

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Retirement Savings Accounts Act 1997

Superannuation Industry (Supervision) Act 1993

Superannuation Legislation Amendment (Broadening Contribution Rules) Regulations 2022

The *Retirement Savings Accounts Act 1997* (RSA Act) governs the prudent management of retirement savings accounts and the supervision by the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), and the Commissioner of Taxation.

Section 200 of 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 RSA Act.

The *Superannuation Industry (Supervision) Act 1993* (SIS Act) governs the prudent management of superannuation funds and the supervision by APRA, ASIC, and the Commissioner of Taxation.

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

The purpose of the Regulations is to amend the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to give effect to the Government's election commitment to expand the eligibility for downsizer contributions into superannuation by reducing the eligibility age from 60 to 55 years. This improves the flexibility for Australians to contribute to their superannuation savings and may encourage people to downsize sooner to a residence that better suits their needs and increase the supply of larger residences for younger families.

Schedule 5 to the *Treasury Laws Amendment (2022 Measures No. 2) Act 2022* (the Amending Act) will amend the *Income Tax Assessment Act 1997* to allow individuals aged 55 years or over to make downsizer contributions to their complying superannuation plan from the proceeds of selling their main residence.

The Regulations support the amendments in Schedule 5 to the Amending Act by ensuring that downsizer contributions will be accepted by regulated superannuation funds and Retirement Savings Account (RSA) institutions for individuals who are aged 55 years or over, from the date of commencement of Schedule 5 to the Amending Act.

The 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 are required to implement publicly announced election commitments. However, confidential consultation was undertaken with the Australian Taxation Office.

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 after the commencement of Schedule 5 to the Amending Act. The Regulations do not commence at all in the event that Schedule 5 to the Amending Act does not commence.

The Regulations apply in relation to contributions made on or after the commencement of the Regulations.

The Office of Best Practice Regulation (OBPR) has advised that the amendments do not require a Regulatory Impact Statement because they have been assessed to have no more than a minor regulatory impact. The OBPR Reference Number is OBPR22-02384.

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

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

Details of the *Superannuation Legislation Amendment (Broadening Contribution Rules) Regulations 2022*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Legislation Amendment (Broadening Contribution Rules) Regulations 2022* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the later of the day after they are registered, and after the commencement of Schedule 5 to the *Treasury Laws Amendment (2022 Measures No. 2) Act 2022* (the Amending Act). The Regulations do not commence at all in the event that Schedule 5 to the Amending Act does not commence.

Section 3 – Authority

The Regulations are made under 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 Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Items 1 to 4 – Amendments to the Retirement Savings Accounts Regulations 1997

Item 1 repeals the table in subregulation 5.03(1) and substitutes a replacement table. The substitute table is modelled on the repealed table but in table items 2 and 3, provides that an RSA institution may accept downsizer contributions from an RSA holder who is aged 55 years or over. Item 1 also inserts a note after the table to explain that for table item 2, RSA holder contributions include downsizer contributions. This corresponds to the amendments made in Schedule 5 to the Amending Act which allow individuals aged 55 years or over to make downsizer contributions to their complying superannuation plan.

Column 1 of the replacement table has a stylistic change for the referencing of the age ranges. Table item 1 applies to anyone who is under 55 years. Table item 2 applies to anyone who is not under 55, but is under 75 years. Table item 3 applies to anyone who is not under 75 years.

A person's contributions when aged less than 55 years can never include downsizer contributions. This is the combined effect of the definition of "downsizer

contribution” in subregulation 5.03(7) and the amendment made by Schedule 5 to the Amending Act.

Item 2 amends subregulation 5.03(1A) to insert “years” after “75” to correct a typographical error. Subregulation 5.03(1A) 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 years. These contributions are employer contributions other than mandated employer contributions, or RSA holder contributions other than downsizer contributions.

Item 3 makes a consequential change to paragraph (a) of the note to subregulation 5.03(1A) to omit “60” and substitute “55”.

Item 4 inserts into Part 7 a savings provision which outlines that the amendments made by the Regulations apply in relation to contributions made on or after the commencement of the Regulations and to ensure that, despite the repeal of the existing table in subregulation 5.03(1), the existing rules continue to apply for contributions made before the commencement of the Regulations.

Items 5 to 8 – Amendments to the Superannuation Industry (Supervision) Regulations 1994

Item 5 repeals the table in subregulation 7.04(1) and substitutes a replacement table. The substitute table is modelled on the repealed table but in table items 2 and 3, provides that a regulated superannuation fund may accept downsizer contributions from a member who is 55 years or over. Item 5 also inserts a note after the table to explain that for table item 2, member contributions include downsizer contributions. This corresponds to the amendments made in Schedule 5 to the Amending Act which allow individuals aged 55 years or over to make downsizer contributions to their complying superannuation plan.

Column 1 of the replacement table has a stylistic change for the referencing of the age ranges. Table item 1 applies to anyone who is under 55 years. Table item 2 applies to anyone who is not under 55, but is under 75 years. Table item 3 applies to anyone who is not under 75 years.

A person’s contributions when aged less than 55 years can never include downsizer contributions. This is the combined effect of the definition of “downsizer contribution” in subregulation 7.04(7) and the amendment made by Schedule 5 to the Amending Act.

Item 6 amends subregulation 7.04(1A) to insert “years” after “75” to correct a typographical error. Subregulation 7.04(1A) 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 7 makes a consequential change to paragraph (a) of the note to subregulation 7.04(1A) to omit “60” and substitute “55”.

Item 8 inserts into Part 14 a savings provision which outlines that the amendments made by the Regulations apply in relation to contributions made on or after the commencement of the Regulations and to ensure that, despite the repeal of the existing table in subregulation 7.04(1), the existing rules continue to apply for contributions made before the commencement of the Regulations.

Statement of Compatibility with Human Rights

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

Superannuation Legislation Amendment (Broadening Contribution Rules) 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 amends the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to expand the eligibility for downsizer contributions into superannuation by reducing the eligibility age from 60 to 55 years. This improves the flexibility for Australians to contribute to their superannuation savings and may encourage people to downsize sooner to a residence that better suits their needs and increase the supply of larger residences for younger families.

Schedule 5 to the *Treasury Laws Amendment (2022 Measures No. 2) Act 2022* (the Amending Act) will amend the *Income Tax Assessment Act 1997* to allow people aged 55 years or over to make downsizer contributions to their complying superannuation plan from the proceeds of selling their residence.

This Legislative Instrument supports the amendments in Schedule 5 to the Amending Act by ensuring that downsizer contributions will be accepted by regulated superannuation funds and RSA institutions for people who are aged 55 years or over from the date of commencement of Schedule 5 to the Amending Act.

Human rights implications

This Legislative Instrument positively engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

The right to social security requires Australia to, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

This Legislative Instrument improves the right to social security in Australia by expanding access to downsizer contributions to Australians between the ages of 55 and 59, who did not previously have access to the downsizer scheme. Expanding eligibility to make downsizer contributions constitutes a positive interaction with the right to social security because it allows more people to make additional contributions to their complying superannuation plan.

Conclusion

This Legislative Instrument is compatible with human rights because it positively engages the right to social security.