

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 315

Issued by authority of the Treasurer

Superannuation Industry (Supervision) Act 1993

Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 4)

Retirement Savings Accounts Act 1997

Retirement Savings Accounts Amendment Regulation 2012 (No. 3)

Subsection 353(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and subsection 200(1) of the *Retirement Savings Act 1997* (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 (SIS Act and RSA Act).

The purpose of the amendments to the SIS Regulations and the RSA Regulations is to amend the criteria for when a member of a superannuation fund is taken to be a 'lost member' under the SIS Regulations or 'lost RSA holder' under the RSA Regulations, and therefore a 'lost member' for the purposes of section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. The amending Regulations introduce a 12 month inactivity test that must be satisfied prior to a member or account holder being defined as 'uncontactable' and therefore a 'lost member' of a superannuation fund or RSA provider.

The Government announced in the 2012-13 Mid-Year Economic and Fiscal Outlook that it would amend the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to change the arrangements for the transfer of lost member accounts to the Commissioner of Taxation, and to provide for the payment of interest at a rate of the consumer price index (CPI) on unclaimed superannuation money. Under the new arrangements small lost account with balances of less than \$2,000 will be required to be transferred to the Commissioner of Taxation.

The Regulations will ensure that small active accounts are not transferred to the Commissioner of Taxation under the new arrangements.

The amending Regulations introduce an additional criterion for being defined as 'uncontactable' and therefore a 'lost member' for the purposes of the SIS Regulations or a 'lost RSA holder' for the purposes of the RSA Regulations. A member or RSA holder is taken to be 'uncontactable' if:

- Either:
 - The superannuation fund or RSA provider has never had an address for the member or RSA holder; or

- One or two written communications have been sent by the superannuation fund or RSA provider to the last known address of the member or RSA holder and have been returned unclaimed; and
- The superannuation fund or RSA provider has not received a contribution or rollover from the member or RSA holder within the last 12 months.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. The Regulations commence on the day after they are registered.

Consultation was considered unnecessary in the making of this instrument as appropriate consultation had already been undertaken by the Senate Economics Committee as part of the inquiry into the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012* (the Bill). The Bill was referred to the Senate Economics Committee for hearing on 12 November 2012. The Committee reported on 19 November 2012.

In relation to the superannuation provisions of the Bill, the Senate Economics Committee found that the amendments contained in the Bill will be of significant benefit to consumers as they will help reunite people with their unclaimed money sooner, and will protect the real value of that money while it remains unclaimed.

In its discussion on the superannuation provisions of the Bill the Committee noted that it had received submissions from the Association of Superannuation Funds of Australia, the Australian Institute of Superannuation Trustees and the Financial Services Council suggesting that the changes would inadvertently increase the number of active accounts (i.e. those still receiving contributions) that needed to be transferred to the Australian Taxation Office and that this would be inconsistent with the policy intent of the Bill.

The submissions recommended the introduction of a 12 or 24 month inactivity test for ‘uncontactable’ members. On the basis of these submissions, this instrument was considered necessary to ensure that the Bill functioned as intended.

Statement of Compatibility with Human Rights

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

Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 4)

Retirement Savings Accounts Amendment Regulation 2012 (No. 3)

The Legislative Instruments are 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 Regulations amend the criteria for when a superannuation fund member or RSA holder is taken to be a 'lost member' or 'lost RSA holder'. Under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, a 'lost member' or 'lost RSA holder' account that is 'small' (that is, less than \$2,000) is required to be transferred to the Commissioner of Taxation. By transferring these accounts to the Commissioner, balances are protected from being eroded by fees and charges.

The amendments to the Superannuation Industry (Supervision) Regulations 1994 and the Retirement Savings Accounts Regulations 1997 amend the criteria for determining a 'lost member' and 'lost RSA holder' to ensure that small active accounts are not transferred to the Commissioner. The amending Regulations include an additional element for when a member is considered to be uncontactable and therefore a 'lost member'. The additional criterion is that the fund has not received a contribution in respect of the member within the last 12 months.

Human rights implications

The Legislative Instruments do not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instruments are compatible with human rights as it does not raise any human rights issues.