

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Superannuation Industry (Supervision) Act 1993, Retirement Savings Accounts Act 1997

Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016

The *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Retirement Savings Accounts Act 1997* (the RSA Act) set out rules for the operation of complying superannuation funds and retirement savings accounts (RSAs). Failing to satisfy these rules attracts a variety of consequences, the most serious of which is that funds or RSAs become non-complying and therefore subject to penalty tax.

Section 353 of the SIS Act and section 200 of the RSA Act provide that the Governor-General may make regulations prescribing matters required or permitted by the respective Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the respective Acts.

The purpose of Schedule 1 to *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016* (the Amending Regulation) is to make amendments to the *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulations) and the *Retirement Savings Accounts Regulations 1997* (the RSA Regulations) to broaden the scope for funds to accept voluntary contributions to superannuation for individuals aged 65 or over but less than 75.

The measure forms part of the Government's Superannuation Reform Package announced in the 2016-17 Budget.

Previously, once an individual reached the age of 65, superannuation funds and RSAs could generally only accept voluntary contributions for a member if the member worked for a minimum period in the financial year.

Once an individual reached the age of 70, acceptance of contributions was further restricted. A superannuation fund or RSA could generally only accept voluntary contributions for a member, if the contributions were made by the member or an employer of the member.

Equivalent restrictions applied to the accrual of benefits by members of defined benefit superannuation funds.

Schedule 1 to the Amending Regulation simplifies and improves the flexibility of the superannuation system by removing the requirement that an individual aged 65 or over but under 75 must meet a work test before their superannuation fund or RSA can accept voluntary contributions for them.

It also removes the restriction on superannuation funds and RSAs accepting contributions for a member who has reached the age of 70 but is less than 75 for contributions made by someone other than the member or an employer of the member (such as, for example, spouse contributions). In effect, this means that individuals who have reached the age of 65 but are less than 75 are treated in the same way as individuals aged below 65.

The amendments also make equivalent changes to the accrual of benefits by members of defined benefit superannuation funds.

Schedule 1 to the Amending Regulation does not generally change the existing restrictions that prevent superannuation funds and RSAs from accepting voluntary contributions for an individual once they reach the age of 75.

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

The Amending Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

Schedule 1 to the Amending Regulation commences on the first day of the first quarter following its registration on the Federal Register of Legislation.

The amendments generally apply to contributions made on or after 1 July 2017.

Details of the Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016

Schedule 1: Harmonising contribution acceptance rules based on age

The purpose of Schedule 1 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulation 2016* (Amending Regulation) is to make amendments to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and the *Retirement Savings Accounts Regulations 1997* (RSA Regulations).

The measure forms part of the Government's Superannuation Reform Package announced in the 2016-17 Budget.

Currently, once an individual reaches the age of 65, regulated superannuation funds and RSAs may generally only accept contributions for that member in respect of a financial year that are either mandated employer contributions or other contributions if the member worked for at least 40 hours in a 30 day period in the financial year (the work test).

Once an individual reaches the age of 70, contributions are further restricted. A regulated superannuation fund or RSA may generally only accept contributions, other than mandated employer contributions, for a member for a financial year if the member satisfies the work test for that financial year and the contributions are made by the member or an employer of the member. Once an individual reaches the age of 75, generally only mandated employer contributions may be accepted. Equivalent restrictions apply to the accrual of benefits by members of superannuation funds that provide defined benefit interests.

Schedule 1 to the Amending Regulation simplifies and improves the flexibility of the superannuation system by removing the requirement that an individual aged 65 or above, but under 75, must meet a work test before their superannuation fund or RSA may accept any contributions, other than mandatory employer contributions, for an income year. It also removes the restriction on superannuation funds and RSAs accepting contributions for a member who has reached the age of 70, but is less than 75, when the contributions are made by the member, or an employer of the member. In effect, this amendment means that individuals aged 65 or above, but under 75, are treated in the same way as individuals aged below 65.

The amendments also make equivalent changes to accrual of benefits by members of superannuation funds that provide defined benefit interests.

Example 1: Personal contribution

Ed is aged 67 and retired in July 2017. He has a \$250,000 interest in his superannuation fund. Ed keeps the \$250,000 in his superannuation fund after retirement. After downsizing to a smaller home Ed has \$150,000 to invest.

In August 2018, Ed decides to contribute the \$150,000 to his superannuation fund. As a result of the amendments, Ed's superannuation fund is able to accept this contribution despite Ed being aged over 65 and not satisfying the work test.

The changes do not allow for any additional contributions or accruals once an individual has reached the age of 75 beyond what is permitted by the existing law. However, they also do not change current rules that permit such contributions to be accepted for individuals aged over 75 in specific circumstances, such as mandatory

employer contributions, contributions made in relation to a period before the individual turned 75 (which could have been accepted had they been made in that period) and contributions made within 28 days after the end of the month in which the individual turned 75. Further, the repeal of the work test has the effect of indirectly broadening some of these exceptions by extending the range of contributions that could have been accepted in the period immediately before the individual reached the age of 75.

The amendments also make a number of minor consequential changes to definitions and other provisions in the RSA Regulations and the SIS Regulations to reflect the wider changes.

The amendments also make a consequential change to the conditions that restrict when benefits can be released from a superannuation interest or RSA.

Prior to the amendments, there was a condition of release that permitted individuals to withdraw without restriction, any benefits they held at the age of 65. This condition would not have permitted benefits to be released where the benefit accrued or the contribution was made after the individual reached 65.

This was rarely an issue as contributions could only be made after 65 if an individual had been employed, and retirement is also a condition of release allowing any benefits to be accessed. However, with the removal of the work requirement, it would be possible for amounts to be contributed after 65 when the individual had already retired and may not have satisfied any other condition of release during their lifetime. This would effectively prevent these contributions being accessed by such members.

To address this outcome, the condition of release is revised to allow the release of amounts held in superannuation at any time after a member attains the age of 65.

The amendments relating to the accrual of benefits for defined benefit interests apply to accruals on or after 1 July 2017.

The amendments to the conditions in which superannuation benefits can be released apply on and after 1 July 2017.

The remaining amendments apply to contributions made on or after 1 July 2017.

Schedule 1 to the Amending Regulation commences on the first day of the first quarter following its registration on the Federal Register of Legislation.