

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Small Superannuation Accounts Act 1995

Small Superannuation Accounts Regulations 2018

Section 94 of the *Small Superannuation Accounts Act 1995* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Small Superannuation Accounts Regulations 2018* (the Regulations) is to remake and improve the *Small Superannuation Accounts Regulations 2002* and ensure their effect continues. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed after 10 years or in accordance with the progressive timetable set out in section 50. The *Small Superannuation Accounts Regulations 2002* was scheduled for automatic repeal on 1 October 2019.

The Act established the Superannuation Holding Accounts Reserve (SHAR). Employers could make superannuation contributions into a SHAR account for employees if they were unable to find a fund willing to accept the contribution (eg. if the contribution was too small). Where there is a relationship breakdown, a SHAR account may be split in accordance with the *Family Law Act 1975*.

The purpose of the *Small Superannuation Accounts Regulations 2002* was to prescribe the balance of the new account that was opened to facilitate a split of the SHAR account between former spouses. That purpose is achieved by the Regulations.

The Regulations will apply to the relevant financial agreements (splitting agreements and splitting orders) that remain unexecuted on the day the Regulations were registered on the Federal Register of Legislation.

The Regulations remake and improve the *Small Superannuation Accounts Regulations 2002* by:

- simplifying and updating the definitions used; and
- adopting current drafting practices such as referring to ‘sections’ rather than ‘regulations’.

The changes do not substantively affect the meaning or operation of the provisions.

An exposure draft of the Regulations and accompanying explanatory statement were released for public consultation from 22 February to 23 March 2018. No submissions were received during the consultation period.

Further details of the Regulations are set out in the [Attachment](#).

The Regulations commenced on the day after it was registered on the Federal Register of Legislation.

The Office of Best Practice Regulation considered the Regulations have minor impact on business, community organisations or individuals and has certified that the remaking of the Regulations do not require a Regulatory Impact Statement (OBPR ID 23466)

Statement of Compatibility with Human Rights

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

Small Superannuation Account Regulations 2018

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 Regulations remake and improve the *Small Superannuation Accounts Regulations 2002* by:

- simplifying and updating the definitions used; and
- adopting current drafting practices such as referring to ‘sections’ rather than ‘regulations’.

The changes do not substantively affect the meaning or operation of the provisions.

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.

Details of the *Small Superannuation Account Regulations 2018*

Section 1 – Name of Regulation

This section specifies that the title of the Regulations is the *Small Superannuation Accounts Regulations 2018*.

Section 2 – Commencement

This section provides the Regulations commence the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Small Superannuation Accounts Act 1995*.

Section 4 – Schedules

This section provides that each instrument identified in a Schedule to the Regulations is amended or repealed in accordance with these Regulations.

Section 5 – Definitions

This section collates all the terms used in the Regulations. This replaces regulation 3 of the prior Regulations.

The definitions largely replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

In particular, flag lifting agreement, payment split and superannuation agreement have been combined and referenced by their operation in the Part IIIVB of the *Family Law Act 1975* in order to simplify the regulations and ensure they apply consistently to both married and de facto relationships.

Section 6 – Balance of accounts

This section specifies that where a new account is opened, the balance of the account will be the amount specified in the splitting agreement or splitting order. If the balance of the account that is being split is less than the amount in the splitting agreement or splitting order, then that lesser amount will be the balance of the new account.

Schedule 1 – Repeals

This Schedule repeals the *Small Superannuation Accounts Regulations 2002* from the day after registration of the Regulations. This ensures that the Regulations will be repealed and remade before they sunset on 1 October 2019.

Finding table

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. This Explanatory Memorandum includes a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Small Superannuation Accounts Regulations 2002*. References to the new law are to the *Small Superannuation Account Regulations 2018*. Also, in the finding table, ‘no equivalent’ means that this is a new provision that has no equivalent in the old law.

<i>Old law</i>	<i>New law</i>
<i>Small Superannuation Accounts Regulations 2002</i>	<i>Small Superannuation Accounts Regulations 2018</i>
1	1
2	2
No equivalent	3
No equivalent	4
3	5
4	6
No equivalent	Schedule 1