

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Superannuation, Financial Services and Financial Technology

Superannuation Industry (Supervision) Act 1993

Retirement Savings Account Act 1997

Superannuation Industry (Supervision) Regulations 1994

Retirement Savings Account Regulations 1994

Section 353 of the *Superannuation Industry (Supervision) Act 1993* (the SIS 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.

Section 200 of the *Retirement Savings Account Act 1997* (the RSA 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.

In the 2019-20 Budget, the Australian Government announced that Australians over 65 years of age would have greater flexibility in making voluntary superannuation contributions (concessional and non-concessional) from 1 July 2020.

The purpose of the proposed Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 is to implement two elements of this Budget measure. Specifically, the proposed Regulations:

- increase, from 65 to 67, the age at which the work test starts to apply for voluntary concessional and non-concessional superannuation contributions; and
- increase the age limit for spouse contributions from 69 to 74.

These changes will be made to both the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations) and the *Retirement Savings Account Regulations 1997* (RSA Regulations).

The third change involved in this measure – the increase in the age limit for accessing the bring-forward non-concessional contributions cap – is implemented through amendments to the *Income Tax Assessment Act 1997*.

The changes apply to contributions made in the 2020-21 financial year, and later financial years.

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

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

Details of the proposed *Superannuation Legislation Amendment (2020 Measures No. 1) Regulation 2020*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020* (the Regulations).

Section 2 – Commencement

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

Section 3 – Authority

The Regulations are made under the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and the *Retirement Savings Account Act 1997* (RSA Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Items 6 to 9 – changes to the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations)

Item 6 would establish a new age category of 65 to 67, and specify the types of contributions that may be made in respect of a member of a regulated superannuation fund who is in that age category.

Currently, a regulated superannuation fund can only accept an employer contribution (except a mandated employer contribution) or a member contribution in respect of a member aged 65 and 66 if that member was gainfully employed on at least a part time basis during the financial year in which the contribution was made.

The effect of proposed item 6 is that a regulated superannuation fund could accept an employer contribution (except a mandated employer contribution) or a member contribution in respect of a member aged 65 and 66, without the member needing to be gainfully employed on at least a part-time basis in the year in which the contribution is made. Subregulation 7.01(3) of the SIS Regulations provides that a person is ‘gainfully employed’ on a part-time basis if the person is employed for at least 40 hours in any 30 day period in that financial year. This requirement is often referred to as the ‘work test’.

Item 7 would change the age range in existing table item 2 of subregulation 7.04(1) from 65-69 to 67-69. This would ensure that proposed table item 1A and existing table item 2 have mutually exclusive age ranges.

Item 8 would amend current table item 3, subparagraph (b)(ii), in subregulation 7.04(1) of the SIS Regulations to enable a regulated superannuation fund to accept spouse contributions made in respect of a member who is under 75 years of age. Currently, such a fund may only accept spouse contributions in respect of a member under 70.

Item 9 would amend current table item 3, subparagraph (d)(ii), in subregulation 7.04(1) of the SIS Regulations to enable spouse contributions in respect of a recently retired member who is eligible for the one-year work test exemption.

Items 1 to 4 – changes to the *Retirement Savings Account Regulations 1997 (RSA Regulations)*

The changes to the RSA Regulations effectively mirror the changes to the SIS Regulations.

Similar to item 6, item 1 would establish a new age category of 65 to 67, and specify the types of contributions that may be made in respect of a Retirement Savings Account (RSA) holder who is in that age category. The effect would be that an RSA institution could accept an employer contribution (except a mandated employer contribution) or an RSA holder contribution in respect of an RSA holder aged 65 or 66, without the RSA holder needing to be gainfully employed on at least a part-time basis during the financial year in which the contribution is made. Subregulation 1.03(1) of the RSA Regulations defines ‘part-time’, in relation to being gainfully employed, to mean working for at least 10 hours, and less than 30 hours, each week.

Similar to item 7, item 2 would change the age range in existing table item 2 of subregulation 5.03(1) from 65-69 to 67-69 to ensure that proposed table item 1A and existing table item 2 have mutually exclusive age ranges.

Similar to item 8, item 3 would increase the age limit for spouse contributions in respect of an RSA holder from 69 to 74. Item 3 would amend table item 3, subparagraph (b)(ii), in subregulation 5.03(1) to remove the requirement for contributions to be made by the RSA holder themselves.

Similar to item 9, item 4 amends table item 3, subparagraph (d)(ii), in subregulation 5.03(1) to enable spouse contributions in respect of a recently retired RSA holder who is eligible for the one-year work test exemption.

Items 5 and 10 – application

These items provide that the proposed changes to the SIS and RSA Regulations would apply in relation to contributions made in the 2020-21 financial year, and later financial years.