

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance

Parliamentary Contributory Superannuation Act 1948

*Parliamentary Contributory Superannuation
(Early Release Payments) Regulations 2020*

The *Parliamentary Contributory Superannuation Act 1948* (the PCS Act) establishes the Parliamentary Contributory Superannuation Scheme (PCSS), which provides superannuation benefits for parliamentarians who entered the Parliament before 9 October 2004.

Section 28 of the PCS 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.

Legislative amendments, passed by Parliament on 23 March 2020, allow affected Australians early access to their superannuation as part of the Government's Economic Response to COVID-19. The amendments allow for early release of superannuation, on compassionate grounds, due to COVID-19 and enable superannuation withdrawals up to \$10,000 before 1 July 2020, and a further \$10,000 from 1 July 2020 until 24 September 2020.

While the early release of superannuation is not a mandatory requirement for defined benefit schemes such as the PCSS, section 22DI of the PCS Act provides the authority to allow such payments to be made to deferred members in the PCSS, subject to regulations being in place. Since the inception of the PCSS, no regulations have been made.

The *Parliamentary Contributory Superannuation (Early Release Payments) Regulations 2020* (the Regulations) provide early release options to PCSS deferring members for financial hardship and compassionate grounds—aligning with early release of superannuation options as currently exists for other Australians, under the *Superannuation Industry (Supervision) Regulation 1994* (SIS Regulations). This includes early release of superannuation on compassionate grounds due to COVID-19.

The Regulations are made under section 22DI of the PCS Act. This section enables the Parliamentary Retiring Allowances Trust, as trustees of the PCSS, the ability to authorise payments for early release on the same grounds that are specified in the SIS Regulations. Under section 22DI, early release of superannuation is only relevant to certain PCSS members that have retired from the Parliament and whose access to superannuation has been deferred until age 55.

The PCS Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations are exempt from sunseting by item 47 of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This is because regulations made under the PCS Act are to administer the PCSS and are intended to be enduring and not subject to regular review under the *Legislation Act 2003*.

The Department of the Treasury was consulted regarding the Regulations.

Details of the amendments are set out in Attachment A.

A statement of Compatibility with Human Rights is at Attachment B.

The Regulations commence on the day after they are registered.

Details of the Parliamentary Contributory Superannuation (Early Release Payments) Regulations 2020

Section 1 – Name of Regulations

This section provides that the name of the Regulations is the *Parliamentary Contributory Superannuation (Early Release Payments) Regulations 2020* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence the day after they are registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Parliamentary Contributory Superannuation Act 1948* (the PCS Act).

Section 4 – Definitions

This section provides for the definitions of terms that are used in the Regulations. These terms have the same meaning as in the PCS Act or the *Income Tax Assessment Act 1997*.

Section 5 – Grounds for early release payments

This section provides that early release payments can be made on the grounds specified in sections 6, 7 and 8.

Section 6 – Early release payments on compassionate grounds—general

This section provides that early release payments can be made on compassionate grounds, which are defined in the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations). The section also clarifies that decisions regarding early release payments in these cases are made by the Parliamentary Retiring Allowances Trust (the Trust) which has responsibility for matters where discretion has been given under the PCS Act.

Section 7 – Early release payments on compassionate grounds—coronavirus

This section provides that early release payments can be made on compassionate grounds, where the payment is required to assist the person to deal with the adverse economic effects of the coronavirus known as COVID-19. The criteria for these payments are specified in the SIS Regulations.

Subsection 7(3) provides that COVID-19 early release payments are not assessable income and are not exempt income for the purposes of section 6-23 of the *Income Tax Assessment Act 1997*. This ensures that these payments are treated in the same way as early release superannuation payments made in the broader community due to COVID-19.

Section 8 – Early release payments for severe financial hardship

This section provides that early release payments can be made on the grounds of severe financial hardship, as defined in the SIS Regulations. Decisions regarding early release payments are treated as though they had been made by the Trust.

Section 9 – Matters for determining the amounts of early release payments

This section specifies the matters that the Trust must take into account when determining the amount of any early release payments. This is achieved by referring to the SIS Regulations, which specify these matters.

Statement of Compatibility with Human Rights

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

**Parliamentary Contributory Superannuation (Early Release Payments)
Regulations 2020**

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

This Legislative Instrument provides a mechanism for early release of superannuation for members of the Parliamentary Contributory Superannuation Scheme (PCSS).

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.

**Senator the Hon Mathias Cormann
Minister for Finance**