

EXPLANATORY STATEMENT

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

Superannuation (Unclaimed Money and Lost Members) Act 1999

Superannuation Industry (Supervision) Act 1993

Retirement Savings Accounts Act 1997

Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021

The *Superannuation (Unclaimed Money and Lost Members) Act 1999* establishes the keeping of registers in relation to unclaimed and lost superannuation money, the payment of unclaimed money and certain amounts relating to former temporary residents, lost members and inactive low-balance account members to the Commissioner of Taxation (the Commissioner) and for the reunification of superannuation balances.

The *Superannuation Industry (Supervision) Act 1993* provides for the supervision of certain entities engaged in the superannuation industry.

The *Retirement Savings Accounts Act 1997* provides for retirement savings accounts to be offered by certain financial institutions.

Section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, section 353 of the *Superannuation Industry (Supervision) Act 1993* and section 200 of the *Retirement Savings Accounts Act 1997* (the Authorising Acts) provide 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 *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* (the Regulations) is to amend the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*, the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to align the regulations with changes to the Authorising Acts made through the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*.

Amendments to the Authorising Acts through the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* facilitated:

- The closure of eligible rollover funds by 31 January 2022;
- Created a new category of payments that superannuation providers may pay to the Commissioner of Taxation (the Commissioner); and
- Provides for the reunification of these amounts with a member's active account or to the person directly, where that person has reached the eligibility age, or the amount is less than \$200.

These Regulations support these changes by:

- No longer requiring or permitting superannuation providers to transfer certain amounts to eligible rollover funds; and
- Enabling the Commissioner to pay interest on amounts the Commissioner receives from eligible rollover funds or other voluntary payments received from superannuation providers.

The Authorising Acts specify no conditions that need to be met before the power to make the Regulations may be exercised.

Targeted consultation was undertaken on the Regulations in March 2020. Six submissions were received from consumer groups, industry groups and regulators on the Regulations. Following this consultation, changes were made to the Regulations to rectify several technical issues, relating to the need to ensure consistency between the proposed Regulations and other existing legislation.

Details of the Regulations are set out in Attachment 1.

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

The Regulations commence the later of the start of the day after the instrument is registered and the commencement of Schedule 2 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*.

Regulation Impact Statement

The amendments in this instrument are consistent with recommendation 5 of the Productivity Commission inquiry into *Superannuation: Assessing Efficiency and Competitiveness* and are estimated to have a minor regulatory impact on business and individuals.

The *Superannuation: Assessing Efficiency and Competitiveness* inquiry report was certified by the Department of the Treasury as a process and analysis equivalent to a Regulation Impact Statement.

The *Superannuation: Assessing Efficiency and Competitiveness* inquiry report can be found at this link:

<https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report>

A statement of Compatibility with Human Rights is at Attachment 2.

Details of the Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* (the Regulations).

Section 2 – Commencement

The Regulations commence the later of the start of the day after the instrument is registered on the Federal Register of Legislation and the commencement of Schedule 2 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*.

Section 3 – Authority

The Regulations are made under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997*.

Section 4 – Schedule

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

Schedule 1 – Amendments

Retirement Savings Accounts Regulations 1997

The amendments to the *Retirement Savings Accounts Regulations 1997* permit retirement savings account (RSA) providers to transfer amounts held to the Commissioner of Taxation (the Commissioner) and also prescribes circumstances where an RSA provider is required to consider if it is in the persons best interests to transfer an amount held to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

RSAs are a form of superannuation plan, alongside superannuation funds and approved deposit funds.

The Supplementary Explanatory Memorandum to the Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 provides guidance and examples on when it may be in the best interests of the person for an amount to be transferred to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Items 1 and 2 of Schedule 1 amend division 4.3 of the *Retirement Savings Accounts Regulations 1997* to provide that where a RSA provider chooses to pay an amount to

the Commissioner the amount must be cashed in favour of the Commissioner as a lump sum.

Items 3 to 15 of Schedule 1 amend Divisions 4A.2 and 4A.3 of the *Retirement Savings Accounts Regulations 1997* to remove references to eligible rollover funds and provide that where an RSA provider does not receive or cannot comply with a request from a non-member spouse in relation to a payment split amount and the RSA provider has not opened a new retirement savings account for the non-member spouse, the RSA provider must consider if it is in the non-member spouse's best interests for the RSA provider to transfer the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Items 16 to 18 of Schedule 1 amend Division 4A.4 of the *Retirement Savings Accounts Regulations 1997* to provide that it is a payment standard for non-member spouse entitlements that where an RSA provider does not receive consent from the non-member spouse to allocate, roll over or transfer the amount, and the non-member spouse has not satisfied a relevant condition of release, then the RSA provider must consider whether it would be in the best interests of the non-member spouse to transfer the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* or, if the RSA provider does not pay the amount to the Commissioner, then they must roll over or transfer the amount to a MySuper product.

If the non-member spouse has met a condition of release, and has not made a nomination, then the RSA provider should consider whether it would be in the best interests of the non-member spouse to pay the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Items 19 and 20 of Schedule 1 repeal regulations 6.05, 6.06 and 6.07 and make a consequential amendment to regulation 6.12 to remove a reference to regulation 6.05. Regulations 6.05, 6.06 and 6.07 were made for the purposes of provisions in the Act that have subsequently been repealed. These regulations are therefore redundant. Item 21 of Schedule 1 inserts transitional provisions to provide that amendments made by these regulations apply on or after 1 May 2021.

Item 22 of Schedule 1 inserts amounts that are paid to the Commissioner under Part 3D of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* into the prescribed conditions of release, to allow RSA providers to pay amounts to the Commissioner under that Part.

Item 23 of Schedule 1 inserts amounts that are paid to the Commissioner under Part 3D of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to the existing provisions on cashing restrictions, and provides that where an amount is paid to the Commissioner under that Part, the cashing restriction is the amount of the person's interest in the RSA, and should be paid as a lump sum to the Commissioner.

Superannuation Industry (Supervision) Regulations 1994

These amendments to the *Superannuation Industry (Supervision) Regulations 1994* make various changes to support the closure of eligible rollover funds by preventing successor fund transfers to eligible rollover funds, permitting superannuation

providers to transfer amounts held to the Commissioner and prescribing certain circumstances where a superannuation provider is required to consider if it is in the persons best interests to transfer an amount held to the Commissioner.

The Supplementary Explanatory Memorandum to the Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 provides guidance and examples on when it may be in the best interests of the person for an amount to be transferred to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Items 24 to 27 of Schedule 1 amend division 6.3 of the *Superannuation Industry (Supervision) Regulations 1994* to provide that where a trustee chooses to pay an amount to the Commissioner the amount must be cashed in favour of the Commissioner as a lump sum.

Item 28 of Schedule 1 provides that a transfer permitted under paragraph 6.29(1)(c) of the *Superannuation Industry (Supervision) Regulations 1994* does not apply where the successor fund is an eligible rollover fund. This will prevent new successor fund transfers to eligible rollover funds on or after the later of 1 May 2021 and the seventh day after Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* commences but will not prevent a trustee of an eligible rollover fund who holds an interest on behalf of a member after this time to undertake a successor fund transfer to another fund that is not an eligible rollover fund.

Items 29 to 46 of Schedule 1 amend Divisions 7A.1A and 7A.2 of the *Superannuation Industry (Supervision) Regulations 1994* to remove references to eligible rollover funds and provide that where a trustee does not receive or cannot comply with a request from a non-member spouse in relation to a payment split amount and the trustee has not created a new interest in the superannuation fund for the non-member spouse, the trustee must consider if it is in the non-member spouse's best interest for the trustee to transfer the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Items 47 to 51 of Schedule 1 amend Division 7A.3 of the *Superannuation Industry (Supervision) Regulations 1994* to provide that where a trustee does not receive consent from the non-member spouse to allocate, roll over or transfer an amount, then the trustee must consider whether it would be in the best interests of the non-member spouse to transfer the amount to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. If the trustee does not pay the amount to the Commissioner, then they must allocate the amount to an interest that the trustee creates for the non-member spouse in the fund.

Where the non-member spouse entitlement derives from a pension that was being paid to the member spouse, and the trustee cannot give effect to a request to allocate the amount to an interest in that fund, the trustee must either pay the amount to the non-member spouse if requested, or otherwise roll over or transfer the amount to another fund nominated by the non-member spouse. In any other case, the trustee must consider whether it would be in the best interests of the non-member spouse to pay the amount to the Commissioner.

Item 52 of Schedule 1 repeals regulation 10.03 of the *Superannuation Industry (Supervision) Regulations 1994* so that the trustee of an eligible rollover funds is no longer required to accept the payment of benefits, other than pension benefits from another superannuation fund.

Item 53 of Schedule 1 inserts transitional provisions to provide that the amendments made by these regulations apply on or after 1 May 2021.

Items 54 to 57 of Schedule 1 inserts amounts that are paid to the Commissioner under Part 3D of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* into the prescribed conditions of release to allow trustees to pay amounts to the Commissioner under that Part.

Superannuation (Unclaimed Money and Lost Members) Regulations 2019

These amendments make consequential amendments to the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to support the operation of amendments made to the enabling Act by the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*.

Item 58 of Schedule 1 amends section 6 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to provide that notices given by the Commissioner under paragraphs 21G(3)(a) and 22E(3)(a) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* must include the information prescribed.

Items 59 to 66 of Schedule 1 amends section 9 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to allow the Commissioner to calculate the amount of interest payable in accordance with sections 21E(5) and (6), 22B(5) and (6) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Item 67 of Schedule 1 amends section 14 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to include a reference to payments made by the Commissioner under sections 21E and 22B of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021

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 the *Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021* (the Regulations) is to amend the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*, the *Retirement Savings Accounts Regulations 1997* and the *Superannuation Industry (Supervision) Regulations 1994* to align the regulations with amendments made through the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*.

The *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* facilitated the closure of eligible rollover funds by 31 January 2022 and enabled the Commissioner of Taxation (the Commissioner) to reunite amounts he or she receives from eligible rollover funds with a member's active account.

These Regulations support these changes by no longer requiring or permitting superannuation providers to transfer certain amounts to eligible rollover funds and enabling the Commissioner to pay interest on amounts the Commissioner receives from eligible rollover funds or other voluntary payments received from superannuation providers.

These measures are consistent with recommendation 5 of the Productivity Commission's 2018 report: *Superannuation: Assessing Efficiency and Competitiveness*, which recommended that all eligible rollover funds should be wound up within three years, and that accounts held in these funds should be transferred to the Australian Taxation Office for consolidation with existing active accounts.

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.