

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Subject - *Superannuation Industry (Supervision) Act 1993*
Retirement Savings Accounts Act 1997

Treasury Laws Amendment (Work Test Exemption) Regulations 2018

The *Superannuation Industry (Supervision) Act 1993* (the SISA 1993) 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, the Australian Securities and Investments Commission and the Commissioner of Taxation.

The *Retirement Savings Accounts Act 1997* (the RSAA 1997) provides for retirement savings accounts (RSA) to be offered by certain financial institutions, the approval of entities that can offer such accounts and the supervision of those entities.

Section 353 of the SISA 1993 and section 200 of the RSAA 1997 (Authorising Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the Authorising Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Authorising Acts.

The purpose of the *Treasury Laws Amendment (Work Test Exemption) Regulations 2018* (the Regulations) is to provide a one-year exemption from the work test for superannuation contributions to allow recent retirees to boost their superannuation balances. Currently, individuals aged 65 to 74 years must work a minimum number of hours during a particular period in the financial year in order to keep making voluntary contributions to superannuation (known as the work test).

Schedule 1 to the Regulations amends the *Superannuation Industry (Supervision) Regulations 1994* (SISR 1994) and the *Retirement Savings Accounts Regulations 1997* (RSAR 1997) to ensure that individuals aged 65 to 74 years with total superannuation balances below \$300,000 can make voluntary contributions to their superannuation for 12 months from the end of the financial year in which they last met the work test. This is achieved by allowing regulated superannuation funds and RSA institutions to accept such contributions in respect of such members or RSA holders, without contravening relevant regulatory restrictions that would otherwise apply.

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

The Regulations were released for public consultation over the period 2 October 2018 to 26 October 2018. Eleven submissions were received from industry stakeholders. Stakeholders were generally supportive of the proposed changes. The explanatory materials have been updated to clarify aspects of the measure in response to stakeholder feedback.

The amendments apply in relation to contributions made in the 2019-20 financial year and later financial years.

The Regulations commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Regulations are registered.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Work Test Exemption) Regulations 2018

The Regulations are 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 Regulations

The purpose of the Regulations is to provide a one-year exemption from the work test for superannuation contributions to allow recent retirees to boost their superannuation balances. Currently, individuals aged 65 to 74 years must work a minimum number of hours during a particular period in the financial year in order to keep making voluntary contributions to superannuation (known as the work test).

The Regulations amend the SISR 1994 and the RSAR 1997 to ensure that individuals aged 65 to 74 years with total superannuation balances below \$300,000 can make voluntary contributions to their superannuation for 12 months from the end of the financial year in which they last met the work test. This is achieved by allowing regulated superannuation funds and RSA institutions to accept such contributions in respect of such members or RSA holders, without contravening relevant regulatory restrictions that would otherwise apply.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as it does not raise any human rights issues.

Details of the *Treasury Laws Amendment (Work Test Exemption) Regulations 2018*

Section 1 – Name of the Regulations

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Work Test Exemption) Regulations 2018* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Regulations are registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997*.

Section 4 – Schedule

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 items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Work test exemption for recent retirees

Context of amendments

A regulated superannuation fund may accept contributions made in respect of a member only in accordance with the table set out in subregulation 7.04(1) of the SISR 1994. Different rules apply based on the type of contributions, the age of the member for whom the contributions are made and whether the member satisfied a work test during the financial year in which the contributions are made. If an amount paid to a superannuation fund cannot be accepted under the SISR 1994 rules, the amount is to be returned to the entity or person that paid the amount.

For members aged 65 to 74 years satisfying the work test is a precondition for funds accepting ‘voluntary contributions’ (refer below) that are made in respect of the member. In order to satisfy the work test for a financial year, a person must be gainfully employed on at least a part-time basis during the financial year, that is, they must be employed at least 40 hours in any 30 day period in that financial year. For example, a person who works 40 hours in a fortnight can make superannuation contributions for the rest of the financial year.

Analogous rules restricting RSA institutions from accepting voluntary contributions apply (see regulation 5.03 of the RSAR 1997). However, the work test that applies for contributions to RSA institutions requires that the RSA holder must be gainfully employed at least 10 hours each week in the financial year.

Voluntary contributions

In the contribution rules for regulated superannuation funds in relation to members aged 65 to 69 years, the work test is a precondition for funds accepting the following contributions (referred to as ‘voluntary contributions’ in these explanatory materials):

- employer contributions (except mandated employer contributions); or
- member contributions.

‘Employer contribution’, ‘mandated employer contributions’ and ‘member contributions’ are expressions defined in SISR 1994.

In the contribution rules for regulated superannuation funds in relation to members aged 70 to 74 years, the work test is a precondition for funds accepting the following contributions (referred to as ‘voluntary contributions’ in these explanatory materials):

- employer contributions (except mandated employer contributions); or
- member contributions made by the member.

In the contribution rules for RSA institutions in relation to RSA holders aged 65 to 69 years, the work test is a precondition for the RSA institution accepting the following contributions (referred to as ‘voluntary contributions’ in these explanatory materials):

- employer contributions (except mandated employer contributions); or
- RSA holder contributions.

‘Employer contribution’, ‘mandated employer contributions’ and ‘RSA holder contributions’ are expressions defined in RSAR 1997.

In the contribution rules for RSA institutions in relation to RSA holders aged 70 to 74 years, the work test is a precondition for the RSA institution accepting the following contributions (referred to as ‘voluntary contributions’ in these explanatory materials):

- employer contributions (except mandated employer contributions); or
- RSA holder contributions made by the RSA holder.

Detailed explanation of Regulations

Items 5 and 7 - Work test exemption for members of regulated superannuation funds aged 65 to 69 years

Items 5 and 7 amend table item 2 of subregulation 7.04(1) of the SISR 1994 and insert subregulation 7.04(1A) of the SISR 1994 to ensure that a regulated superannuation fund may accept voluntary contributions made in respect of a member aged 65 to 69 years if all the following requirements are satisfied:

- the member has *not* been gainfully employed on either a full-time or part-time basis during the financial year in which the contributions are made (that is, the

member does not meet the conditions of the work test in the contribution year); and

- the member has been gainfully employed on at least a part-time basis during the financial year ending before the financial year in which the contributions are made (that is, the member meets the conditions of the work test in the previous financial year); and
- the member has a ‘total superannuation balance’ (refer section 307-230 of *Income Tax Assessment Act 1997* (ITAA 1997)) below \$300,000 on 30 June of the previous financial year; and
- the individual has not previously relied on the work test exemption provided by the amendments in this Schedule in relation to a previous financial year.

This allows regulated superannuation funds to accept contributions made in respect of certain members that satisfy the work test in the previous financial year, rather than satisfying the work test in the financial year in which the contributions are made. The effect of the amendments is to provide a 12 month exemption from satisfying the work test for certain members, provided members satisfied the work test in the previous financial year.

The exemption only applies where a member does not satisfy the work test in the contribution year in relation to contributions that are made in respect of them. Currently, superannuation funds are already able to accept contributions made in respect of members that satisfy the work test in the contribution year.

Exemption only available in relation to one financial year

An individual may only utilise the work test exemption provided by the amendments in this Schedule in one financial year. This ensures that if retired individuals return to work and meet the work test in future financial years, they would not be able to utilise the exemption again. This would ensure the change does not incentivise individuals to make a brief return to work in order to contribute more money to superannuation than they would otherwise be entitled to.

This would not preclude such an individual from returning to work and making contributions in a future year in which they satisfy the work test, as may occur under the current law.

Regulated superannuation funds would need to be satisfied that this requirement is met if an individual is relying on the exemption to make contributions. One way that a fund could be satisfied that this requirement has been met is to obtain a statement from a member attesting to the member having never utilised the work test exemption in a prior financial year.

A member would not be precluded from utilising the work test exemption in a particular financial year where they had qualified for the work test exemption in a prior financial year but did not utilise the exemption at that time by making a contribution in that year.

Exemption only available for members with low balances

In order to qualify for the exemption, a member must have a 'total superannuation balance' below \$300,000 on 30 June of the previous financial year. Where a member's total superannuation balance increases above the \$300,000 threshold following this date, the member is not precluded from qualifying for the exemption.

Section 307-230 of the ITAA 1997 provides for the calculation of an individual's total superannuation balance at a particular point in time, which is essentially, the total of different amounts or valuations for each of the individual's superannuation interests.

Regulated superannuation funds would need to be satisfied that this requirement is met if an individual is relying on the exemption to make contributions. One way that a fund could be satisfied that this requirement has been met is to obtain a statement from a member attesting to the member having a total superannuation balance below \$300,000 on the 30 June of the previous financial year. A particular superannuation fund will not be in a position to independently calculate an individual's total superannuation balance as the fund will not have oversight of an individual's superannuation interests held in other funds.

Items 1 and 3 - Work test exemption for RSA holders aged 65 to 69 years

Items 1 and 3 amend table item 2 of subregulation 5.03(1) of the RSAR 1997 and insert subregulation 5.03(1A) of the RSAR 1997 to ensure that a RSA institution may accept voluntary contributions made in respect of a RSA holder aged 65 to 69 years where the RSA holder does not satisfy the work test in the contribution year, provided the RSA holder satisfied the work test in the previous financial year.

In order to qualify for the work test exemption, analogous requirements to those that apply for the work test exemption for contributions made to regulated superannuation funds must be satisfied (refer above information about items 5 and 7). That is, the exemption will only be available in relation to one financial year and will only be available for RSA holders with a total superannuation balance below \$300,000 on 30 June of the previous financial year.

Items 6 and 7 - Work test exemption for members of regulated superannuation funds aged 70 to 74 years

Items 6 and 7 amend table item 3 of subregulation 7.04(1) of the SISR 1994 and insert subregulation 7.04(1A) of the SISR 1994 to ensure that a regulated superannuation fund may accept voluntary contributions made in respect of a member aged 70 to 74 years where the member does not satisfy the work test in the contribution year, provided the member satisfied the work test in the previous financial year.

In order to qualify for the work test exemption, analogous requirements to those that apply for the work test exemption for contributions made to regulated superannuation funds in respect of members aged 65 to 69 years must be satisfied (refer above information about items 5 and 7). That is, the exemption will only be available in relation to one financial year and will only be available for members with a total superannuation balance below \$300,000 on 30 June of the previous financial year.

Items 2 and 3 - Work test exemption for RSA holders aged 70 to 74 years

Items 2 and 3 amend table item 3 of subregulation 5.03(1) of the RSAR 1997 and insert subregulation 5.03(1A) of the RSAR 1997 to ensure that a RSA institution may accept voluntary contributions made in respect of a RSA holder aged 70 to 74 years where the RSA holder does not satisfy the work test in the contribution year, provided the RSA holder satisfied the work test in the previous financial year.

In order to qualify for the work test exemption, analogous requirements to those that apply for the work test exemption for contributions made to regulated superannuation funds must be satisfied (refer above information about items 5 and 7). That is, the exemption will only be available in relation to one financial year and will only be available for RSA holders with a total superannuation balance below \$300,000 on 30 June of the previous financial year.

Items 4 and 8 – Application

Items 4 and 8 provide that the amendments made by this Schedule apply in relation to contributions made in the 2019-20 financial year and later financial years.

Clarification of operation of work test exemption for defined benefit funds

For defined benefit funds, rules which mirror the acceptance of contributions rules in regulation 7.04 of the SISR apply for determining how a defined benefit fund may grant an accrual of benefits in respect of their members. For members aged 65 to 74 years, a defined benefit fund may grant an accrual of benefits in respect of the member if the member satisfies a work test during the financial year.

The work test exemption introduced by the Regulations does not apply to defined benefit funds. This does not prevent a member of a defined benefit fund from opening an accumulation superannuation account in order to make voluntary contributions utilising the work test exemption.