

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation Guarantee (Administration) Act 1992

*Superannuation Guarantee (Administration) Amendment
(Aged Care Retention Bonus) Regulations 2020*

This instrument amends regulations to assist the administration of the Aged Care Workforce Retention Bonus.

The *Superannuation Guarantee (Administration) Act 1992* (the Act) governs the arrangements that apply to the superannuation contributions that an employer must make in order to avoid being subject to a superannuation guarantee charge.

Section 80 of the Act provides that the Governor-General may make regulations to prescribe matters that are permitted by the Act to be prescribed. Paragraph 27(1)(e) refers to prescribed kinds of salary or wages that are excluded from calculating the superannuation guarantee payable by an employer in respect of an employee.

The *Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020* (the Regulations) ensure that an employer is not required to make additional superannuation contributions as a result of a bonus payment paid to an employee under the Aged Care Workforce Retention Grant Opportunity (the Grant). The Regulations achieve this by exempting payments made to an employee under the Grant from being included in the “salary or wages” that are used to calculate an employer’s superannuation guarantee charge.

The Government has announced that the Grant will fully fund bonus payments to certain workers to ensure the continuity of the aged care workforce in residential and home care. Eligible employers will make the bonus payment to their eligible employees (including at a pro-rata rate for part-time employees).

The Regulations apply to bonus payments made under the Grant on or after 1 June 2020. While the Regulations will have some retrospective application to payments that occurred prior to commencement, the Regulations are consistent with section 12 of the *Legislation Act 2003*, as it does not adversely affect a person’s rights or impose liabilities retrospectively. This is on the basis that the Regulations prevent an employer from being subject to superannuation guarantee charge (which is a tax).

Public consultation on the Regulations was not undertaken as the amendments are minor or machinery in nature. However, consultation was conducted with the Australian Taxation Office and the Department of Health.

Details of the Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after registration on the Federal Register of Legislation.

An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Superannuation Guarantee (Administration) Act 1992* (the Act).

Section 4 – Schedule

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

Schedule 1 – Amendments

Item 1 inserts a new paragraph 12(1)(f) into the *Superannuation Guarantee (Administration) Regulations 2018*. This new paragraph exempts an employer from being required to make superannuation contributions, or pay a superannuation guarantee charge, in respect of a payment made to an employee after 1 June 2020, that was funded as part of the Grant.

The Grant funds two bonus payments for eligible aged care workers as part of the Government's response to the coronavirus crisis. The Grant is paid to employers on the condition that the funds be used to make bonus payments to their eligible employees. The Regulations exempt the bonus payment from being included in the calculations that determine the amount of superannuation contribution that an employer must make to avoid a superannuation guarantee charge and from the calculation that determines the superannuation guarantee charge payable if an employer does not elect to make contributions in respect of their employees.

This ensures that employers do not incur superannuation guarantee-related liabilities as a result of their employees receiving a bonus payment under the Grant.

Statement of Compatibility with Human Rights

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

Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulation 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

The Regulations exempt an employer from being required to make a superannuation contribution (in order to avoid a superannuation guarantee charge liability) in respect of a bonus payments made by the employer to an employee under the Grant.

Human rights implications

The Regulations engages the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights as it exempts an employer from having to make a superannuation contribution (in order to avoid a superannuation guarantee charge liability) in respect of a bonus payment that is otherwise funded by the Government, which results in lower superannuation contributions, which are a form of remuneration, than would otherwise be the case.

However, without the exemption employers will incur additional costs associated with participating in the Grant and may chose not to apply. This would result in employees not receiving the bonus payment at all. Exempting the payment from being included in the superannuation guarantee charge calculation ensures that no additional costs are incurred by an employer who chooses to participate and is therefore an acceptable limitation on the right to work.

Conclusion

The Regulations is compatible with human rights as it is a reasonable, necessary and proportionate limitation on human rights.