

EXPLANATORY STATEMENT

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

Superannuation Industry (Supervision) Act 1993

Treasury Laws Amendment (Self Managed Superannuation Funds) Regulations 2021

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

The purpose of the *Treasury Laws Amendment (Self Managed Superannuation Funds) Regulations 2021* (the Regulations) is to amend relevant provisions in the *Superannuation Industry (Supervision) Regulations 1994* that refer to self managed superannuation funds (SMSFs) and small superannuation funds (SSFs). The amendments ensure the provisions accord with the increased member limits of SMSFs and SSFs provided by the *Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021* (the Act).

The increase to the maximum number of allowable members for SMSFs was announced in the 2018-19 Budget.

Increasing the allowable size of these funds increases choice and flexibility for members. SMSFs are often used by families as a vehicle for controlling their own superannuation savings and investment strategies. For families with more than four members, currently the only real options are to create two SMSFs (which would incur extra costs) or place their superannuation in a larger fund. This change will help large families to include all their family members in their SMSF.

The Act does not specify any conditions that must be met in order for the Regulations to be made.

Consultation was not undertaken in respect of these Regulations on the basis that they are minor or machinery in nature. In addition, the amendments are necessary consequential changes that are required to ensure the SIS Regs continue to operate as intended after the changes made by the Act come into effect.

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 amendments commenced from the later of the day after this instrument was registered and the day on which the *Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021* commenced.

The amendments are estimated to have a minor regulatory impact on business, community organisations or individuals.

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

Details of the *Treasury Laws Amendment (Self Managed Superannuation Funds) Regulations 2021*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Self Managed Superannuation Funds) Regulations 2021* (the Regulations).

Section 2 – Commencement

The instrument commences on later of the day after the instrument is registered and the day on which the *Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021* (the Act) commences.

Section 3 – Authority

The Regulations are made under the *Superannuation Industry (Supervision) Act 1993*.

Section 4 – Schedule

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

Schedule 1 – Amendments

The amendments in Schedule 1 to the Regulations update various provisions in the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regs) that refer to self managed superannuation funds (SMSFs) and small superannuation funds (SSFs).

Various provisions throughout the SIS Regs applied to superannuation funds that either had fewer than 5 members (i.e. funds which were SMSFs and SSFs) or more than 4 members (i.e. funds which were not SSFs or SMSFs). This member threshold was based on the maximum number of allowable members that SMSFs can have.

Consistent with the increased member limits of SMSFs and SSFs provided by the Act, the amendments provided by Schedule 1 to the Regulations update relevant provisions throughout the SIS Regs so that they accord with the increased member limits of SMSFs and SSFs. The member limits were increased from 4 to 6. Relevant provisions which referred to funds that have fewer than 5 members will now refer to funds that have “no more than 6 members”. Relevant provisions which referred to funds with at least 5 members will now refer to funds which have “more than 6 members”.

Not all provisions in the SIS Regs which refer to the quantity of members of a fund do so in the context of SMSFs and SSFs (e.g. subregulation 3.05(2)(b)). Accordingly, such provisions were not amended.

Division 13.3A of the SIS Regs concerns in-house assets of superannuation funds. The member limit reference in subregulation 13.22B(2)(a) of the SIS Regs was not updated as the regulation exclusively concerns facts existing before the commencement of the Act. Although subregulation 13.22C(2) of the SIS Regs is capable of applying to facts existing before the commencement of the Act, the amendment to the subregulation applies prospectively from commencement and so will therefore only apply to facts occurring from the commencement of the amendment. Facts existing before the commencement of the amendment will be subject to the previous “fewer than 5 members” reference.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Self Managed Superannuation Funds) 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 purpose of the *Treasury Laws Amendment (Self Managed Superannuation Funds) Regulations 2021* is to amend relevant provisions in the *Superannuation Industry (Supervision) Regulations 1994* that refer to self managed superannuation funds (SMSFs) and small superannuation funds (SSFs). The amendments ensure the provisions accord with the increased member limits of SMSFs and SSFs provided by the *Treasury Laws Amendment (Self Managed Superannuation Funds) Act 2021*.

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.