EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation Industry (Supervision) Act 1993

Retirement Savings Accounts Act 1997

Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021

Section 353 of the *Superannuation Industry (Supervision) Act 1993* (the SIS 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.

Section 200 of the *Retirement Savings Accounts Act 1997* (the RSA Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the RSA Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) require that a minimum payment be made from account based pensions, allocated pensions and market linked pensions (and for the equivalent annuity products) at least annually. Minimum payments are determined by age and the value of the account balance at 1 July of each year.

The *Retirement Savings Accounts Regulations 1997* (RSA Regulations) contain parallel payment rules for pensions payable from retirement savings accounts.

The minimum annual payment rules are designed so that retirees draw down on their superannuation capital over their retirement. This rule recognises that superannuation is a retirement savings vehicle, supported by tax concessions, designed to provide income in retirement.

The *Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021* (the Regulations) amends the SIS Regulations and the RSA Regulations to give effect to the Government's announced measure on 29 May 2021 to extend the temporary reduction in minimum payment amounts for account based pensions, allocated pensions and market linked pensions (and for the equivalent annuity products) by half for the 2021-22 financial year.

This measure extends to 30 June 2022 the Government's response to the Coronavirus pandemic made for the financial years 2019-20 and 2020-21. The measure is designed to continue to assist pension and annuity account balances to recover from capital losses associated with the economic impact of the pandemic, by allowing retirees to adjust their drawdowns from their depreciated asset holdings and avoid being forced to sell assets in a loss position to fund income stream payments.

The SIS Act and the RSA Act specify no conditions that need to be met before the power to make the Regulations may be exercised.

Consultation with the Australian Taxation Office was undertaken in preparing this measure. Given the minor and technical nature of the amendments, and the fact that the amendments temporarily extends measure made for the 2019-20 and 2020-21 financial years, no public consultation was undertaken.

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 commenced on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation Impact Statement

No Regulation Impact Statement was required as the measure was likely to only have a minor regulatory impact.

A statement of Compatibility with Human Rights is at Attachment B

ATTACHMENT A

Details of the *Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021* (the Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The Regulations are made under the *Retirement Savings Accounts Act 1997* (the RSA Act) and the *Superannuation Industry (Supervision) Act 1993* (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 – Amendments

Retirement Savings Accounts Regulations 1997

Schedules 1 and 1A to the RSA Regulations set out the method for calculating the minimum and maximum payment limits for allocated pensions paid from retirement savings accounts.

Clause 2 in each of Schedule 1 and 1A sets out the method for calculating the minimum payment limit.

Clause 3A in each of Schedule 1 and 1A provides that for the financial years commencing 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019 and 1 July 2020, the minimum limit is half of the amount determined under the formula in clause 2.

Items 1 and 2 amend clause 3A of Schedules 1 and 1A to provide the minimum payment limit is also half of the amount determined under the formula in clause 2 for the financial year commencing 1 July 2021.

Schedule 4 to the RSA Regulations contains the rules for calculating the annual payment amounts for market linked pensions.

Clause 1 of Schedule 4 sets out the formula for determining the annual payment amount.

Clause 10 of Schedule 4 provides that for the financial years commencing 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019 and 1 July 2020, an amount is taken to have been determined in accordance with clause 1 if it is:

- not less than 45% of the amount determined in accordance with clause 1 (that is, 50 per cent of the lower payment limit specified under clause 8); and
- not greater than 110% of the amount determined in accordance with clause 1.

Item 3 amends clause 10 of Schedule 4 to provide an amount is also taken to have been determined in accordance with clause 1 if it is not less than 45% of the amount determined in accordance with clause 1 and not greater than 110% of the amount determined in accordance with clause 1 for the financial year commencing 1 July 2021.

Schedule 5 of the RSA Regulations contains the rules for calculating the minimum payment amount for an account-based pension.

The method for calculating the minimum payment is set out in clause 1 of Schedule 5.

Clause 3A of Schedule 5 provides that for the financial years commencing 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019 and 1 July 2020, the minimum limit is half of the amount worked out in using the formula in clause 1.

Item 4 amends clause 3A of Schedule 5 to provide that the minimum limit is also half of the amount worked out in using the formula in clause 1 for the financial year commencing 1 July 2021.

Superannuation Industry (Supervision) Regulations 1994

Schedules 1A and 1AAB to the SIS Regulations set out the method for calculating the minimum and maximum payment limits for allocated pensions (and for the equivalent annuity product).

Clause 2 in each of Schedule 1A and 1AAB sets out the method for calculating the minimum payment limits.

Clause 3A in each of Schedule 1A and 1AAB provides that for the financial years commencing 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019 and 1 July 2020, the minimum limit is half of the amount determined under the formula in clause 2.

Items 5 and 6 amends clause 3A in Schedules 1A and 1AAB to provide the minimum limit is also half of the amount determined under the formula in clause 2 for the financial year commencing 1 July 2021.

Schedule 6 to the SIS Regulations contains the payment rules for market linked income streams.

Clause 1 of Schedule 6 sets out the formula for determining the annual payment amount.

Clause 10 of Schedule 6 provides that for the financial years commencing 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019 and 1 July 2020, an amount is taken to have been determined in accordance with clause 1 if it is:

- not less than 45% of the amount determined in accordance with clause 1 (that is, 50 per cent of the lower payment limit specified under clause 8), and
- not greater than 110 percent of the amount determined in accordance with clause 1.

Item 7 amends clause 10 of Schedule 6 to provide an amount is also taken to have been determined in accordance with clause 1 if it is not less than 45% of the amount determined in accordance with clause 1, and not greater than 110% of the amount determined in accordance with clause 1 for the financial year commencing on 1 July 2021.

Schedule 7 of the SIS Regulations contains the rules for calculating the minimum payment amount for a superannuation income stream.

Clause 1 of Schedule 7 sets out the method for calculating the minimum payment amount for an account-based pension (and for the equivalent annuity product).

Clause 4A of Schedule 7 provides that for the financial years commencing 1 July 2008, 1 July 2009, 1 July 2010, 1 July 2019 and 1 July 2020, the minimum limit is half of the amount worked out using the formula in clause 1.

Item 8 amends clause 4A of Schedule 7 to provide the minimum limit is also half of the amount worked out using the formula in clause 1 for the financial year commencing 1 July 2021.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Superannuation Legislation Amendment (Superannuation Drawdown) 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

These Regulations amends the SIS Regulations and the RSA Regulations to give effect to the Government's announced measure on 29 May 2021 to extend the temporary reduction in minimum payment amounts for account based pensions, allocated pensions and market linked pensions (and for the equivalent annuity products) by half for the 2021-22 financial year.

The SIS Regulations and RSA Regulations require that a minimum payment be made from account based pensions, allocated pensions and market linked pensions (and for the equivalent annuity products) at least annually. Minimum payments are determined by age and the value of the account balance at 1 July of each year.

The minimum annual payment rules are designed so that retirees draw down on their superannuation capital over their retirement. This rule recognises that superannuation is a retirement savings vehicle, supported by tax concessions, designed to provide income in retirement.

The measure is designed to continue to assist pension and annuity account balances to recover from capital losses associated with the economic impact of the pandemic, by allowing retirees to adjust their drawdowns from their depreciated asset holdings and avoid being forced to sell assets in a loss position to fund income stream payments.

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.