

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 203**

#### **Issued by authority of the Minister Assisting for Financial Services and Superannuation**

##### *Superannuation (Unclaimed Money and Lost Members) Amendment (Prescribed Public Sector Superannuation Schemes and Other Measures) Regulation 2013*

Section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (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 main purpose of the amending Regulation is to allow certain public sector schemes to be able to pay unclaimed superannuation money, lost member accounts and superannuation of former temporary residents to the Commissioner of Taxation (the Commissioner) if they chose to do so. Unlike private sector superannuation providers, public sector schemes are not required to pay these monies to the Commissioner. The amending Regulation also makes a number of minor amendments which make the Superannuation (Unclaimed Money and Lost Members) Regulations 1999 (the Principal Regulations) easier to navigate and correct technical errors.

The Act requires superannuation providers to give the Commissioner details relating to unclaimed money, lost member accounts and unclaimed superannuation of former temporary residents they hold and subsequently pay those monies to the Commissioner.

Public sector superannuation schemes, however, are not required to report and pay these monies to the Commissioner provided they comply with a state or territory law which requires their unclaimed money to be reported and paid to the relevant state or territory authority. However, the legislation allows prescribed public sector superannuation schemes to pay these monies to the Commissioner if they chose to do so. These Regulations give effect to the Act by prescribing these schemes.

Broadly speaking, subsections 18AA(1) and 24HA(1) of the Act provide that prescribed public sector schemes will be treated in a similar way to other superannuation funds in relation to the transfer and reporting and payment of unclaimed money and lost member accounts to the Commissioner of Taxation.

Broadly speaking, subsection 20JA(1) of the Act provides that prescribed public sector superannuation schemes will be treated in a similar way to other superannuation providers in relation to the reporting and payment of unclaimed superannuation of former temporary residents to the Commissioner.

The Principal Regulations prescribe those public sector schemes that have indicated they wish to be permitted to comply with certain sections of the Act.

Details of the amendments to the Principal Regulations are set out in Attachment A.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

These Regulations prescribe only those schemes that have been nominated by the relevant authority. Accordingly, in preparing these Regulations the former Minister for Superannuation and Financial Services wrote to the Ministers for Finance and Defence and to the State and Territory Treasurers to seek details of which of the respective public sector schemes they are responsible for they wished to have prescribed in the Regulations. As a result of this consultation, only certain State and Commonwealth public sector schemes have been prescribed in the Regulations.

*Authority: Subsection 50 (1) of the  
Superannuation (Unclaimed Money  
and Lost Members) Act 1999.*

## ATTACHMENT

### **Details of the *Superannuation (Unclaimed Money and Lost Members) Amendment (Prescribed Public Sector Superannuation Schemes and Other Measures) Regulation 2013***

#### Regulation 1 – Name of Regulation

This regulation specifies that the title of the Regulation is the *Superannuation (Unclaimed Money and Lost Members) Amendment (Prescribed Public Sector Superannuation Schemes and Other Measures) Regulation 2013*.

#### Regulation 2 – Commencement

This regulation provides for the Regulation to commence on the day after it is registered.

#### Section 3 – Authority

This section provides that the Regulation is made under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

#### Schedule 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule in the Regulation is amended or repealed as set out in the applicable items in the Regulation.

#### **Item [1]**

This item inserts a new Part heading. The objective in inserting this heading is to make the the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999* (Principal Regulations) easier to navigate and understand.

#### **Item [2] –Definitions**

This item amends regulations 3 and 4 of the Principal Regulations to omit a redundant purposive regulation and renumber a definitional regulation concerning the term *Act* which when used in the Principal Regulations refers to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

#### **Items [3], [4], [5], [6], [7], [8], [9], [10], [11], [12], [13], [14] and [15]**

These items either combine existing regulations, correct technical errors in the Principal Regulations or insert new part headings to make the Principal Regulations easier to navigate.

#### **Item [16]**

### **Unclaimed money and lost member accounts -prescribed schemes**

This regulation amends the Principal Regulations to insert regulation 11 setting out a list of public sector superannuation schemes which are prescribed for the purposes of sections 18AA and 24HA of the Act. Prescribed schemes are permitted, but not required, to give a statement in relation to, and subsequently pay the Commissioner, unclaimed money and lost member accounts.

Such amounts paid to the Commissioner can be claimed by persons entitled to them.

Thus far, schemes have opted in for both sections 18AA and 24HA of the Act. If, however, at any time in the future a State or Territory authority opts to have one of its schemes prescribed for only one of these subsections, regulation 11 would need to then be split into 2 regulations. This would enable a scheme to opt in for one of those purposes, but not the other.

### **Unclaimed superannuation money of former temporary residents - prescribed schemes**

This regulation amends the Principal Regulations to insert regulation 11 setting out a list of public sector superannuation schemes which are prescribed for the purposes of section 20JA of the Act. Prescribed schemes are permitted, but not required, to give a statement in relation to, and subsequently pay the Commissioner, unclaimed superannuation of former temporary residents.

Such amounts paid to the Commissioner can be claimed by persons entitled to them.

## **Statement of Compatibility with Human Rights**

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

### **Superannuation (Unclaimed Money and Lost Members) Amendment (Prescribed Public Sector Superannuation Schemes 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 legislative instrument makes a number of technical amendments to update the Superannuation (Unclaimed Money and Lost Members) Regulations 1999.

The main purpose of the legislative instrument is to prescribe those public sector superannuation schemes to which various sections of the Superannuation (Unclaimed Money and Lost Members) Act 1999 (SUMLM) Act) will apply.

The legislative instrument will allow prescribed schemes to transfer certain unclaimed superannuation moneys to the Commissioner of Taxation. Only those schemes which have been nominated by the Commonwealth or the States and Territories have been prescribed. The law permits, rather than requires, the trustees of these schemes to pay unclaimed monies to the Commissioner of Taxation. Individuals whose superannuation moneys are transferred to the Commissioner are able to claim back their money at any time.

#### **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.