EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 117

Issued by authority of the Minister for Financial Services and Superannuation

Banking Act 1959; Corporations Act 2001; First Home Saver Accounts Act 2008; Life Insurance Act 1995; and Superannuation (Unclaimed Money and Lost Members) Act 1999

Treasury Legislation Amendment (Unclaimed Money and Other Measures) Regulation 2013

Section 71 of the *Banking Act 1959* (the Banking Act), section 1364 of the *Corporations Act 2001* (Corporations Act), section 131 of the *First Home Saver Accounts Act 2008* (FHSA Act), section 253 of the *Life Insurance Act 1995* (Life Insurance Act) and section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Unclaimed Superannuation Act) (collectively, the Principal Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the relevant Act.

The purpose of the Regulation is to amend the *Banking Regulations 1966* (Banking Regulations), *Corporations Regulations 2001* (Corporations Regulations), *First Home Saver Accounts Regulations 2008* (FHSA Regulations) and the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* (Unclaimed Superannuation Regulations) (collectively, the Principal Regulations) to specify how to work out the interest payable by the Commonwealth on unclaimed money in three sets of circumstances.

Subsections 69(7AA) of the Banking Act, 51C(1A) of the FHSA Act, 216(7A) of the Life Insurance Act, 1341(3A) of the Corporations Act and 17(2AB), 17(2AC), 20H(2AA), 24G(3A) and 24G(3B) of the Unclaimed Superannuation Act all further provide that regulations will specify how interest is to be worked out for this unclaimed money.

The Principal Acts all set out circumstances under which money held by the entities regulated by the Principal Acts will be considered unclaimed money and must therefore be paid to the Commonwealth (either to the Commissioner of Taxation (Commissioner) or the Australian Securities and Investments Commission (ASIC)). The Principal Acts also set out the conditions on which this money will then be paid by the Commissioner or ASIC to an individual and the circumstances in which interest will be paid on these payments of unclaimed money.

The first set of circumstances for which the Regulation specifies how interest is to be worked out is for unclaimed money held by the Commonwealth from 1 July 2013.

In the 2012-13 Budget, the Government announced a number of reforms to the rules around unclaimed money. As part of these reforms the Government committed to preserve the real value of unclaimed money while it is held by the Commonwealth.

To give effect to this commitment, the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (the Amending Act) makes a number of amendments to the Principal Acts. These amendments provide for the Commonwealth to pay interest on unclaimed money for the period it is held from 1 July 2013.

The Regulation amends the Principal Regulations to specify that interest is payable at the annual rate of increase in the Consumer Price Index for all unclaimed money held by the Commonwealth under the Principal Acts from 1 July 2013.

The second set of circumstances in which the Regulation provides for interest is for certain unclaimed superannuation held by the Commonwealth before 1 July 2013 and paid prior to 1 July 2013. Since 2009, the Unclaimed Superannuation Act has provided for the payment of interest on the unclaimed superannuation of former temporary residents who later become Australian citizens or permanent residents.

The Regulation amends the Unclaimed Superannuation Regulations to specify that interest is payable at the 10 year Treasury bond rate (as provided in subsection 20H(2B)) for the period which the unclaimed superannuation was held by the Commonwealth prior to 1 July 2013, for those amounts of unclaimed superannuation that meet the requirements of subsections 20H(2A) and (2B) of the Unclaimed Superannuation Act.

Following changes made by the Amending Act, subsection 20H(2A) only applies to payments made by the Commissioner before 1 July 2013. However, the changes made by the Amending Act were not intended to remove individuals' existing entitlements. To address this, the Regulation provides for interest to be payable in a third set of circumstances.

The Regulation amends the Unclaimed Superannuation Regulations to specify that interest is payable for the period before 1 July 2013 for payments of unclaimed superannuation made after 1 July 2013, where the amount would have satisfied the other conditions for the payment of interest under subsection 20H(2A). Interest will be paid on these amounts in the same way (ie. at the 10 year bond rate) as interest would have been paid for this period under subsection 20H(2A).

The Regulation does not provide methods for calculating interest on amounts that are wrongly paid to the Commonwealth as unclaimed money or amounts that are treated as unclaimed superannuation as a result of section 65AA of the *Superannuation Guarantee (Administration) Act 1992*. These amounts do not fall within the scope of the Government's commitment to preserve the unclaimed money it holds. No interest is payable in relation to these amounts.

The Principal Acts specify no conditions that need to be met before the power to make the proposed Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Targeted consultation was undertaken on this Regulation with key stakeholder organisations (including those organisations who provided submissions on the Amending Act). Of the organisations contacted, only three provided submissions and none raised significant concerns.

No public consultation was undertaken as the amendments are minor and mechanical in nature, implementing a policy that has already been subject to detailed public scrutiny in the course of the passage of the Amending Act.

The Regulation commences from the day after registration.

<u>ATTACHMENT</u>

<u>Details of the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Regulation 2013*</u>

<u>Section 1 – Name of Regulation</u>

This section would provide that the title of the Regulation is the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Regulation 2013*.

<u>Section 2 – Commencement</u>

This section would provide for the Regulation to commence on the day after it is registered.

<u>Section 3 – Authority</u>

This section would provide that the Regulation is made under the *Banking Act 1959; Corporations Act 2001; First Home Saver Accounts Act 2008; Life Insurance Act 1995;* and *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

<u>Section 4 – Schedules</u>

This section would provide each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

<u>Schedule 1, Items 1 to 8, Amendments to the *Banking Regulations 1966, Corporations Regulations 2001, First Home Saver Accounts Regulations 2008* and *Life Insurance Regulations 2008*.</u>

The amendments to these provisions are, allowing for the different legislative context, effectively identical.

CPI definition

The amendments define the CPI for a period as the weighted average of the Consumer Price Index numbers for the eight capital cities for that period as published by the Australian Bureau of Statistics.

Method for calculating interest

Each regulation setting out how interest is calculated is made up of five subregulations.

The first subregulation (subregulations 22(1) of the *Banking Regulations 1966* (Banking Regulations), 9.7.01(1) of the *Corporations Regulations 2001* (Corporations Regulations), 13A(1) of the *First Home Saver Account Regulations 2008* (FHSA Regulations) and 10.05AA(1) of the *Life Insurance Regulations 1995* (Life Insurance Regulations)) provides the purpose of the regulation is to set out how interest is to be calculated for the relevant legislative provision.

The second subregulation (subregulations 22(2) of the Banking Regulations, 9.7.01(2) of the Corporations Regulations, 13A(2) of the FHSA Regulations and 10.05AA(2) of the Life Insurance Regulations) provides that interest is to be determined separately for each payment of unclaimed money, even where the payments may arise from a single account.

This provision ensures that interest is payable for the period the money has been held by the Commonwealth. It prevents individuals from being either advantaged or disadvantaged by errors made by financial institutions.

The third subregulation (subregulations 22(3) of the Banking Regulations, 9.7.01(3) of the Corporations Regulations, 13A(3) of the FHSA Regulations and 10.05AA(3) of the Life Insurance Regulations) specifies the period over which interest is payable on the unclaimed money. Interest commences to be payable from the later of 1 July 2013 or the date the unclaimed money was paid to the Commonwealth and ceases to be payable 14 days after payment of the unclaimed money was authorised (generally by Australian Securities and Investments Commission (ASIC) on behalf of the Commonwealth).

The interest period commences from the date the money is paid rather than the date money was legally required to be paid. This approach differs from that adopted for unclaimed superannuation. However, such an approach is necessary in this context as certain types of unclaimed money under the *Corporations Act 2001* (see, for example, section 601NG of the *Corporations Act 2001*) are not required to be paid by a fixed date.

The interest period ends 14 days after payment is most recently authorised. Ideally, interest would cease to be payable at the time of payment. However, it is not administratively feasible to vary amounts after payment has been authorised. To address this, the measure extends the period on which interest is payable to 14 days after payment is authorised to reflect the anticipated time for the payments of these amounts.

The fourth subregulation (subregulations 22(4) of the Banking Regulations, 9.7.01(4) of the Corporations Regulations, 13A(4) of the FHSA Regulations and 10.05AA(4) of the Life Insurance Regulations) provides that the total amount of interest payable is to be worked out by adding together the amount of interest payable for each financial year wholly or partly within the interest period.

The fifth subregulation (subregulations 22(5) of the Banking Regulations, 9.7.01(5) of the Corporations Regulations, 13A(5) of the FHSA Regulations and 10.05AA(5) of the Life Insurance Regulations) provides the formula for calculating the interest payable in the financial year. Broadly, the amount of interest for a financial year will be the amount of unclaimed money (plus any interest payable in relation to prior financial years), multiplied by the interest rate and the number of days in the interest period in the financial year, then divided by the total number of days in the financial year.

The amount of interest is rounded to the nearest cent.

Under this formula, the interest on the unclaimed money compounds annually as the interest from prior year is included with the base amount in working out the amount of interest for subsequent years.

The relevant interest rate is specified as being the percentage change in the All Groups CPI between the two most recent March quarters at the start of the financial year – for example, the rate of interest for 2013-14 would be the percentage change between the March 2012 All Groups CPI and the March 2013 All Groups CPI. This rate is rounded to four decimal places. However, if the percentage change between the two quarters is negative, the interest rate for the relevant year will be zero.

Schedule 1, Items 9 to 10, Amendments to the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*

The provisions relating to superannuation differ from those for other unclaimed money. This results in part from the different administrative context. It also results in part from the existence of a prior entitlement to interest for former temporary residents who become Australian citizens or permanent residents. This interest is paid at the 10 year Treasury bond rate rather than at the rate of CPI.

From 1 July 2013, all interest will be dealt with under the new regime introduced by the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (the Amending Act). However, it is not intended that individuals will lose any entitlement to interest that may have accrued prior to this date (under section 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Unclaimed Superannuation Act)).

To accommodate this, there are three separate regimes for interest on unclaimed superannuation: one for interest for the period after 1 July 2013 – set out in regulation 4F of the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* (Unclaimed Superannuation Regulations); one for interest for the period before 1 July 2013 where certain types of unclaimed superannuation are paid after 1 July 2013 – set out in regulation 4E; and one for interest for the period before 1 July 2013 where certain types of unclaimed superannuation are paid before 1 July 2013 – set out in regulation 4D. The only significant difference between the regimes set out in regulations 4D and 4E is the timing of the payments to which they apply – otherwise, the same amounts of interest will be payable in the same circumstances under both regulations.

Where an amount of unclaimed superannuation has been held by the Commissioner from before 1 July 2013 and is paid after 1 July 2013, the Commissioner may be obliged to provide interest under both regulations 4E and 4F if the conditions for payment of interest under both regulations are satisfied.

Definitions

The regulations amend regulation 4 of the Unclaimed Superannuation Regulations to include a definition of CPI as the Consumer Price Index number, being the weighted average of the eight capital cities published by the Australian Bureau of Statistics.

The regulations also amend regulation 4 of the Unclaimed Superannuation Regulations to include a definition of the Treasury bond rate for a particular day. If Treasury bonds with a ten year term are issued on that day, then the bond rate will be the rate of interest (annual yield) on those bonds. If no such bonds are issued on that day, the rate on interest will be the annual yield on Treasury bonds with a ten year term as published by the Reserve Bank of Australia for that day.

Regulation 4F of the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*

Regulation 4F sets out how to work out interest for all types of unclaimed superannuation for the period after 1 July 2013. It is the equivalent of the method for calculating interest provided for the other types of unclaimed money.

Subregulation 4F(1) of the Unclaimed Superannuation Regulations provides that the purpose of regulation 4F is to set out the method for calculating interest for subsections 17(2AB) and (2AC), 20H(2AA) and 24G(3A) and (3B) of the Unclaimed Superannuation Act.

Subregulation 4F(2) and (3) of the Unclaimed Superannuation Regulations sets out the scope of the amounts (defined as 'unclaimed amounts') to which the calculation method set out in this regulation applies.

Subregulation 4F(2) provides that the calculation method applies to amounts paid after 1 July 2013 under the provisions of the Unclaimed Superannuation Act that allow for the Commissioner to pay unclaimed superannuation to the individual to whom it belongs, or in some cases, to the individual's legal personal representative, death beneficiary or a superannuation fund nominated by the individual.

Subregulation 4F(3) provides that the method does not apply to certain amounts that are not unclaimed superannuation. This includes amounts that the Commissioner repays to superannuation providers as the fund has mistakenly paid an amount to the Commissioner as unclaimed superannuation. It also includes certain components of the Superannuation Guarantee Charge that are treated as unclaimed superannuation as a result of section 65AA of the *Superannuation Guarantee (Administration) Act 1992.*

This subregulation is included for the avoidance of doubt.

Subregulation 4F(4) sets out the period in respect of which interest is payable an amount. This period commences from the later of 1 July 2013 or the date when superannuation provider was required to pay the unclaimed superannuation to the Commissioner, and ends on the third day after the Commissioner authorises payment to the relevant individual.

This interest period differs from that which applies to other unclaimed money. As discussed previously, this reflects the different administrative context.

The interest period for interest under regulation 4F will never include any period prior to 1 July 2013. However, in some circumstances interest may be provided in relation to certain amounts of unclaimed superannuation under both regulations 4F (for the period after 1 July 2013) and 4E (for the period before 1 July 2013).

Subregulation 4F(5) provides that the total amount of interest payable is to be worked out by adding the amount of interest payable for each financial year (or part of a financial year) within the interest period.

Subregulation 4F(6) provides the method for calculating the amount of interest payable in a financial year. This method is largely identical to the method set out in the fifth subregulation for other unclaimed money, providing for interest at the rate of the increase in the CPI, calculated and compounded annually (subregulations 22(5) of the Banking Regulations, 9.7.01(5) of the Corporations Regulations, 13A(5) of the FHSA Regulations and 10.05AA(5) of the Life Insurance Regulations).

Regulation 4E of the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*

Regulation 4E is one of the two regulations setting out how to work out interest for the period before 1 July 2013 on certain amounts of unclaimed superannuation of former temporary residents who are now an Australian citizen or permanent resident.

This regulation is made under subsection 20H(2AA) and applies to amounts of unclaimed superannuation paid by the Commissioner after 1 July 2013. As a result, this will generally mean that interest will be payable under both regulation 4E for the period the amount is held by the Commissioner up to 1 July 2013 and regulation 4F for the period the unclaimed superannuation is held after 1 July 2013.

Subregulation 4E(1) of the Unclaimed Superannuation Regulations provides that the purpose of regulation 4E is to set out the method for calculating interest for subsection 20H(2AA).

Subregulations 4E(2) and (3) set out the scope of the payments to which the calculation method set out in this regulation applies.

Subregulation 4E(2) provides that this calculation method only applies to amounts:

- that were paid to the Commissioner under subsection 20F(1) of the Unclaimed Superannuation Act (that is, the amount became unclaimed superannuation as a result of an individual becoming a former temporary resident under section 20AA of the Unclaimed Superannuation Act);
- that were paid by the Commissioner after 1 July 2013; and
- where the Commissioner was satisfied that the relevant individual is (or was immediately before their death) an Australian citizen or permanent resident.

Effectively, these are the same amounts that would have been entitled to interest under section 20H(2A) of the Unclaimed Superannuation Act and regulation 4D of the Unclaimed Superannuation Regulations had the payment been made before 1 July 2013.

Subregulation 4E(3) provides that the method does not apply to amounts that fall under these provisions but are not unclaimed superannuation. It is identical to subregulation 4F(3).

Subregulation 4E(4) sets out the period over which interest is payable on the amounts of unclaimed superannuation. This period commences from the date when the unclaimed superannuation was required to be paid to the Commissioner and ends 30 June 2013.

No interest is payable under regulation 4E for any period unclaimed superannuation is held after 1 July 2013. However, in some circumstances interest may be provided in relation to an amount under both regulations 4F (for the period after 1 July 2013) and 4E (for the period before 1 July 2013).

Subregulations 4E(5) and 4E(6) are largely identical to subregulations 4F(5) and 4F(6), providing for interest to be calculated and compounded annually according to the same method. They differ only in relation to their context (as the rest of the regulations are more significantly different) and the interest rate.

The interest rate used to determine interest under regulation 4E is the ten year Treasury bond rate for the last day of the previous financial year. However, if this rate would be less than zero, it is instead taken to be zero.

Regulation 4D of the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*

Regulation 4D is the second of the two regulations setting out how to work out interest for the period before 1 July 2013 on those amounts of unclaimed superannuation for which certain individuals were entitled to receive interest in this period.

The regulation is made under subsection 20H(2B) for the purposes of interest payable under subsection 20H(2AA). It applies to amounts of unclaimed superannuation paid by the Commissioner before 1 July 2013. Subsections 20H(2A) and (2B) also impose restrictions on what amounts of unclaimed superannuation are entitled to interest. In particular:

- the amount must have been paid to the Commissioner under subsection 20F(1) of the Unclaimed Superannuation Act (that is, the amount must have become unclaimed superannuation as a result of an individual becoming a former temporary resident under section 20AA of the Unclaimed Superannuation Act); and

- the Commissioner must be satisfied that the relevant individual is (or was immediately before their death) an Australian citizen or permanent resident.

These restrictions are the same as those that are imposed under regulation 4E, and as a result interest will payable in the same circumstances for payments by the Commissioner before 1 July 2013 (under regulation 4D) and after 1 July 2013 (for regulation 4E).

As regulations 4E and 4F only provide for the payment of interest on amounts paid by the Commissioner after 1 July 2013, an amount will never be eligible for interest under both regulation 4D and one of the other regulations.

Subregulation 4D(1) of the Unclaimed Superannuation Regulations provides that the purpose of regulation 4D is to set out the method for calculating interest for subsection 20H(2B).

Subregulations 4D(2) and (3) of the Unclaimed Superannuation Regulations sets out the scope of the payments to which the calculation method set out in this regulation applies.

Subregulation 4D(2) provides that this calculation method only applies to amounts:

- that were paid to the Commissioner under subsection 20F(1) of the Unclaimed Superannuation Act (that is, the amounts became unclaimed superannuation as a result of an individual becoming a former temporary resident under section 20AA of the Unclaimed Superannuation Act); and

- were paid by the Commissioner before 1 July 2013.

Subregulation 4D(3) provides that the method does not apply to amounts that fall under these provisions but are not unclaimed superannuation. It is largely identical to subregulations 4F(3) and 4E(3).

Subregulations 4D(5) and 4D(6) set out how to work out the amounts of interest payable. They are largely identical to subregulations 4E(5) and 4E(6), providing for interest to be calculated and compounded annually at the Treasury bond rate according to the same method.

Attachment B

Statement of Compatibility with Human Rights

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

Treasury Legislation Amendment (Unclaimed Money and Other Measures) Regulation 2013

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 this instrument is to is to amend the *Banking Regulations 1966* (Banking Regulations), *Corporations Regulations 2001* (Corporations Regulations), *First Home Saver Accounts Regulations 2008* (FHSA Regulations) and the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* (Unclaimed Superannuation Regulations) (collectively, the Principal Regulations) to specify consistent how to calculate the interest payable by the Commonwealth on unclaimed money that is held under the relevant Acts.

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.