

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Superannuation Industry (Supervision) Act 1993

Treasury Laws Amendment (2018 Measures No. #) Regulations 2018

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. Sections 34K and 34Z of the SIS Act provide that the regulations make provision for superannuation data and payment matters and may also prescribe matters in relation to the provision of information to the Commissioner of Taxation (the Commissioner).

The SIS Act provides for the prudent management of superannuation funds, approved deposit funds and pooled superannuation trusts. This specifically includes mandating the use of a prescribed electronic data and payment system as well as supervision by the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission and the Commissioner.

The *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994) generally requires all superannuation funds, other than self managed superannuation funds (SMSFs), to provide data to regulators and transfer payments between funds using the secure electronic payment and data verification system known as SuperStream.

The principal purpose of the *Treasury Laws Amendment (2018 Measures No. #) Regulations 2018* (the Regulations) is to amend the SISR 1994 to extend the operation of SuperStream to cover SMSFs. The Regulations also make some minor changes to simplify and update SISR 1994.

The amendments made by Schedule 1 to the Regulations commence on or after 30 November 2019. Self managed superannuation funds will not be required to do anything in relation to SuperStream before that date.

The amendments made by Schedule 2 to the Regulations commence from the day after registration and apply to transfers and rollovers that are requested on or after 30 November 2019.

The amendments made by Schedule 3 to the Regulations provide the application and transitions rules for Schedules 1 and 2.

Details of the Regulations are set out in the Attachment.

The SIS Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

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ATTACHMENT

Details of the proposed *Treasury Laws Amendment (2018 Measures No. #) Regulations 2018*

This Attachment sets out further details of the *Treasury Laws Amendment (2018 Measures No. #) Regulations 2018*.

Section 1 – Name

This section specifies the name of the Regulations is the *Treasury Laws Amendment (2018 Measures No. #) Regulations 2018*.

Section 2 – Commencement

This section prescribes that the Regulations, other than Schedule 1, commence the day after the Regulations are registered.

Schedule 1 commences on 30 November 2019.

Section 3 – Authority

This section provides that the Regulations are made under the *Superannuation Industry (Supervision) Act 1993* (the SIS Act).

Section 4 – Schedules

This section provides that each instrument identified in a Schedule to the Regulations is amended or repealed in accordance with these Regulations.

Schedule 1 – Applying Part 3B to self managed superannuation funds etc.

Schedule 1 amends Part 3B of the *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994) to extend its operation to cover SMSFs.

The Commissioner of Taxation (Commissioner) is required to keep a central register containing SuperStream information, including the bank details and an internet protocol address for prescribed eligible superannuation entities. The Commissioner may make this information available to entities that must comply with the data and payment regulations and standards to ensure that payments and transmissions of data are sent to the correct destination. Part 3B of SISR 1994 outlines the information that is required to be provided to the Commissioner and the manner and timing for its provision.

Items 1 and 2

Items 1 and 2 operate to make all eligible superannuation entities prescribed superannuation entities. Extending the class of prescribed eligible superannuation entities ensures that SMSFs are subject to requirements in section 34Z of the SIS Act and the regulations in Part 3B of SISR 1994.

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Under these amendments, SMSFs enter the SuperStream system and may be required to provide the Commissioner with:

- a unique superannuation identifier (which is likely to be their ABN);
- bank details that can receive electronic payments; and
- an internet protocol address or other digital address approved by the Commissioner that can facilitate SuperStream communication.

Not all SMSFs currently have a unique superannuation identifier or internet protocol address. In practice, an SMSF will only be required to obtain an identifier or address and provide it to the Commissioner if it receives a contribution, or a rollover or transfer of a member's withdrawal benefit. If an SMSF never receives a contribution, rollover or transfer of a member's withdrawal benefit, it is not required to provide the listed information to the Commissioner and consequently is not required to obtain a unique superannuation identifier.

Item 3

This item simplifies and updates subregulation 3B.03(4). Item 3 retains the requirement that information provided to the Commissioner in respect of a particular contribution, rollover, or transfer must be current at the time that the transaction occurs.

Items 4, 5 and 6

These items simplify and update subregulations 3B.03(5), (6) and (7).

Trustees of all prescribed superannuation entities (which includes SMSFs) must provide the Commissioner with electronic banking and communication information that is relevant to process a particular contribution, rollover or transfer at least 10 business days before that transaction occurs.

Where information previously provided to the Commissioner by the trustee remains current, it is not necessary to resubmit the information for subsequent transactions.

Schedule 2 – Applying Division 6.5 of Part 6 to self managed superannuation funds etc.

Schedule 2 amends Division 6.5 of Part 6 of the SISR 1994 to extend its operation to cover SMSFs.

Broadly speaking, Division 6.5 of Part 6 of the SISR prescribes which superannuation transactions are subject to the superannuation electronic data and payment regulations and standards (SuperStream). It prescribes what information is required to accompany a request for a rollover or transfer, a member registration and a contribution, and when that information must be validated. Prior to these amendments, Division 6.5 had very limited application to SMSFs.

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Items 1, 2, 3, 5 and 9

These items remove the general exclusion of self managed superannuation funds from the operation of Division 6.5.

The amendments ensure that a member of an SMSF may request to rollover their superannuation benefit (in whole or in part) and make that request to either the transferring fund or the receiving fund.

Regulation 6.33E of SISR 1994 still applies to a superannuation fund when it receives a request to rollover to an SMSF. The regulation prescribes that the transferring fund must use an *electronic service* to verify:

- the ABN;
- name and regulated status of the received superannuation fund; and
- the member is a member of receiving fund.

These additional requirements continue to apply to verify the identity of the member of the SMSF via the electronic service provided by the Commissioner. The requirements have been retained to ensure the integrity of the expanded SuperStream system.

Items 4, 6, 7, 8, 10, 11, 12, 13 and 14

As there is no longer a general distinction between the regulation of SMSFs and other eligible superannuation entities, there is no longer a need for two distinct forms (previously contained in Schedules 2A and 2B to the SISR 1994) to request a rollover or transfer. The information that was previously provided in these forms will form the basis of a new approved form.

These amendments repeal Schedules 2A and 2B, replacing them with form to be approved by the Commissioner.

Schedule 3 – Transitional Arrangements

Item 1

Item 1 contains transitional rules that ensure the Regulations apply appropriately for rollovers, contributions and transfers that happen on 30 November 2019 or within the 10 business days that follow.

Schedule 1 commences on 30 November 2019. Item 1 prescribes the application of Schedule 1 to ensure that an SMSF is not required to provide information to the Commissioner before 30 November 2019.

If an SMSF receives a contribution, or a rollover or transfer of a member's withdrawal benefit between 30 November 2019 and 16 December 2019 (inclusive) information must be provided to the Commissioner on 30 November 2019. In the absence of the transitional rule an SMSF would have been otherwise required to have provided the information before 30 November 2019.

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Schedule 2 commences the day after registration of the Regulations on the Federal Register of Legislation. Item 1 ensures that the amendments in Schedule 2 only apply to transfers and rollovers that are requested on or after 30 November 2019.