

## **EXPLANATORY STATEMENT**

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

*Retirement Savings Accounts Act 1997*  
*Superannuation Industry (Supervision) Act 1993*

*Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds)*  
*Regulations (No. 3) 2020*

Section 200 of the RSA Act and section 353 of the SIS Act provides that the Governor-General may make regulations prescribing matters required or permitted by these Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to these Acts.

The purpose of the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020* (the Regulations) is to extend the deadline by which applications must be made for coronavirus related early release from superannuation and retirement savings accounts. The Regulations build on the amendments introduced through Schedule 13 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which established such grounds of early release for individuals who have been adversely affected by the coronavirus.

Superannuation benefits are generally required to be ‘preserved’ in the superannuation system until retirement or until preservation age is reached (between 55 and 60 years, depending on year of birth). Subject to the governing rules of the fund, early release of ‘preserved’ benefits is permitted in certain restricted circumstances.

The rules for the early release of superannuation are set out in the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) and the conditions of release are in Schedule 1 to those Regulations. The *Retirement Savings Accounts Regulations 1997* (the RSA Regulations) contain equivalent provisions. The Commissioner of Taxation is responsible for the administration of regulations made in relation to the early release from superannuation and retirement savings accounts on compassionate grounds.

Eligible individuals can apply for the release of amounts from their superannuation or retirement savings account on compassionate grounds relating to coronavirus. Certain eligible persons are permitted to have up to two releases – one for an application made during the 2019-20 financial year and another for an application made during the 2020-21 financial year. Currently, an application made during the 2020-21 financial year must also be made by 24 September 2020. Temporary residents were only entitled to make a single application during the 2019-20 financial year.

The Regulations extend the deadline by which applications must be made for coronavirus related early release from superannuation and retirement savings accounts to 31 December 2020. As these changes relate to applications made in the 2020-21 financial year, the extension is not relevant to temporary residents.

These changes were announced in the Government’s July 2020 Economic and Fiscal Update.

Consultation was undertaken with the Australian Taxation Office to ensure the effectiveness of the Regulations. Public consultation was not necessary as the amendments are minor and machinery in nature.

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 it is registered.

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 Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020**

Section 1 – Name of the Regulations

This provides that the name of the Regulations is the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the RSA Act and the SIS Act.

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument 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

The Regulations extend the deadline by which applications must be made for coronavirus related early release from superannuation and retirement savings accounts to 31 December 2020.

They achieve this by updating the existing references, subregulation 6.19B(2) of the SIS Regulations and subregulation 4.22B(2) of the RSA Regulations, that currently require applications be made by 24 September 2020.

The related conditions of release in items 107 and 207 of Schedule 1 to the SIS Regulations, and item 109AA of the table in Schedule 1 to the RSA Regulations apply appropriately without further amendment as they refer to the related determinations made by the Commissioner. Similarly, the tax free treatment provided by section 303-15 of the *Income Tax (Transitional Provisions) Act 1997* continues to apply to any amounts released under these conditions of release.

**Statement of Compatibility with Human Rights**

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

***Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 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 purpose of the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020* is to extend the deadline by which applications must be made for coronavirus related early release from superannuation and retirement savings accounts. The new deadline will be 31 December 2020 (instead of 24 September 2020).

The Regulations build on the amendments introduced through Schedule 13 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which established such grounds of early release for individuals who have been adversely affected by the coronavirus.

**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.