

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 110, 2015

Issued by authority of the Assistant Treasurer

Income Tax Assessment Act 1997

Retirement Savings Accounts Act 1997

Superannuation Industry (Supervision) Act 1993

*Tax and Superannuation Laws Amendment (Terminal Medical Conditions)
Regulation 2015*

Section 909-1 of the *Income Tax Assessment Act 1997*, section 200 of the *Retirement Savings Accounts Act 1997* and section 353 of the *Superannuation Industry (Supervision) Act 1993* (Principal Acts) each provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Principal Acts.

The purpose of the *Tax and Superannuation Laws Amendment (Terminal Medical Conditions) Regulation 2015* (Regulation) is to extend the certification period for a terminal medical condition for the purposes of releasing benefits from superannuation and the tax-free treatment of those benefits.

The Regulation amends the *Income Tax Assessment Regulations 1997* (ITAR), the *Retirement Savings Accounts Regulations 1997* (RSAR) and the *Superannuation Industry (Supervision) Regulations 1994* (SISR) to extend the certification period for a terminal medical condition for the purposes of releasing benefits from superannuation and the tax-free treatment of those benefits.

The *Income Tax Assessment Act 1997* provides that a superannuation lump sum paid to a person who has a terminal medical condition is tax-free.

The RSAR and SISR contain conditions of release that allow persons with a terminal medical condition to access the full amount of their superannuation benefits without restriction.

The ITAR, RSAR and SISR each contain the same definition of ‘terminal medical condition’. This definition prescribes that a terminal medical condition exists if two registered medical practitioners, at least one of whom is a specialist, have certified that a person suffers from an illness or injury that is likely to result in their death within the certification period of 12 months or less.

The Regulation amends the definition of ‘terminal medical condition’ in the ITAR, RSAR and SISR to extend the maximum certification period from 12 to 24 months.

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

Consultation

Limited targeted consultation on this proposal was undertaken with the superannuation industry and cancer-related charities. There was broad support for extending the release of superannuation benefits in this way. Consultation identified the need to communicate the changes to members, funds, and the medical profession. No material concerns were raised about the drafting of the amendments.

Relationship with insurance products

The amendments relate to the release of superannuation benefits where a terminal medical condition exists. It is common for superannuation trustees to also offer members insurance products which pay a benefit in the event of a terminal medical condition, and these products use similar definitions based on a 12 month certification period.

The Regulation makes no amendment to require such insurance products be offered on a 24 month certification period. Regulation 4.07D of the SISR provides that a trustee must not provide an insured benefit unless the insured event is consistent with certain conditions of release (including on the grounds of a terminal medical condition), to ensure that insured benefits are able, in all circumstances, to be released to members. A 12 month period for insurance purposes is consistent with the condition of release based on a 24 month certification period, because the insurance benefit would be able to be released to the affected member.

Consultation also identified that superannuation funds are aware of the need to inform affected members of any differences between their superannuation and insurance benefits, and of any impacts that might have for the member (including, for example, the need to retain money in the superannuation fund to pay insurance premiums).

Conditions and commencement

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

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

The Regulation commences on 1 July 2015.

These amendments do not affect the rights of individuals such that they are disadvantaged and do not impose liabilities on affected individuals before the date of registration for the purposes of the *Legislative Instrument Act 2003*.

ATTACHMENT**Details of the Tax and Superannuation Laws Amendment (Terminal Medical Conditions) Regulation 2015****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Tax and Superannuation Laws Amendment (Terminal Medical Conditions) Regulation 2015* (Regulation).

Section 2 – Commencement

This section provides that each provision of the Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Section 3 – Authority

This section provides that the Regulation is made under the *Income Tax Assessment Act 1997*, the *Retirement Savings Accounts Act 1997* and the *Superannuation Industry (Supervision) Act 1993*.

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 – Amendments**Amendments to definition of ‘terminal medical condition’**

The Regulation amends the *Income Tax Assessment Regulations 1997* (ITAR), the *Retirement Savings Accounts Regulations 1997* (RSAR) and the *Superannuation Industry (Supervision) Regulations 1994* (SISR) to extend the certification period for a terminal medical condition for the purposes of releasing benefits from superannuation and the tax-free treatment of those benefits.

Section 303-10 of the *Income Tax Assessment Act 1997* (ITAA) provides that a superannuation lump sum paid to a person who has a terminal medical condition is non-assessable and non-exempt income (tax-free).

The RSAR and SISR contain conditions of release that allow persons with a terminal medical condition to access the full amount of their superannuation benefits without restriction.

The ITAR, RSAR and SISR each contain the same definition of ‘terminal medical condition’. This definition prescribes that a terminal medical condition exists if two registered medical practitioners, at least one of whom is a specialist, have certified that a person suffers from an illness or injury that is likely to result in their death within the certification period of 12 months or less.

Items 1, 2 and 3 amend the definition of ‘terminal medical condition’ in paragraph 303-10.01(a) of the ITAR, paragraph 4.01A(a) of the RSAR and paragraph 6.01A(a) of the SISR respectively to increase the maximum certification period from 12 to 24 months.

Statement of Compatibility with Human Rights

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

Tax and Superannuation Laws Amendment (Terminal Medical Conditions) Regulation 2015

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

The purpose of the *Tax and Superannuation Laws Amendment (Terminal Medical Conditions) Regulation 2015* (the Regulation) is to extend the certification period for a terminal medical condition for the purposes of releasing benefits from superannuation and the tax-free treatment of those benefits. Under the current provisions, a person with a terminal medical condition is required to obtain certification from medical specialists that they have less than 12 months to live.

The Regulation will amend the *Income Tax Assessment Regulations 1997*, the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to extend the certification period to 24 months. This will allow terminally ill patients to access their superannuation benefits tax-free earlier.

Human rights implications

The Regulation interacts with the right to social security as recognised in Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the right to an adequate standard of living in Article 11 of the ICESCR.

The amendments made by the Regulation promote an individual's right to social security and the right to an adequate standard of living by allowing a person with a terminal medical condition to access their superannuation benefits tax-free earlier.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.