Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015* commences.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Australian Prudential Regulation Authority Act 1998*, *Banking Act 1959*, *Corporations Act 2001*, *Electronic Transactions Act 1999*, *Retirement Savings Act 1997* and the *Superannuation Industry (Supervision) Act 1993*.

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 to the *Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015* (the Repeal Bill) will repeal the legislation establishing the FHSA Scheme and providing for the payment of the Government matching contribution to FHSA accounts — the *First Home Saver Accounts Act 2008*, the *First Home Saver Account Providers Supervisory Levy Imposition Act 2008* and the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008*.

Schedule 1 to the Repeal Bill also makes a number of changes to the other Commonwealth Acts to remove references to FHSAs and other concepts and provisions that will cease to exist or become inoperative following the repeals.

A number of references to these concepts and provisions were also contained in Commonwealth regulations, and will become inoperative when Schedule 1 to the *Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015* becomes law.

The Regulation amends the *Australian Prudential Regulation Authority Regulations 1998*, *Corporations Regulations 2001*, *Electronic Transactions Regulations 2000*, *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to remove these references.

To ensure that these changes do not remove references before the cease to be operative, the amendments made by the Regulation would only have effect from the

later of 1 July 2015 or the day Schedule 1 to the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015 commences.

Consistent with the general rules around repeals of legislation, Part 3 of the proposed regulation ensures that the removal of these references does not affect entitlements and obligations that have arisen prior to the day of repeal.

## **Statement of Compatibility with Human Rights**

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

### **Treasury Laws Amendment (First Home Saver Accounts) Regulation 2015**

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**

Schedule 1 to the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015 will repeal the legislation establishing the FHSA Scheme and providing for the payment of the Government matching contribution to FHSA accounts — the *First Home Saver Accounts Act 2008*, the *First Home Saver Account Providers Supervisory Levy Imposition Act 2008* and the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008*.

Schedule 1 to the Repeal Bill also makes a number of changes to the other Commonwealth Acts to remove references to FHSAs and other concepts and provisions that will cease to exist or become inoperative following the repeals.

A number of references to these concepts and provisions were also contained in Commonwealth regulations, and will become inoperative when Schedule 1 to the Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015 becomes law.

The *Treasury Laws Amendment (First Home Saver Accounts) Regulation 2015* amends the *Australian Prudential Regulation Authority Regulations 1998*, *Corporations Regulations 2001*, *Electronic Transactions Regulations 2000*, *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to remove these references.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms – it only removes inoperative references and has no substantive effect.

#### **Conclusion**

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