

## **EXPLANATORY STATEMENT**

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

*Income Tax Assessment Act 1997*

*Retirement Savings Accounts Act 1997*

*Superannuation Industry (Supervision) Act 1993*

*Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022*

Subsection 909-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) 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* (RSA 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 353 of the *Superannuation Industry (Supervision) Act 1993* (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.

The purpose of the *Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022* (the Regulations) is to amend the *Income Tax Assessment (1997 Act) Regulations 2021*, the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to support the amendments in Schedules 3 and 4 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Act 2022* (the Act).

Schedule 3 to the Act amends the ITAA 1997 to allow individuals aged 60 and above to make downsizer contributions to their superannuation plan from the proceeds of selling their home. The Regulations support the amendments in Schedule 3 to the Act by ensuring that downsizer contributions can be accepted by regulated superannuation funds and RSA institutions for individuals who are 60 and above.

Schedule 4 to the Act amends the ITAA 1997 to preserve the work test for personal deductible contributions made by individuals aged between 67 and 75, and to allow such individuals to make or receive non-concessional superannuation contributions under the bring-forward rule without meeting the work test. Schedule 4 to the Act supports the work test repeal for non-concessional and salary sacrificed contributions in conjunction with the Regulations.

The Act and the Regulations give effect to the Flexible Super package announced in the 2021-22 Budget. The Government announced its intention to reduce the eligibility age for downsizer contributions into superannuation for individuals from 65 to 60 years, and to repeal the work test for non-concessional and salary sacrificed contributions for individuals aged between 67 and 75 years. The Flexible Super package improves the flexibility for Australians to contribute to their superannuation. Specifically, it encourages individuals to downsize sooner to a home that better suits their needs and increase the supply of larger homes for younger families, and simplifies the rules governing superannuation contributions.

The ITAA 1997, RSA Act and SIS Act do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

Public consultation on the Regulations was not undertaken as the amendments are minor or machinery in nature and operate to change a threshold and are required to implement publicly announced Budget decisions. However, confidential consultation was undertaken with the Australian Taxation Office.

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 later of the day after they are registered, and the commencement of Schedules 3 and 4 to the Act. The Regulations do not commence at all in the event that Schedules 3 and 4 to the Act do not commence.

The Regulations apply on and from 1 July 2022.

The Office of Best Practice Regulation advised that a Regulation Impact Statement is not required (OBPR ID 43903). The amendments are estimated to have a low impact on compliance costs.

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

**Details of the *Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022***

**Section 1 – Name of the Regulations**

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022* (the Regulations).

**Section 2 – Commencement**

Schedule 1 to the Regulations commences on the later of the day after the instrument is registered on the Federal Register of Legislation, and immediately after the commencement of Schedules 3 and 4 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Act 2022* (the Act). However, the provisions do not commence at all if Schedules 3 and 4 to the Act do not commence.

**Section 3 – Authority**

The Regulations are made under the *Income Tax Assessment Act 1997* (ITAA 1997), the *Retirement Savings Accounts Act 1997* and the *Superannuation Industry (Supervision) Act 1993*.

**Section 4 – Schedule**

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

**Schedule 1 – Amendments**

**Item 1 – Amendments to the *Income Tax Assessment (1997 Act) Regulations 2021***

Item 1 inserts new section 290-165.01 after section 290-155.05 of the *Income Tax Assessment (1997 Act) Regulations 2021*. Section 290-165.01 prescribes certain provisions in the *Retirement Savings Accounts Regulations 1997* (RSA Regulations) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to ensure an individual cannot rely on the exemption to the work test in section 290-165(1A)(b) of the ITAA 1997 if they had previously relied on one of the equivalent exemptions which were in the RSA Regulations and the SIS Regulations.

**Items 2 to 11 – Amendments to the *Retirement Savings Accounts Regulations 1997***

Item 2 amends subregulation 5.02(2) of the RSA Regulations by omitting the text "Part" and substituting "Division", to correct a typographical error.

Item 3 amends subregulation 5.03(1) to insert a cross reference to a new subregulation 5.03(1A), which is introduced through item 4.

Item 4 repeals the table in subregulation 5.03(1) and substitutes a replacement table. The substitute table is modelled on the repealed table but simplifies the contributions acceptance rules for each of the age groups, removes the work test requirements and, in table items 2 and 3, provides that an RSA institution may accept downsizer contributions from an RSA holder who is 60 years or more.

Work test conditions may still apply, however, at the point of deducting certain contributions rather than at the point of a fund accepting contributions (see subsection 290-165(1A) of the ITAA 1997).

Item 5 repeals the existing subregulation 5.03(1A) and substitutes a new subregulation 5.03(1A) which provides flexibility for an RSA institution to accept certain contributions made in respect of an RSA holder that are received on or before 28 days after the end of the month in which the RSA holder turns 75. These contributions are employer contributions other than mandated employer contributions, or RSA holder contributions other than downsizer contributions.

Item 6 amends subregulation 5.03(2) by omitting the text "subregulation (1)" and substituting "subregulations (1) and (1A)", to reflect other amendments made to the Regulations.

Items 7 to 10 insert cross references to the new subregulation 5.03(1A) through amendments to subregulation 5.03(4), paragraph 5.03(4)(a), sub-subparagraph 5.03(4)(b)(v)(D) and subregulation 5.03(6).

Item 11 inserts into Part 7 – Transitional matters a savings provision to ensure that, despite the repeal of the existing table in subregulation 5.03(1), the existing rules continue to apply for contributions made on or after the commencement of the legislative instrument but before 1 July 2022.

### **Items 12 to 26 – Amendments to the *Superannuation Industry (Supervision) Regulations 1994***

Item 12 repeals subregulation 7.01(1A) of the SIS Regulations to remove the definition of *child* as the reference to this term in Division 7.1 no longer exists.

Item 13 repeals subregulation 7.01(3) including the note to remove the meaning of a person being gainfully employed on a part-time basis, as references to that phrase in Part 7 will no longer exist after changes introduced through item 15.

Item 14 amends subregulation 7.04(1) to insert a cross reference to a new subregulation 7.04(1A), which is introduced through item 15.

Item 15 repeals the table in subregulation 7.04(1) and substitutes a replacement table. The substitute table is modelled on the repealed table but simplifies the contributions acceptance rules for each of the age groups, removes the work test requirements and, in table items 2 and 3, provides that a regulated superannuation fund may accept downsizer contributions from a member who is 60 years or more.

Work test conditions may still apply, however, at the point of deducting certain contributions rather than at the point of a fund accepting contributions (see subsection 290-165(1A) of the ITAA 1997).

Item 16 repeals the existing subregulation 7.04(1A) and substitutes a new subregulation 7.04(1A) which provides flexibility for a regulated superannuation fund to accept certain contributions made in respect of a member that are received on or before 28 days after the end of the month in which the member turns 75. These contributions that may be accepted are employer contributions other than mandated employer contributions or member contributions other than downsizer contributions.

Item 17 amends subregulation 7.04(2) by omitting the text "subregulation (1)" and substituting "subregulations (1) and (1A)", to reflect other amendments made to the Regulations.

Items 18-22 inserts cross references to the new subregulation 7.04(1A) through amendments to subregulation 7.04(4), paragraph 7.04(4)(a), sub-subparagraph 7.04(4)(b)(v)(D), subregulation 7.04(6) and subregulation 7.04(6A).

Item 23 repeals the definition of *superannuation provider* in subregulation 7.04(7) as the term is not referenced in regulation 7.04. The term is already defined elsewhere in the SIS Regulations and does not need to be included in this subregulation.

Item 24 repeals subregulations 7.05(2) and (3) and substitutes a new subregulation 7.05(2). This amendment removes the work test requirements and aligns the remaining rules for accrual of benefits attributable to contributions made in respect of a person aged 65 to 75 years, which previously differed slightly in the range of member contributions which could be accepted in respect of persons aged 65 to under 70 years compared to persons aged 70 to under 75 years. Subregulation 7.05(2) now allows a defined benefit fund to grant an accrual of benefits in respect of a member aged between 65 and 75 years if the accrual is attributable to contributions made in respect of the member that are employer contributions or member contributions (e.g. made by the member or by their spouse in respect of the member).

Item 25 amends subregulation 7.05(5) by omitting the cross reference to subregulation 7.05(3), which has been repealed by item 24 of these amendments.

Item 26 inserts into Part 14 – Transitional arrangements a savings provision to ensure that, despite the repeal of the existing table in subregulation 7.04(1) and subregulation 7.05(2) and (3), the existing rules continue to apply for contributions made on or after the commencement of the legislative instrument but before 1 July 2022.

### **Other matters**

The Regulations amend the RSA Regulations and the SIS Regulations. Items 56B and 59A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* exempts these regulations from sunset. The RSA Regulations prescribe the operation of a number of the fundamental building blocks essential to the effective operation of the retirement savings accounts superannuation structure. The SIS Regulations prescribe the operation of the fundamental building blocks essential to the effective operation of the superannuation system.

The RSA Regulations and the SIS Regulations are substantial. They are also complex, with both instruments having considerable interactions with numerous other legislative instruments. The administrative burden associated with such remaking these regulations would outweigh any regulatory benefit. Further, the

regulation of superannuation is already subject to ongoing review and amendment. The complex and evolving nature of the financial services industry, combined with the size and significance of the superannuation industry, indicates that the RSA Regulations and the SIS Regulations will continue to be the subject of regular review and amendment into the future. This will ensure that the RSA Regulations and the SIS Regulations remain up to date and continue to be fit-for-purpose. Accordingly, it is appropriate to exempt the RSA Regulations and the SIS Regulations from sunseting as they are subject to regular review and amendment, and are sufficiently large and complex such that the administrative burden associated with remaking them would outweigh any regulatory benefit. This is consistent with the Attorney-General's Department's Guide to managing the sunseting of legislative instruments.

**Statement of Compatibility with Human Rights**

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

***Treasury Laws Amendment (Enhancing Superannuation Outcomes) Regulations 2022***

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**

This Legislative Instrument makes amendments to the *Income Tax Assessment (1997 Act) Regulations 2021*, the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to support the amendments in Schedules 3 and 4 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Act 2022* (the Act).

Schedule 3 to the Act amends the *Income Tax Assessment Act 1997* (ITAA 1997) to allow individuals aged 60 and above to make downsizer contributions to their superannuation plan from the proceeds of selling their home. The Regulations support the amendments in Schedule 3 to the Act by ensuring that downsizer contributions can be accepted by regulated superannuation funds and RSA institutions for individuals who are aged 60 and above.

Schedule 4 to the Act amends the ITAA 1997 to preserve the work test for personal deductible contributions made by individuals aged between 67 and 75, and to allow such individuals to make or receive non-concessional superannuation contributions under the bring-forward rule without meeting the work test. Schedule 4 to the Act supports the work test repeal for non-concessional and salary sacrificed contributions in conjunction with 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.