# EXPLANATORY STATEMENT

## Issued by authority of the Minister for Revenue and Financial Services, Minister for Women and Minister Assisting the Prime Minister for the Public Service

*Small Superannuation Accounts Act 1995*

*Small Superannuation Accounts Regulations 2018*

Section 94 of the *Small Superannuation Accounts Act 1995* (the 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.

The purpose of the *Small Superannuation Accounts Regulations 2018* (the Regulations) is to remake and improve the *Small Superannuation Accounts Regulations 2002* and ensure their effect continues. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed after 10 years or in accordance with the progressive timetable set out in section 50. The *Small Superannuation Accounts Regulations 2002* was scheduled for automatic repeal on 1 October 2019.

The Act established the Superannuation Holding Accounts Reserve (SHAR). Employers could make superannuation contributions into a SHAR account for employees if they were unable to find a fund willing to accept the contribution (eg. if the contribution was too small). Where there is a relationship breakdown, a SHAR account may be split in accordance with the *Family Law Act 1975*.

The purpose of the *Small Superannuation Accounts Regulations 2002* was to prescribe the balance of the new account that was opened to facilitate a split of the SHAR account between former spouses. That purpose is achieved by the Regulations.

The Regulations will apply to the relevant financial agreements (splitting agreements and splitting orders) that remain unexecuted on the day the Regulations were registered on the Federal Register of Legislation.

The Regulations remake and improve the *Small Superannuation Accounts Regulations 2002* by:

* simplifying and updating the definitions used; and
* adopting current drafting practices such as referring to ‘sections’ rather than ‘regulations’.

The proposed changes do not substantively affect the meaning or operation of the provisions.

Further details of the Regulations are set out in the Attachment.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

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

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

**ATTACHMENT**

**Details of the proposed *Small Superannuation Account Regulations 2018***

This Attachment sets out further details of the *Small Superannuation Account Regulations 2018* (the proposed Regulations). All references are to the proposed Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Small Superannuation Accounts Regulations 2002*, as identified by the Finding Table at page 6.

Changes of a minor or machinery nature, such as references to section rather than regulation in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

**Section 1 –** Specifies the name of the Regulations as Small Superannuation Accounts Regulations 2018.

**Section 2** – provides the Regulations commence the day after they are registered on the Federal Register of Legislation.

**Section 3** – provides the Regulations are made under the Small Superannuation Accounts Act 1995.

**Section 4** – provides that each instrument identified in a Schedule to the Regulations is amended or repealed in accordance with these Regulations.

**Section 5** - Consistent with modern drafting practice, the proposed Regulations include a section titled ‘Definitions’ that would list all of the defined terms used in the Regulations. This replaces regulation 3 of the prior Regulations.

The definitions largely replicate the corresponding provisions in the prior Regulations, but have been updated in accordance with modern drafting practice.

In particular, flag lifting agreement, payment split and superannuation agreement have been combined and referenced by their operation in the Part IIIVB of the   
*Family Law Act 1975* in order to simplify the regulations and ensure they apply consistently to both married and de facto relationships.

**Section 6** – specifies that where a new account is opened the balance of the account will be the amount will be the amount specified in the splitting agreement or splitting order. If the balance of the account that is being split is less than the amount in the splitting agreement or splitting order, then that lesser amount will be the balance of the new account.

**Schedule 1** – repeals the Small Superannuation Accounts Regulations from the day after registration of the Regulations. This ensures that the Regulations will be repealed and remade before they sunset on 1 October 2019.

**Finding table**

As a result of some of the changes described above, it became necessary to renumber provisions of the proposed Regulations. This Explanatory Memorandum includes a finding table to assist in identifying which provision in the proposed Regulations corresponds to a provision in the old law that has been rewritten or consolidated, and vice versa.

References to the old law are to the *Small Superannuation Accounts Regulations 2002.* References to the new law are to the *Small Superannuation Account Regulations 2018*. Also, in the finding table, ‘no equivalent’means that this is a new provision that has no equivalent in the old law.

|  |  |
| --- | --- |
| ***Old law*** | ***New law*** |
| *Small Superannuation Accounts Regulations 2002* | *Small Superannuation Accounts Regulations 2018* |
| 1 | 1 |
| 2 | 2 |
| No equivalent | 3 |
| No equivalent | 4 |
| 3 | 5 |
| 4 | 6 |
| No equivalent | Schedule 1 |