

EXPLANATORY STATEMENT

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

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

Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020

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, the Australian Securities and Investments Commission and the Commissioner of Taxation (the Commissioner).

The *Retirement Savings Accounts Act 1997* (the RSA Act) 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 *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.

Section 200 of the RSA 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.

In the 2019-20 Budget, the Australian Government announced that changes to the work test and spouse contributions, and an associated change to the bring forward rules for non-concessional contributions, to provide greater flexibility for people to save for their retirement in the concessional tax superannuation system.

Currently, individuals aged 65 to 74 years must meet the “work test”, that is, work a minimum of 40 hours during a 30 day period each financial year, to keep making voluntary contributions to their superannuation. The *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations) make changes to allow people aged 65 and 66 to make voluntary contributions to superannuation without having to meet the work test. This change brings contribution rules for individuals aged 65 and 66 into line with those for individuals aged under 65 years, providing additional time and greater flexibility to make additional contributions as they approach retirement.

Currently, individuals can receive voluntary contributions to their superannuation from their spouses if they are under the age of 70 years. The Regulations increase the cut-off age for spouse contributions from 70 years to 75 years, which aligns with the cut-off age that applies for other voluntary contributions. This change provides extra flexibility for couples to plan for their retirement and gives couples greater scope to qualify for the spouse tax offset of up to \$540.

The Regulations implement the first two elements of the announced budget measure – increasing the age at which the work test starts to apply (from 65 years to 67 years) and the age limit for spouse contributions (from 69 years to 74 years). The third element of this budget measure – increasing the age limit for accessing the bring forward non-concessional contributions cap – is implemented through amendments to the *Income Tax Assessment Act 1997*.

The changes set out in the Regulations are to both the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and the *Retirement Savings Account Regulations 1997* (RSA Regulations).

The changes apply to contributions made in the 2020-21 financial year, and later financial years.

The amendments to the *Income Tax Assessment Act 1997* concerning the bring forward rule and related elements of the measure contained in the Regulations will result in a small increase in implementation costs for individuals and superannuation funds in the short term. There will be an overall decrease in ongoing compliance costs for individuals and superannuation funds.

A Statement of compatibility with Human Rights is at [Attachment B](#). The Legislative Instrument is compatible with human rights and does not raise any human rights issues.

The Regulations were released for public consultation over the period 5 March 2020 to 3 April 2020 alongside the draft changes to the *Income Tax Assessment Act 1997* and the explanatory materials. Seven public submissions were received in relation to the Regulations in this process. Stakeholders were generally supportive of this measure and no changes were made to the Regulations as a result of the consultation.

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

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

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

Details of the *Superannuation Legislation Amendment (2020 Measures No. 1) Regulation 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations).

Section 2 – Commencement

The Regulations commence the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the SIS Act and the RSA Act.

Section 4 – Schedules

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

Schedule 1 – Amendments

Items 6 to 9 – changes to the *Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations)*

Item 6 established a new age category of 65 years to 67 years, and specify the types of contributions that may be made in respect of a member of a regulated superannuation fund who is in that age category.

Currently, a regulated superannuation fund can only accept an employer contribution (except a mandated employer contribution) or a member contribution in respect of a member aged 65 years and 66 years if that member was gainfully employed on at least a part time basis during the financial year in which the contribution was made.

The effect of item 6 is that a regulated superannuation fund can accept an employer contribution (except a mandated employer contribution) or a member contribution in respect of a member aged 65 years and 66 years, without the member needing to be gainfully employed on at least a part-time basis in the year in which the contribution is made. Subregulation 7.01(3) of the SIS Regulations provides that a person is ‘gainfully employed’ on a part-time basis if the person is employed for at least 40 hours in any 30 day period in that financial year. This requirement is often referred to as the ‘work test’.

Item 7 changes the age range in existing table item 2 of subregulation 7.04(1) from 65-69 years to 67-69 years. This ensures that table item 1A and existing table item 2 have mutually exclusive age ranges.

Item 8 amends current table item 3, subparagraph (b)(ii), in subregulation 7.04(1) of the SIS Regulations to enable a regulated superannuation fund to accept spouse contributions made in respect of a member who is under 75 years of age. Currently, such a fund may only accept spouse contributions in respect of a member under 70 years of age.

Item 9 amends current table item 3, subparagraph (d)(ii), in subregulation 7.04(1) of the SIS Regulations to enable spouse contributions in respect of a recently retired member who is eligible for the one-year work test exemption.

Items 1 to 4 – changes to the RSA Regulations

The changes to the RSA Regulations effectively mirror the changes to the SIS Regulations.

Similar to item 6, item 1 established a new age category of 65 years to 67 years, and specify the types of contributions that may be made in respect of a Retirement Savings Account (RSA) holder who is in that age category. The effect is that an RSA institution can accept an employer contribution (except a mandated employer contribution) or an RSA holder contribution in respect of an RSA holder aged 65 years or 66 years, without the RSA holder needing to be gainfully employed on at least a part-time basis during the financial year in which the contribution is made. Subregulation 1.03(1) of the RSA Regulations defines ‘part-time’, in relation to being gainfully employed, to mean working for at least 10 hours, and less than 30 hours, each week.

Similar to item 7, item 2 changes the age range in existing table item 2 of subregulation 5.03(1) from 65-69 years to 67-69 years to ensure that table item 1A and existing table item 2 have mutually exclusive age ranges.

Similar to item 8, item 3 increases the age limit for spouse contributions in respect of an RSA holder from 69 to 74. Item 3 amends table item 3, subparagraph (b)(ii), in subregulation 5.03(1) to remove the requirement for contributions to be made by the RSA holder themselves.

Similar to item 9, item 4 amended table item 3, subparagraph (d)(ii), in subregulation 5.03(1) to enable spouse contributions in respect of a recently retired RSA holder who is eligible for the one-year work test exemption.

Items 5 and 10 – application

These items provide that the changes to the SIS Regulations and RSA Regulations apply in relation to contributions made in the 2020-21 financial year, and later financial years.

Statement of Compatibility with Human Rights

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

Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020

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

Currently, individuals aged 65 to 74 years must meet the “work test”, that is, work a minimum of 40 hours during a 30 day period each financial year, to keep making voluntary contributions to their superannuation. The *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations) make changes to allow people aged 65 and 66 to make voluntary contributions to superannuation without having to meet the work test. This change brings contribution rules for individuals aged 65 and 66 into line with those for individuals aged under 65 years, providing additional time and greater flexibility to make additional contributions as they approach retirement.

Currently, individuals can receive voluntary contributions to their superannuation from their spouses if they are under the age of 70 years. The Regulations increase the cut-off age for spouse contributions from 70 years to 75 years, which aligns with the cut-off age that applies for other voluntary contributions. This change provides extra flexibility for couples to plan for their retirement and gives couples greater scope to qualify for the spouse tax offset of up to \$540.

The changes set out in the Regulations are to both the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and the *Retirement Savings Account Regulations 1997* (RSA Regulations).

The changes apply to contributions made in the 2020-21 financial year, and later financial years.

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.