

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

Retirement Savings Accounts Act 1997
Superannuation Industry (Supervision) Act 1993

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

The *Retirement Savings Accounts Act 1997* (RSA Act) provides for retirement savings accounts, the approval of entities that can offer such accounts, and the supervision of those entities.

The *Superannuation Industry (Supervision) Act 1993* (the SIS Act) provides for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts, and for their supervision by the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission and the Commissioner of Taxation (the Commissioner).

Section 200 of the RSA Act and section 353 of the SIS Act provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The purpose of this Regulation is to amend the *Retirement Savings Accounts Regulations 1997* (RSA Regulations) and the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) to improve the integrity of the processes under which benefits are released on compassionate grounds by superannuation entities or retirement savings account (RSA) providers, to their members. The amendments coincide with the changes made by the *Treasury Laws Amendment (2018 Measures No. x) Act 2018* to transfer the administrative responsibility for the early release of benefits on compassionate grounds from the Chief Executive Medicare to the Commissioner.

The process for a member to seek early release of their benefits on compassionate grounds previously involved:

- the member applying to the Regulator for a determination that the member qualifies for early release; and
- if the Regulator was satisfied that the member qualifies, the Regulator making a written determination to that effect.

It was common practice for only the member to receive the written determination from the Regulator. There was previously no obligation for the Regulator to provide a copy of the determination to the trustee of the superannuation entity or RSA provider. This procedure meant that some trustees and RSA providers adopted an administrative process of verifying determinations, which resulted in increased compliance costs and delays.

The amendments made by this Regulation streamline and improve the integrity of the process by providing that the Regulator (now the Commissioner as a result of the amendments made by the *Treasury Laws Amendment (2018 Measures No. x) Act 2018*) must give a copy of its written determination to both the member who applied, and the trustee of the superannuation entity or RSA provider.

The amendments require the Commissioner to disclose information that falls within the definition of protected information in section 355-30 of Schedule 1 to the *Taxation Administration Act 1953* (the TAA) to trustees of superannuation entities and RSA providers. The general rule in section 355-25 of Schedule 1 to the TAA makes it an offence for a taxation officer to disclose protected information of an individual. However, such disclosures are permitted when they are done for the purpose of carrying out functions under a taxation law (see section 355-50 of Schedule 1 to the TAA).

The amendments made by Schedule 1 to this Regulation apply in relation to applications for the early release of benefits on compassionate grounds made after the commencement of Schedule 1 to this Regulation.

Sections 1 to 4 of the Regulation commenced on the day after the Regulations were registered. Schedule 1 to the Regulation commenced on the commencement of Schedule 1 to the *Treasury Laws Amendment (2018 Measures No. x) Act 2018*.

Explanation of provisions

Sections 1 to 4

Sections 1 to 4 of the *Treasury Laws Amendment (2018 Measures No. x) Regulations 2018* (the Regulation) are machinery provisions setting out:

- the name of the Regulation;
- the day the Regulation and its schedule commenced;
- the authority for making the Regulation; and
- that the items in the schedule to the Regulation amend or repeal each instrument that is specified in the schedule, and have effect according to their terms.

Items 1 and 5 of Schedule 1

Items 1 and 5 amend subregulation 6.19A(1) of the SIS Regulations and subregulation 4.22A(1) of the RSA Regulations to clarify that a person may apply to the Regulator for a determination for the early release of that person's superannuation or retirement savings account (RSA) benefits in respect of a specified superannuation entity or RSA provider.

Items 2 and 6 of Schedule 1

Item 2 inserts new subregulations 6.19A(6A) and 6.19A(6B) into the SIS Regulations, and item 6 inserts new subregulations 4.22A(6A) and 4.22A(6B) into the RSA Regulations.

Subregulation 6.19A(6A) and subregulation 4.22A(6A) provide that a determination made by a Regulator under regulation 6.19A of the SIS Regulations or regulation 4.22A of the RSA Regulations to allow the early release of benefits on compassionate grounds, must specify the superannuation entity or RSA provider which can release benefits to the member, and the maximum amount of benefits that may be released.

Subregulation 6.19A(6B) and subregulation 4.22A(6B) provide that a copy of the determination the Regulator makes under regulation 6.19A of the SIS Regulations or regulation 4.22A of the RSA Regulations must be given to the member, and trustee of the superannuation entity or RSA provider.

Item 3 of Schedule 1

Item 3 amends column 2 of table item 107 in Part 1 of Schedule 1 to the SIS Regulations, changing the condition of release from 'on a compassionate ground' to 'the Regulator has determined under regulation 6.19A that a specified amount of benefits in the regulated superannuation fund may be released on a compassionate ground'. This change clarifies the requirements that need to be satisfied for the early release of benefits on a compassionate ground, and reflects the new administrative approach provided by the amendments in item 2 of Schedule 1 to the Regulation that

it is the Regulator who makes a determination, and what that determination must specify.

Item 4 of Schedule 1

Item 4 amends table item 207 in Part 2 of Schedule 1 to the SIS Regulations, changing the condition of release from ‘on a compassionate ground’ to ‘the Regulator has determined under regulation 6.19A that a specified amount of benefits in the approved deposited fund may be released on a compassionate ground’. This change clarifies the requirements that need to be satisfied for the early release of benefits on a compassionate ground in respect of approved deposit funds, and reflects the new administrative approach provided by the amendments in item 2 of Schedule 1 to the Regulation that it is the Regulator who makes a determination, and what that determination must specify. Item 4 also amends column 3 of table item 207 to clarify that it is the Regulator (now the Commissioner of Taxation as a result of the amendments made by the *Treasury Laws Amendment (2018 Measures No. x) Act 2018*), not the Australian Prudential Regulatory Authority (APRA), that may approve the cashing of benefits on compassionate grounds in respect of approved deposit funds.

Item 7 of Schedule 1

Item 7 amends table item 109 in Schedule 2 to the RSA Regulations, changing the condition of release from ‘on a compassionate ground’ to ‘the Regulator has determined under regulation 6.19A that the amount of benefits in the RSA may be released on a compassionate ground’. This change clarifies the requirements that need to be satisfied for the early release of benefits on a compassionate ground, and reflects the new administrative approach provided by the amendments in item 6 of Schedule 1 to the Regulation that it is the Regulator who makes a determination, and what that determination must specify. Item 7 also amends column 3 in table item 109 to clarify that it is the Regulator, not APRA, that may approve the cashing of benefits on compassionate grounds in respect of approved deposit funds.

Item 8 of Schedule 1

Item 8 provides that the amendments made by Schedule 1 to the Regulation apply in relation to applications for the early release of benefits on compassionate grounds made after the commencement of the Schedule. The commencement of Schedule 1 to the Regulation is linked to the commencement of the amendments made by the *Treasury Laws Amendment (2018 Measures No. x) Act 2018*. The amendments made by that Act commence on a single day to be fixed by proclamation or 6 months after the day that Act receives royal assent, whichever is earlier.

Schedule 1 to the Regulation commenced on the date of commencement of Schedule 1 of the *Treasury Laws Amendment (2018 Measures No. x) Act 2018*.