

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 (No. 2) 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 (No. 2) 2020* (the Regulations) is to revise the criteria for holders of a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa to apply to the Commissioner of Taxation for release of their superannuation on compassionate grounds.

The *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020*, which commenced on the 17 April 2020, made amendments to the early release provisions in the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) and the *Retirement Savings Accounts Regulations 1997* (the RSA Regulations). These recent amendments 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.

This included providing that holders of a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa could apply 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. The Regulations replace this criterion with requirements for the visa holder to be employed and unable to meet their immediate living expenses. The revised criteria is expected to broaden access to the early release provisions for these visa holders.

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.

ATTACHMENT A

Details of the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 2) 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 (No. 2) 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

Items 1 and 2 (paragraph 6.19B(1C)(b) of the SIS Regulations and paragraph 4.22B(1C)(b) of the RSA Regulations) - Revised criteria for release for Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa holders

These items provide revised 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 revised criteria are that the person is employed and is unable to meet immediate living expenses.

The revised criteria replaces the criteria introduced by *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations 2020*, which had required the visa holder to have, on or after 1 January 2020, had their working hours reduced to zero and still be employed by their employer.

The revised criteria is expected to broaden access to the early release provisions for these visa holders.

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 (No. 2) 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

The purpose of the *Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 2) 2020* (the Regulations) is to revise the criteria for holders of a Subclass 457 (Temporary Work (Skilled)) or Subclass 482 (Temporary Skill Shortage) visa to apply to the Commissioner of Taxation for release of their superannuation on compassionate grounds. The revised criteria is expected to broaden access to the early release provisions for these visa holders.

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.