

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing, Minister for Homelessness, Social and Community Housing**

*Income Tax Assessment Act 1997*

*Income Tax (Transitional Provisions) Act 1997*

*Retirement Savings Accounts Act 1997*

*Superannuation Industry (Supervision) Act 1993*

*Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021*

The *Income Tax Assessment Act 1997* (the Act) is one of the main Commonwealth Acts that govern the income tax law in Australia. The Act provides for income tax to be calculated and collected, including for individuals, companies, trusts, partnerships and superannuation funds.

The *Income Tax (Transitional Provisions) Act 1997* (ITTP Act) contains transitional provisions that affect the income tax law that do not have ongoing application.

The *Superannuation Industry (Supervision) Act 1993* (SIS Act) sets out a framework for the regulation of superannuation funds, approved deposit funds and pooled superannuation trusts.

The *Retirement Savings Accounts Act 1997* (RSA Act) provides for the prudential supervision of retirement savings accounts.

Section 909-1 of the Act and the ITTP Act, section 353 of the SIS Act and section 200 of the RSA Act provide 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 *Income Tax Assessment Regulations 1997* (1997 Regulations) provide for certain operational rules for income tax calculations and liabilities for individuals, companies, trusts, partnerships and superannuation funds. They are necessary to support the operation of the Act. The 1997 Regulations sunset on 1 April 2021 and accordingly need to be remade prior to this time to ensure that these rules are in place to support the ongoing operation of the income tax law.

The purpose of the *Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021* (the Regulations) is to repeal the 1997 Regulations at the same time as the replacement instrument, the *Income Tax Assessment (1997 Act) Regulations 2021* (the 2021 Regulations) commence. The Regulations would also make consequential amendments to regulations made under the *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings*

*Accounts Act 1997* and would make some minor updates that are required because of the sunseting and remaking of the 1997 Regulations.

The consequential amendments are required to remove references to provisions in the 1997 Regulations following the repeal of the instrument and instead refer to the corresponding provisions in the 2021 Regulations.

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

The Act, ITTP Act, SIS Act and the RSA Act do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

No public consultation was undertaken on the Regulations as separate consultation was already undertaken on the *Income Tax Assessment (1997 Act) Regulations 2021* concerning the repeal of the 1997 Regulations and the minor consequential amendments are wholly a consequence of those changes and are minor or machinery in nature only. Consultation was undertaken with the Australian Taxation Office on the Regulations.

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

The Regulations commence at the same time as the *Income Tax Assessment (1997 Act) Regulations 2021* commence.

No Regulation Impact Statement has been prepared because the amendments are minor or machinery in nature only (OBPR reference ID number (25286)).

A Statement of Compatibility with Human Rights is at [Attachment B](#). The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Details of the *Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021***

This attachment sets out further details of the *Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021* (the Regulations). All references are to the Regulations unless otherwise stated.

The Regulations contain minor consequential amendments to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and also to the *Retirement Savings Accounts Regulations 1997* (RSA Regulations). The repeal of the *Income Tax Assessment Regulations 1997* (the 1997 Regulations) is principally made under the regulation making power in the *Income Tax Assessment Act 1997* (Act). However the regulation making power under the *Income Tax (Transitional Provisions) Act 1997* (ITTP Act) also supports the repeal of the Regulations. Items 115 to 117 of Schedule 1 to the *Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013* provide that, although regulations were originally made under section 292-25 or 292-170 of the Act, they are taken to have been made under the ITTP Act, or under the Act but as amended by the ITTP respectively.

**Preliminary**

**Section 1 – Name of Regulations**

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021*.

**Section 2 – Commencement**

This section provides that the Regulations commence at the same time as the *Income Tax Assessment Regulations 2021* commence.

**Section 3 – Authority**

This section provides that the Regulations are made under the following Acts:

- *Income Tax Assessment Act 1997*;
- *Income Tax (Transitional Provisions) Act 1997*;
- *Retirement Savings Accounts Act 1997*; and
- *Superannuation Industry (Supervision) Act 1993*.

**Section 4 - Schedules**

This section provides that an instrument specified in a Schedule to this legislative instrument is amended or repealed as set out in the Schedule.

## **Schedule 1 – Repeals and amendments**

### **Part 1 – Repeals**

#### ***Item 1 – Income Tax Assessment Regulations 1997***

Schedule 1 repeals the *Income Tax Assessment Regulations 1997* (1997 Regulations).

### **Part 2 – Amendments**

#### ***Item 2 – Retirement Savings Accounts Regulations 1997***

Paragraph 4.01A(c) of the RSA Regulations is amended to clarify the intended outcome that if two medical practitioners jointly certify a person's terminal medical condition then the certification period for that certificate must not have expired for a terminal medical condition to exist. This clarifies that it applies to a single certificate in the same way as where two separate certificates are issued. The amendment does not change existing policy and is consistent with how the provision has been administered by the Commissioner of Taxation.

#### ***Items 3 to 9 – Superannuation Industry (Supervision) Regulations 1994***

The Regulations amend subparagraph 5.04(3)(b)(iv) of the SIS Regulations to update the reference to regulation 292-170.03 of the 1997 Regulations to regulation 7.11 of the SIS Regulations, which is the corresponding regulation. This consequential amendment is needed because of the repeal of the 1997 Regulations and the relocation of the corresponding provision to regulation 7.11 of the SIS Regulations.

Paragraph 6.01A(c) of the SIS Regulations is repealed and replaced with an updated definition of the term 'terminal medical condition' in relation to the 24 month certification period. The amendment confirms the existing administrative practice that where there is a joint certificate signed by two registered medical practitioners, there is only one certification period that is required not to have ended. Consistent with the operation of the provision prior to the amendments, where there are two separate signed certifications there will be two certification periods, neither of which must have ended.

Subparagraph 7.07H(1)(a)(ii) of the SIS Regulations is amended to refer to regulation 7.11 of the SIS Regulations instead of 'regulation 292-170.03 of the 1997 Regulations'. This is a consequential amendment made as a result of the repeal of the 1997 Regulations and the relocation of the corresponding provision to regulation 7.11 of the SIS Regulations.

A consequential amendment is made to paragraph 7.08(1)(c) of the SIS Regulations to refer to regulation 7.11 of the SIS Regulations, rather than regulation 292-170.03 of the 1997 Regulations. This consequential amendment is needed because of the repeal of the 1997 Regulations and the relocation of the corresponding provision to regulation 7.11 of the SIS Regulations.

A consequential amendment is made to Regulation 7.09 of the SIS Regulations to change the reference from regulation 292-170.03 of the 1997 Regulations to

section 291-170.03 of the 2021 Regulations to ensure that the corresponding section in the 2021 Regulations is referred to.

Regulation 7.10 of the SIS Regulations is amended by replacing the reference to ‘that are required to allocate contributions in accordance with regulation 292-170.03 of the 1997 Regulations with ‘in relation to which this Division applies’. This amendment simplifies the drafting but retains the same policy outcome.

Regulation 7.11 of the SIS Regulations is amended to clarify that contributions are required to be allocated in the month they are received by the trustee or within 28 days after the end of the month or in a period that is reasonably practicable having regard to the present and prospective liabilities of the fund to its members. Allocation based on present and prospective fund liabilities is consistent with existing practice for allocations. Previously this rule was split between regulation 7.11 of the SIS Regulations and former regulation 292-170.03 of the 1997 Regulations but is now located in regulation 7.11 of the SIS Regulations for ease of access so that the provision is located in one instrument only.

### **Item `10 – Application and Transitional Arrangements**

Regulation 14.27 is included in the SIS Regulations by the amendments. It provides that the amendments made by the Regulations to regulation 5.04 and Divisions 7.2 and 7.3 of the SIS Regulations apply in relation to any contribution received on or after 1 July 2021. The other amendments made by the Regulations apply from commencement of the Regulations which is at the same time as the *Income Tax Assessment (1997 Act) Regulations 2021* commence (1 April 2021).

**Statement of Compatibility with Human Rights**

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

***Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021***

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 *Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021* (Regulations) repealed the *Income Tax Assessment Regulations 1997* (1997 Regulations) at the same time as the *Income Tax Assessment Regulations 2021* came into operation.

The Regulations also make consequential amendments to the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* that are required to update references to the Regulations in these other instruments and also to take account of changes in numbering in the Regulations.

**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.