

EXPLANATORY STATEMENT

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

Income Tax (Transitional Provisions) Act 1997

Income Tax (Transitional Provisions) (Permanent Incapacity Benefits) Rules 2024

Section 301-105 of the *Income Tax (Transitional Provisions) Act 1997* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) that:

- relate to the amendments or repeals made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023*; and
- relate to either or both of the 2022-23 and 2023-24 income years.

The purpose of the *Income Tax (Transitional Provisions) (Permanent Incapacity Benefits) Rules 2024* (the Rules) is to continue transitional arrangements made by section 301-100 of the Act for an additional 12 months to include the 2022-23 income year.

Section 301-100 of the Act prevents the Commissioner from amending certain income tax assessments on the basis that a superannuation benefit paid to a person is a superannuation income stream benefit because of amendments made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* ('the Schedule 9 amendments'). Those amendments sought to reverse the effect of the Federal Court's decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (the Douglas decision) by clarifying that all defined benefit pensions paid from most defined benefit funds (including permanent incapacity benefits) are superannuation income stream benefits and not superannuation lump sums for the purpose of the *Income Tax Assessment Act 1997*.

Section 301-100 of the Act is a transitional arrangement that applies for income years up to and including the 2021-22 income year. It applies to certain recipients of permanent incapacity benefits who had previously had their superannuation benefits assessed on the basis that they were a superannuation lump sum, and this assessment was first made before 4 December 2020 (the date of the Douglas decision). In practice, this means taxpayers whose superannuation benefits commenced before the 2020-21 income year, as benefits commencing in the 2020-21 income year will not have the relevant assessment made before 4 December 2020.

The Rules apply to income tax assessments for the 2022-23 income year.

The Rules modify section 301-100 of the Act to extend the transitional arrangements for a further year. This will provide affected funds and individuals with further time to transition some aspects of reporting the incapacity benefits as superannuation lump sums to reporting them as superannuation income streams in accordance with the Schedule 9 amendments. The Rules mean that if the Commissioner makes an assessment on the basis that a permanent incapacity benefit is a superannuation lump sum for the 2022-23 income year, the Commissioner is prevented from amending that assessment on the basis of the

Schedule 9 amendments. However, the Commissioner may amend the assessment for reasons such as fraud or dishonesty, or if the taxpayer requests a review of the assessment.

The Act specifies conditions that need to be satisfied before the power to make the Rules may be exercised.

Subsection 301-105(2) of the Act provides that rules made under this section before 12 months after the commencement of the Schedule 9 amendments may modify the provisions of that Schedule or any other Act or instrument. The Schedule 9 amendments commenced on 24 June 2023. The Rules modify the provisions of Schedule 9, and meet that condition if made by 23 June 2024.

The Rules also meet the condition in subsection 301-105(3) of the Act, which provides that the rules must not create an offence or civil penalty, provide coercive powers, impose a tax, set an amount to be appropriated or directly amend the text of the Act.

Formal consultation was not undertaken on the draft instrument as the Rules extend existing transitional arrangements to provide additional time for some of the arrangements to transition from reporting the benefits as superannuation lump sums to superannuation income stream benefits. As the Rules relate to a past income year, making the Rules promptly will provide certainty to relevant taxpayers.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*, and are subject to disallowance and sunseting in accordance with that Act.

This legislative instrument commences on the day after registration.

The Rules apply retrospectively to the 2022-23 income year. It is appropriate to extend the transitional arrangements for a further year to provide additional time for relevant funds and individuals to make the transition. This is particularly appropriate because the Schedule 9 amendments commenced towards the end of the 2022-23 income year, which has not provided adequate time to work through the implications of those amendments for the 2022-23 income year. The Rules will not have any detrimental impacts on individual taxpayers and therefore are not affected by subsection 12(2) of the *Legislation Act 2003*. The Rules will preserve assessments that are made in relation to the 2022-23 income year, providing greater certainty for taxpayers.

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

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

The Office of Impact Analysis has been (OIA) has been consulted (OIA23-06092) and agreed that an Impact Analysis is not required.

Details of the *Income Tax (Transitional Provisions)(Permanent Incapacity Benefits) Rules 2024*

Section 1 – Name

This section provides that the name of the legislative instrument is the *Income Tax (Transitional Provisions)(Permanent Incapacity Benefits) Rules 2024* (the Rules).

Section 2 – Commencement

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

Section 3 – Authority

The Rules are made under the *Income Tax (Transitional Provisions) Act 1997* (the Act).

Section 4 – Definitions

Expressions used in this legislative instrument have the same meaning as in the Act.

Section 5 – Transitional Rules

Section 5 modifies the Act by providing that subparagraph 301-100(2)(b)(i) of the Act has effect as if the reference to the 2021-22 income year were a reference to the 2022-23 income year. This means that the transitional arrangements that prevent the Commissioner from amending certain income tax assessments continue for a further 12 months.

Statement of Compatibility with Human Rights

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

Income Tax (Transitional Provisions) (Permanent Incapacity Benefits) Rules 2024

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 *Income Tax (Transitional Provisions) (Permanent Incapacity Benefits) Rules 2024* (the Rules) is to continue transitional arrangements made by section 301-100 of the *Income Tax (Transitional Provisions) Act 1997* (the Act) for an additional 12 months to include the 2022-23 income year.

Section 301-100 of the Act prevents the Commissioner from amending certain income tax assessments on the basis that a superannuation benefit paid to a person is a superannuation income stream benefit because of amendments made by Schedule 9 to the *Treasury Laws Amendment (2022 Measures No. 4) Act 2023* ('the Schedule 9 amendments'). Those amendments sought to reverse the effect of the Federal Court's decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (the Douglas decision) by clarifying that all defined benefit pensions paid from most defined benefit funds (including permanent incapacity benefits) are superannuation income streams and not superannuation lump sums for the purpose of the *Income Tax Assessment Act 1997*.

The Rules will provide affected funds and individuals with further time to transition from reporting the incapacity benefits as superannuation lump sums to reporting them as superannuation income stream benefits in accordance with the Schedule 9 amendments.

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.