

EXPLANATORY STATEMENT

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

Income Tax Assessment Act 1997

Superannuation (Unclaimed Money and Lost Members) Act 1999

Superannuation Industry (Supervision) Act 1993

Treasury Laws Amendment (KiwiSaver Scheme) Regulations 2021

Section 50 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, section 353 of the *Superannuation Industry (Supervision) Act 1993* and section 909-1 of the *Income Tax Assessment Act 1997* (the Authorising Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the Authorising Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Authorising Acts.

The purpose of the *Treasury Laws Amendment (KiwiSaver Scheme) Regulations 2021* (the Regulations) is to amend the *Income Tax Assessment (1997 Act) Regulations 2021*, *Superannuation Industry (Supervision) Regulations 1994* and *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to support amendments made by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

In 2009, the Australian and New Zealand Governments signed the *Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability* (the Arrangement). The Arrangement establishes a scheme which allows Australians and New Zealanders to transfer their retirement savings between Australia and New Zealand.

Amendments were made to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020* to allow individuals to direct the Commissioner to pay amounts the Commissioner holds in respect of them under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to a KiwiSaver scheme provider. A KiwiSaver scheme is broadly analogous to an Australian superannuation fund.

The Regulations support these changes by ensuring that amounts dealt with by the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* are treated in accordance with the Arrangement and by prescribing the further matters that must be satisfied for the Commissioner to pay an amount to a KiwiSaver scheme provider.

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

Consultation was undertaken on the Regulations with the Australian Taxation Office and New Zealand Inland Revenue. Minor feedback was received, and amendments were made to the Regulations to ensure the provisions operate as intended.

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

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

Sections 1 to 4 of the Regulations commence on the day after the Regulations are registered.

Schedule 1 to the Regulations commence on the later of the start of the day after the Regulations are registered and immediately after the commencement of Part 1 of Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

The Regulations have a negligible impact on compliance costs.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Treasury Laws Amendment (KiwiSaver Scheme) Regulations 2021*

Section 1 – Name of the Regulations

The name of the Regulations is the *Treasury Laws Amendment (KiwiSaver Scheme) Regulations 2021* (the Regulations).

Section 2 – Commencement

Sections 1 to 4 of the Regulations commence on the day after the Regulations are registered.

Schedule 1 to the Regulations commence on the later of the start of the day after the Regulations are registered and immediately after the commencement of Part 1 of Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

Section 3 – Authority

The Regulations are made under the *Income Tax Assessment Act 1997*, *Superannuation Industry (Supervision) Act 1993* and *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Income Tax Assessment (1997 Act) Regulations 2021

The amendments to the *Income Tax Assessment (1997 Act) Regulations 2021* support the amendments made by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

The *Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability* (the Arrangement) requires retirement savings transfers between Australia and New-Zealand to be exempt from any entry or exit taxes. Items 1 to 3 of Schedule 1 to the Regulations amend the *Income Tax Assessment (1997 Act) Regulations 2021* to ensure that Australian law operates in accordance with this requirement.

The amendments provide that superannuation lump sums that are paid to a KiwiSaver scheme provider under paragraph 20H(2) or subsection 20H(2AA) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* are not departing Australia superannuation payments under section 301-170 of the *Income Tax Assessment Act 1997*. This means that such superannuation lump sum payments are not subject to tax under the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

Superannuation Industry (Supervision) Regulations 1994

The amendments to the *Superannuation Industry (Supervision) Regulations 1994* support the amendments made by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

Items 4 and 5 of Schedule 1 to the Regulations amend the *Superannuation Industry (Supervision) Regulations 1994* to note that the amounts covered by the Arrangement include amounts paid by the Commissioner of Taxation (the Commissioner) to a KiwiSaver scheme provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Item 6 of Schedule 1 to the Regulations amends the definition of ‘Australian-sourced amount’ in regulation 12A.02 of the *Superannuation Industry (Supervision) Regulations 1994* to include amounts that are:

- paid to the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and are identified by the Commissioner as an amount that was originally accrued in a complying superannuation fund;
- paid by the Commissioner to a complying superannuation fund under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and are identified by the complying superannuation fund as an amount that was originally accrued in a complying superannuation fund; and
- paid by a KiwiSaver scheme provider to a complying superannuation fund and are identified by the complying superannuation fund as an amount that was originally accrued in a complying superannuation fund.

The amendment ensures that amounts dealt with by the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* are afforded the correct status as required by the Arrangement.

Item 7 of Schedule 1 to the Regulations amends the definition of ‘New Zealand sourced amount’ in regulation 12A.02 the *Superannuation Industry (Supervision) Regulations 1994* to include amounts that are:

- paid to the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and are identified by the Commissioner as an amount that was originally accrued in a KiwiSaver scheme;
- paid by the Commissioner to a complying superannuation fund under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and are identified by the complying superannuation fund as an amount that was originally accrued in a KiwiSaver scheme; and
- paid by a complying superannuation fund to a KiwiSaver scheme provider and are identified by the KiwiSaver scheme provider as an amount that was originally accrued in a KiwiSaver scheme.

The amendment also ensures that amounts dealt with by the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* are afforded the correct status as required by the Arrangement.

Superannuation (Unclaimed Money and Lost Members) Regulations 2019

The amendments to the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* support the amendments made by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

Item 8 of Schedule 1 to the Regulations amends section 4 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* by inserting definitions of ‘element untaxed in the fund’, ‘superannuation benefit’ and ‘taxable component’, with their meanings provided by the *Income Tax Assessment Act 1997*. The amendments support other amendments made by item 9 of Schedule 1 to the Regulations.

Item 9 of Schedule 1 to the Regulations inserts Part 8 and section 20 into the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*. Section 20 of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* prescribes the matters that must be satisfied for the Commissioner to make a payment of an amount in respect of a person to a KiwiSaver scheme provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Paragraphs 20(2)(a) and (b) of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* ensure that the person in respect of whom the amount is being paid indefinitely resides in New Zealand before the amount is paid. However, it may transpire that in several years’ time the person returns to Australia. In such a case, the person may be able to transfer their retirement savings back to Australia.

Paragraphs 20(2)(c) to (e) of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* ensure that the amount can be received by the nominated KiwiSaver scheme provider and paid to the person’s KiwiSaver account.

Paragraph 20(2)(f) of the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* ensure that amounts which have not yet borne tax in Australia are not able to be paid to KiwiSaver scheme providers. This is consistent with the Arrangement and existing legislation and ensures that such amounts are appropriately taxed in Australia.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (KiwiSaver Scheme) 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 (KiwiSaver Scheme) Regulations 2021* (the Regulations) is to amend the *Income Tax Assessment (1997 Act) Regulations 2021*, *Superannuation Industry (Supervision) Regulations 1994* and *Superannuation (Unclaimed Money and Lost Members) Regulations 2019* to support amendments made by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*.

In 2009, the Australian and New Zealand Governments signed the *Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability* (the Arrangement). The Arrangement establishes a scheme which allows Australians and New Zealanders to transfer their retirement savings between Australia and New Zealand.

Amendments were made to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* by Schedule 2 to the *Treasury Laws Amendment (2020 Measures No. 5) Act 2020* to allow individuals to direct the Commissioner to pay amounts the Commissioner holds in respect of them under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* directly to a KiwiSaver scheme provider. A KiwiSaver scheme is broadly analogous to an Australian superannuation fund.

The Regulations support these changes by ensuring that amounts dealt with by the Commissioner under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* are treated in accordance with the Arrangement and by prescribing the further matters that must be satisfied for the Commissioner to pay an amount to a KiwiSaver scheme provider.

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.