

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation Industry (Supervision) Act 1993

Retirement Savings Accounts Act 1997

*Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds)
Regulations 2020*

Section 353 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and section 200 of the *Retirement Savings Accounts Act 1997* (the RSA Act) provides that the Governor-General may make regulations prescribing matters required or permitted by these Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to these Acts.

The purpose of the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020* (the Regulations) is to allow temporary residents affected by the adverse economic effects of coronavirus to have up to \$10,000 released from their superannuation or retirement savings account on compassionate grounds. The Regulations build on the amendments introduced in Schedule 13 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which established such grounds of early release for Australian citizens and permanent residents.

Superannuation benefits are generally required to be ‘preserved’ in the superannuation system until retirement or until preservation age is reached (between 55 and 60 years, depending on year of birth). Subject to the governing rules of the fund, early release of ‘preserved’ benefits is permitted in certain restricted circumstances.

The rules for the early release of superannuation are set out in the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) and the conditions of release are in Schedule 1 to those regulations. The *Retirement Savings Accounts Regulations 1997* (the RSA Regulations) contain equivalent provisions. The Commissioner of Taxation has general administration of regulations made in relation to the early release from superannuation and retirement savings accounts on compassionate grounds.

Temporary residents are only able to satisfy certain conditions of release, which are listed in regulation 6.01B of the SIS Regulations and regulation 4.01B of the RSA Regulations. Prior to the amendments made in the Regulations, generally temporary residents would be precluded from satisfying the conditions of release relating to the compassionate grounds for coronavirus-related economic effects.

The Regulations allow temporary residents to satisfy the conditions of release relating to these grounds. Temporary residents who hold a student visa may apply to the Commissioner of Taxation for release if they have held a student visa for 12 months or more and are unable to meet immediate living expenses. Temporary residents who hold a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa may apply to the Commissioner of Taxation for release if they have, on

or after 1 January 2020, had their working hours reduced to zero but are still employed by their employer. Other temporary visa holders may apply for release if they are unable to meet immediate living expenses.

These changes were announced by the Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on 4 April 2020, as part of a package of changes to temporary visa holder arrangements during the coronavirus crisis. The changes are designed to protect the health and livelihoods of Australians, support critical industries and assist with the rapid recovery post the virus.

The SIS Act and the RSA Act do not specify any conditions that need to be met before the power to make the Regulations may be exercised.

Consultation has been undertaken with the Australian Taxation Office and the Department of Home Affairs to ensure the effectiveness of the Regulations. Public consultation has not occurred given the need to respond to urgent and unforeseen events.

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

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

The Regulations commenced on the day after registration.

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

An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

Details of the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Amendments

The Regulations build on the amendments introduced in Schedule 13 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which established compassionate grounds of early release for Australian citizens and permanent residents who are adversely affected by the economic effects of the coronavirus.

Items 4 and 9 (subregulation 6.19B(2) of the SIS Regulations and subregulation 4.22B(2) of the RSA Regulations) - Single payment of up to \$10,000 in 2019-2020 financial year for temporary residents

Temporary residents may only make an application for release in the financial year ending 30 June 2020. Temporary residents may only apply for one payment of up to \$10,000.

In contrast, Australian citizens and permanent residents may apply for two payments of up to \$10,000 each in the 2019-2020 and 2020-2021 financial years.

These items also update provisions in the SIS Regulations and RSA Regulations to assist readers by specifying the end date for making an early release application for Australian citizens and permanent residents. Prior to the Regulations, the provisions referred to an application being precluded if made after the end of the period of 6 months starting on the day those provisions commence. The date of commencement

was 25 March 2020, therefore the end date for an Australian citizen or permanent resident to make an application is now known (24 September 2020).

Items 1, 3, 5 and 8 (paragraphs 6.19B(1B)(a) and 6.19B(1C)(a) and subregulation 6.01(2) of the SIS Regulations and paragraphs 4.22B(1B)(a) and 4.22B(1C)(a) and subregulation 4.01(2) of the RSA Regulations) - Criteria for release for student visa holders

These items provide criteria for a holder of a ‘student visa’ within the meaning of the *Migration Act 1958* to apply to the Commissioner of Taxation for early release of their superannuation on compassionate grounds. The criteria are that the person must be unable to meet immediate living expenses and have held a student visa for 12 months or more.

Consistent with the general criteria for release under these grounds, the release must also be required to assist the person to deal with the adverse economic effects of coronavirus.

The process for applying for release is the same as that which applies for other proposed releases on compassionate grounds relating to coronavirus. That is, the person applies for a determination from the Commissioner of Taxation to have an amount released, the amendments do not specify any minimum documentation or evidentiary conditions and it is expected individuals will self-assess their eligibility to apply for a determination.

The individual must self-certify that they have held a student visa for 12 months or more.

The person must also self-certify that they are unable to meet immediate living expenses. This involves day-to-day living expenses, such as rent, food and utility bills, and may include the living expenses of the person’s dependants or persons with whom the person has an interdependency relationship.

A ‘student visa’ within the meaning of the *Migration Act 1958* means any of the following subclasses of visa:

- a Subclass 500 (Student) visa;
- a Subclass 570 (Independent ELICOS Sector) visa;
- a Subclass 571 (Schools Sector) visa;
- a Subclass 572 (Vocational Education and Training Sector) visa;
- a Subclass 573 (Higher Education Sector) visa;
- a Subclass 574 (Postgraduate Research Sector) visa;
- a Subclass 575 (Non-Award Sector) visa;
- a Subclass 576 (Foreign Affairs or Defence Sector) visa.

Example – Student unable to meet immediate living expenses

Lee is a university student who has been studying and living in Australia for the past two years on a Subclass 500 (Student) visa. Lee's visa allows her to work up to 40 hours every fortnight. To help support herself while in Australia, Lee works part-time at a local cafe.

As a result of the coronavirus, the café has decided to close and stand down all of its staff, including Lee. Lee determines that she cannot meet immediate living expenses and decides to access the superannuation that she has accumulated while working in Australia. Lee self-certifies that she fulfils the eligibility criteria for the temporary ground of early release on myGov and applies by 1 July 2020 to have up to \$10,000 released.

Items 3 and 8 (paragraphs 6.19B(1B)(b) and 6.19B(1C)(b) of the SIS Regulations and paragraphs 4.22B(1B)(b) and 4.22B(1C)(b) of the RSA Regulations) - Criteria for release for Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa holders

These items provide criteria for a holder of a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa mentioned in the *Migration Regulations 1994* to apply to the Commissioner of Taxation for early release of their superannuation on compassionate grounds. The criteria are that the person must have, on or after 1 January 2020, had their working hours reduced to zero and still be employed by their employer.

Consistent with the general criteria for release under these grounds, the release must also be required to assist the person to deal with the adverse economic effects of coronavirus.

The process for applying for release is the same as that which applies for other proposed releases on compassionate grounds relating to coronavirus. See above.

Items 3 and 8 (paragraphs 6.19B(1B)(c) and 6.19B(1C)(c) of the SIS Regulations and paragraphs 4.22B(1B)(c) and 4.22B(1C)(c) of the RSA Regulations) - Criteria for release for other temporary visa holders

These items provide criteria for holders of other temporary visas to apply to the Commissioner of Taxation for early release of their superannuation on compassionate grounds. The criterion is that the person must be unable to meet immediate living expenses.

Consistent with the general criteria for release under these grounds, the release must also be required to assist the person to deal with the adverse economic effects of coronavirus.

The process for applying for release is the same as that which applies for other proposed releases on compassionate grounds relating to coronavirus. See above.

This criterion applies for temporary visa holders, including (but not limited to) holders of the following subclasses of visa described in Schedule 2 to the *Migration Regulations 1994*:

- a Subclass 400 (Temporary Work (Short Stay Specialist)) visa;
- a Subclass 403 (Temporary Work (International Relations)) visa;
- a Subclass 407 (Training) visa;
- a Subclass 408 (Temporary Activity) visa;
- a Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) visa;
- a Subclass 476 (Skilled -- Recognised Graduate) visa;
- a Subclass 485 (Temporary Graduate) visa.

This criterion does not apply for temporary visa holders who are:

- student visa holders; or
- holders of Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa; or
- holders of Subclass 405 (Investor Retirement) or Subclass 410 (Retirement) visa; or
- New Zealand citizens or permanent residents.

The criteria that applies for student visa holders and holders of a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa are described above.

Holders of Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa and temporary visa holders who are New Zealand citizens or permanent residents are subject to the same criteria for release that apply for Australian citizens and permanent residents.

Items 3 and 8 (paragraphs 6.19B(1A)(a) to (f) and subregulation 6.19B(1) of the SIS Regulations and paragraphs 4.22B(1A)(a) to (f) and subregulation 4.22B(1) of the RSA Regulations) – Restructuring and reinserting criteria for release for Australian citizens and permanent residents

These items reinsert (unchanged) the criteria for early release that applies for Australian citizens and permanent residents. These criteria also apply for holders of a Subclass 405 (Investor Retirement) visa or a Subclass 410 (Retirement) visa and temporary visa holders who are New Zealand citizens or permanent residents.

The criteria are reinserted (and slightly restructured) to allow for the extension of the early release provisions to temporary residents.

Items 2, 6 and 7 (paragraph 6.01B(3)(b) of the SIS Regulations and paragraph 4.01B(3)(b) of the RSA Regulations) - Allowing temporary visa holders to satisfy condition of release

These items allow a holder of a temporary visa to potentially satisfy the conditions for early release of their superannuation on compassionate grounds. This is achieved by listing these conditions of release as ones that can be satisfied in respect of a temporary resident.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations

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 *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations* is to allow temporary residents affected by the adverse economic effects of coronavirus to have up to \$10,000 released from their superannuation or retirement savings account on compassionate grounds. The Regulations build on the amendments introduced in Schedule 13 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which established such grounds of early release for Australian citizens and permanent residents.

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.