

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Competition and Consumer Act 2010

Retirement Savings Accounts Act 1997

Superannuation Guarantee (Administration) Act 1992

Superannuation Industry (Supervision) Act 1993

Treasury Laws Amendment (2016 Measures No 2) Regulation 2016

Schedule 1 – Community development program

Section 200(1) of the *Retirement Savings Accounts Act 1997*, section 80 of the *Superannuation Guarantee (Administration) Act 1992* and section 353 of the *Superannuation Industry (Supervision) Act 1993* (respectively the RSA Act, the SGA Act and the SIS Act) each provide 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 Schedule 1 to the *Tax and Superannuation Laws Amendment (2016 Measures No. 2) Regulation 2016* (Regulation) is to remove redundant references to the Community Development Employment Projects ('CDEP') Scheme from the *Retirement Savings Accounts Regulations 1997*, the *Superannuation Guarantee (Administration) Regulations 1993* and the *Superannuation Industry (Supervision) Regulations 1994* (collectively referred to as 'the Regulations'), in conjunction with the repeal of the CDEP Scheme.

The CDEP Scheme operated between 1977 and 2015, assisting Indigenous job-seekers to find and retain employment.

In July 2013, the CDEP Scheme was subsumed into the Remote Jobs and Communities Program, with a number of CDEP Participants remaining on grandfathering arrangements. The CDEP Scheme finally ceased operation from 1 July 2015, and all CDEP Participants transitioned to income support payments under the *Social Security Act 1991*.

The Social Security Legislation Amendment (Community Development Program) Bill 2015 will, if enacted, provide for the repeal of the CDEP Scheme and related redundant provisions and definitions in the *Social Security Act 1991*.

If the CDEP Scheme is repealed, Schedule 1 to this Regulation removes redundant references to the CDEP Scheme from the Regulations, such that the Regulations now reflect the repeal of the CDEP Scheme.

Schedule 1 to the Regulation has no compliance cost impact, as the CDEP Scheme is inoperative and the Regulation merely removes redundant references to the Scheme.

The Acts do not specify any conditions that need to be met before the power to make this Regulation may be exercised.

Schedule 1 to the Regulation was not released for public consultation as the amendments are of a minor and machinery nature.

Schedule 1 to the Regulation commences on the later of:

- the start of the day after registration; and
- the same time as Part 1 of Schedule 2 to the *Social Security Legislation Amendment (Community Development Program) Act 2016* commences.

However, this Regulation does not commence at all if Part 1 of Schedule 2 to the *Social Security Legislation Amendment (Community Development Program) Act 2016* does not commence.

Schedule 2 – National energy laws

Section 172 of the *Competition and Consumer Act 2010* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act (other than Schedule 2) to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act (other than Schedule 2).

The National Electricity Law (NEL), the National Gas Law (NGL) and the National Electricity Retail Law (NERL) are three Commonwealth-State-Territory cooperative legislative schemes (national energy laws) in the energy sector, established as part of the Council of Australian Governments' energy market reform program. Together, the national energy laws provide for matters including the economic regulation of monopoly electricity and natural gas transmission and distribution businesses, third party access to their infrastructure, and the regulation of the retail sale of energy to small customers. Each national energy law is set out in the schedule to a statute of South Australia, which is the lead jurisdiction for these cooperative schemes. The national energy laws are then applied as law by legislation in force in those states and territories participating in each cooperative scheme and by the Commonwealth as provided for in the *Australian Energy Market Act 2004*.

The relevant regulator for the national energy laws is the Australian Energy Regulator (AER), a Commonwealth body established under the Act. The Act also provides for the AER's functions and powers. The AER's functions include functions conferred pursuant to a relevant 'State/Territory energy law' subject to satisfaction of the requirements of the Act.

What constitutes a 'State/Territory energy law' is defined in the Act and includes, amongst other things, provisions of a law of a state or territory that relate to energy and are prescribed by regulations for the purposes of that definition. Under the Act, the AER may make an application to the Federal Court for certain orders, including for breach of a 'State/Territory energy law'.

Victoria has recently introduced the National Electricity (Victoria) Further Amendment Bill 2015 (Victorian Bill) into its Legislative Assembly. The Victorian Bill relevantly provides for amendments to the *National Electricity (Victoria) Act*

2005 (Vic) (NEVA) to modify the NEL as applied in Victoria to extend the AER's functions and powers.

Schedule 2 to the Regulation identifies the new and amended parts of the NEVA as a 'State/Territory energy law' to provide for the conferral of functions on the AER under that Victorian legislation in accordance with the Act and to enable the Federal Court to make certain orders under the Act in respect of breaches of that legislation.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Victorian reforms fall under Victorian consultation obligations. This includes consultation on the Victorian Bill with the COAG Energy Council. The Commonwealth's consideration and approval, through that COAG Energy Council process, also involved consultation with the AER and the Treasury.

The amendments in the Regulation will form part of the Australian energy market legislative arrangements which support the three national cooperative legislative regimes in the energy sector. Consequently, the Regulation has been consulted on and approved by the COAG Energy Council, the AER and the Treasury.

Schedule 2 to the Regulation commences the day after this instrument is registered, and the items in Schedule 2 to the Regulation commence in accordance with section 2.

Details of the Regulation are set out at [Attachment](#).

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Treasury Laws Amendment (2016 Measures No 2) Regulation 2016*

Section 1

This section provides that the title of the Regulation is the *Treasury Laws Amendment (2016 Measures No 2) Regulation 2016*

Section 2 – Commencement

Clause (1) provides that each provision of this instrument commences, or is taken to have commenced, in accordance with column 2 of the table.

Sections 1 to 4 of the Regulation commence the day after the instrument is registered.

Schedule 1 to the Regulation will commence on the later of:

- (a) the start of the day after this instrument is registered; and
- (b) the same time as Part 1 of Schedule 2 to the *Social Security Legislation Amendment (Community Development Program) Act 2016* (Cth)

However, the provisions will not commence at all if the event mentioned in paragraph (b) does not occur.

Schedule 2 to the Regulation, commences on the later of:

- (a) the start of the day after this instrument is registered; and
- (b) immediately after the commencement of Part 2 of the *National Electricity (Victoria) Further Amendment Act 2016* (Vic).

However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.

Clause (2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 – Authority

This section provides that this instrument is made under the *Competition and Consumer Act 2010*, the *Retirement Savings Accounts Act 1997*, the *Superannuation Guarantee (Administration) Act 1992*, and the *Superannuation Industry (Supervision) Act 1993*.

Section 4 – Schedules

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

Schedule 1 - Community development program

RSA Regulations and SIS Regulations

The RSA Regulations and SIS Regulations contain restrictions on the payment of superannuation benefits from superannuation providers. Both the RSA Regulations and SIS Regulations allow a person to seek the early release of an amount of their superannuation or retirement savings on the basis of severe financial hardship,

provided they meet the other criteria of the RSA Act or SIS Act (as applicable) and subject to cashing restrictions.

A person will be considered to be in severe financial hardship if, among other criteria, they are, or have been, in receipt of a ***Commonwealth income support payment*** for a certain period of time. Payments made under the CDEP Scheme were included in the definition of ***Commonwealth income support payment***, meaning CDEP participants may meet the definition of severe financial hardship and thereby seek the early release of some of their superannuation or retirement savings.

Items 1 and 6 of Schedule 1 to the Regulation removes CDEP payments from the definition of ***Commonwealth income support payment***. Items 2 and 7 ensure that where a person has, in the past, received CDEP payments, they will not be considered not to be in severe financial hardship merely because those payments have been removed from the definition of ***Commonwealth income support payment***.

SGA Regulations

Under the SGA Act, employers will be subject to a superannuation guarantee charge if they have not paid sufficient superannuation contributions for eligible employees by the quarterly cut-off date (ie, the employer has a superannuation guarantee shortfall).

The ***individual superannuation guarantee shortfall*** is calculated using the formula in section 19 of the SGA Act, one component of which is the total salary or wages paid by the employer to the employee for the quarter. Under the SGA Regulations, payments of CDEP salary or wages are excluded and not taken into account for the purpose of calculating an ***individual superannuation guarantee shortfall***.

Item 4 of Schedule 1 to the Regulation removes CDEP payments from the list of excluded payments in the SGA Regulations, and Item 3 makes a minor consequential amendment. Item 5 of this Regulation provides that this amendment only applies to quarters starting after commencement. This preserves the exclusion of CDEP payments from the 'salary and wages' component of the superannuation guarantee shortfall calculation, in case there is any need to recalculate the superannuation guarantee shortfall for a past quarter.

Schedule 2 – National Energy Laws

The table in existing regulation 7A prescribes specified state and territory provisions relating to energy for the purposes of paragraph (c)(ii) of the definition of 'State/Territory energy law' in s 4(1) of the *Competition and Consumer Act 2010*.

Item 1 repeals table item 3.2, and replaces it with a new item 3.2 that states:

'Parts 2, 3, 4, and 5 of, and Schedules 2 and 3 to, the *National Electricity (Victoria) Act 2005* (Vic) and regulations and orders made under that Act'.

This amendment is to reflect that various amendments were made to the *National Electricity (Victoria) Act 2005* (Vic) by the *National Electricity (Victoria) Further Amendment Act 2016* (Vic), including to amend Part 2 and to insert Schedules 2 and 3.

To the extent Part 2 applies a uniform energy law as a law of Victoria it falls within paragraph (b) of the definition of State/Territory energy law. The prescription of

Part 2 under paragraph (c)(ii) of that definition confirms Part 2 continues to come within the definition following its amendment.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (2016 Measures No 2) Regulation 2016

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

Schedule 1 to the Regulation removes redundant references to the Community Development Employment Projects (CDEP) Scheme from the *Retirement Savings Accounts Regulations 1997*, the *Superannuation Guarantee (Administration) Regulations 1993* and the *Superannuation Industry (Supervision) Regulations 1994*, following the cessation of the CDEP Scheme.

Schedule 2 to the Regulation sets out amendments to *Competition and Consumer Regulations 2010* to identify the new and amended parts of the *National Electricity (Victoria) Act 2005* (Vic) as a ‘State/Territory energy law’ for the purposes of the *Competition and Consumer Act 2010* (Act). This is to provide for the conferral of functions on the AER under that Victorian legislation in accordance with the Act and to enable the Federal Court to make certain orders under the Act in respect of breaches of that Victorian legislation.

Human rights implications

Schedule 1 to the Regulation does not engage any of the applicable rights or freedoms.

Schedule 2 to the Regulation does not directly engage any of the applicable rights or freedoms, as it only deals with machinery provisions that provide for the conferral of functions on the AER under relevant State/Territory energy laws. To the extent that the underlying functions that are conferred on the AER by the *National Electricity (Victoria) Further Amendment Act 2016* (Vic), may indirectly engage applicable rights and freedoms, these are subject to scrutiny by the Victorian Parliament.

Conclusion

The Regulation does not directly engage with any of the applicable rights or freedoms. To the extent that the Regulation may indirectly operate to engage human rights, through the prescription of Victorian legislation as a State/Territory energy law for the purposes of the Act, the Victorian Parliament will have scrutiny over that legislation to ensure there is either no incompatibility with the right engaged or any potential limitations are otherwise reasonable, necessary and proportionate. The Regulation is therefore compatible with the relevant human rights.