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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SUPERANNUATION (UNCLAIMED MONEY AND LOST
MEMBERS) CONSEQUENTIAL AND TRANSITIONAL BILL 1999

EXPLANATORY MEMORANDUM

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Treasurer, the Hon Peter Costello, MP)

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General outline and financial impact

Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Bill 1999

This Bill contains transitional provisions relating to the Superannuation (Unclaimed Money and Lost Members) Bill 1999 (the New Act) and makes consequential amendments to the New Act, the *Financial Transaction Reports Act 1988*, the *Income Tax Assessment Act 1936*, the *Retirement Savings Accounts Act 1997*, the *Small Superannuation Accounts Act 1995*, the *Superannuation Act 1976*, the *Superannuation Act 1990*, the *Superannuation Industry (Supervision) Act 1993* and the *Taxation Administration Act 1953*.

Date of effect: Subject to transitional arrangements, this Bill will apply from Royal Assent.

Proposal announced: Not previously announced.

Financial impact: A small unquantifiable increase in revenue is expected to result from superannuation money paid from State and Territory unclaimed money registers being taxed in the same manner as superannuation money paid from complying superannuation funds, retirement savings accounts and the Commonwealth unclaimed money register. Administration costs for Commonwealth, State and Territory unclaimed money registers will be substantially reduced through provisions facilitating greater co-operation between the registers and extending the use of tax file numbers to the Commonwealth lost members register and the State and Territory unclaimed money registers.

Compliance cost impact: Minimal.

Chapter 1

Overview and Preliminary

Overview

1.1 This Bill makes consequential amendments to 9 Acts as a result of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (the New Act) and sets out transitional provisions which apply in relation to the New Act.

1.2 This Bill is structured in 3 Parts: Part 1 (Preliminary), Part 2 (Amendment of Acts) and Part 3 (Transitional and Application Provisions). This Bill contains 3 Schedules: Schedule 1 (Amendments), Schedule 2 (Amendments relating to the enactment of the *Public Service Act 1999*) and Schedule 3 (Other amendments).

Summary

Purpose of the provisions

1.3 This Bill makes consequential amendments to the New Act, the *Financial Transaction Reports Act 1988*, the *Income Tax Assessment Act 1936* (ITAA 1936), the *Retirement Savings Accounts Act 1997* (the RSA Act), the *Small Superannuation Accounts Act 1995*, the *Superannuation Act 1976*, the *Superannuation Act 1990*, the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Taxation Administration Act 1953* (TAA 1953) and contains transitional provisions relating to the New Act.

Date of effect

1.4 Subject to transitional arrangements, the amendments outlined in this Bill are to have effect when the New Act receives Royal Assent.
[Clause 2]

Transitional arrangements

1.5 The reporting and payment of unclaimed superannuation money (unclaimed money) to Commonwealth, State and Territory unclaimed money registers is currently linked to half-calendar years (ie. 1 January to 30 June and 1 July to 31 December). Superannuation providers must determine the unclaimed money they have at the end of each half-year and pay those monies and report information in respect of those monies within 4 months from the end of the half-year.

1.6 The New Act continues this half-calendar year cycle of reporting and payment, however to ensure that the effect of this Bill in respect of the half-calendar year cycle is prospective, this Bill will apply in respect of the reporting and payment from the next half-year after Royal Assent.
[Clause 8]

1.7 Item 264 of Schedule 1 to the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1999 proposes to add a **new subsection 158(3)** into the *Superannuation Act 1976* containing a reference to the unclaimed money provisions of the SIS Act. Items 41 and 42 of Schedule 1 to this Bill update that reference to the unclaimed money provisions of the SIS Act (provisions which are repealed by this Bill) with a reference to the New Act. As the commencement time of item 264 is not certain, to ensure that items 41 and 42 achieve their purpose, this Bill provides that if item 264 commences at or after the time when the New Act commences, items 41 and 42 commence at the later of:

- immediately after the Royal Assent of the New Act; and
- immediately after the commencement of item 264.

[Subclause 2(3)]

1.8 Item 868 of Schedule 1 to the Public Employment (Consequential and Transitional) Amendment Bill 1999 proposes to amend the *Superannuation Contributions Tax (Assessment and Collection Act) 1997* with effect from the commencement of the Public Service Bill 1999, to update references to the *Public Service Act 1922* with references to the *Public Service Act 1999*.

1.9 Amendments in Schedule 2 to this Bill propose similar amendments to the New Act as a consequence of the Public Employment (Consequential and Transitional) Amendment Bill 1999. As the commencement time of item 868 is not certain, to ensure that Schedule 2 achieves its purpose, this Bill provides that if item 868 commences:

- before the New Act commences, Schedule 2 to this Bill commences immediately after the New Act commences; or
- at or after the New Act commences, Schedule 2 to this Bill commences at the later of:
 - immediately after the New Act commences; and
 - immediately after the commencement of item 868.

[Subclause 2(4)]

1.10 This Bill also makes a technical amendment to section 202 of the ITAA 1936 and sections 8WA and 8WB of the TAA 1953 to rectify a

drafting error which occurred as a result of the insertion of 2 paragraph (k)s in section 202 of the ITAA 1936.

1.11 The first paragraph (k) was inserted by the *Family (Tax Initiative) Act 1996* with effect from 1 January 1997 to enable tax file numbers (TFNs) to facilitate the administration of family tax payments under the Family Tax Initiative. The second paragraph (k) was inserted by the *Retirement Savings Accounts (Consequential Amendments) Act 1997* with effect from 2 June 1997. This Bill ensures that the drafting error is remedied with effect from that date [*subclause 2(5)*]. The first paragraph (k) is no longer required as the use of TFNs for the purpose of facilitating the administration of family tax payments under the Family Tax Initiative is also authorised under paragraph 202(e) of the ITAA 1936. As the first paragraph (k) has now become redundant it is repealed with effect from Royal Assent of this Bill [*subclause 2(6)*].

1.12 The correction of the drafting error is beneficial to taxpayers as it provides certainty that taxpayers are not liable for an offence for use of TFNs in accordance with the RSA Act. However, to ensure that there can be no adverse impact of the correction on entities such as trustees of superannuation funds who refused to quote TFNs on the basis of the drafting error, this Bill contains a transitional provision that provides that the correction does not make any person liable for an offence. [*Clause 9*]

Background to the legislation

1.13 The *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992* provided a major extension of superannuation to the workforce. With the increased coverage, many casual and itinerant workers and those with broken employment patterns became ‘lost’ members in the sense that they lost the paperwork associated with their account, were never given the paperwork because they terminated employment before their superannuation guarantee contributions were made, or lost contact with their fund in other circumstances.

1.14 The Commonwealth Government policy document *Strengthening Superannuation Security* (21 October 1992) announced the establishment of the Commonwealth unclaimed money register and the Commonwealth lost members register to maximise the prospect of superannuation members receiving contributions made on their behalf. Along with State and Territory unclaimed money registers, the Commonwealth registers are currently operating under the SIS Act and the RSA Act.

1.15 The New Act strengthens arrangements for reuniting people with their superannuation (particularly casual and itinerant workers and workers with broken employment patterns) while this Bill makes transitional and consequential amendments to various Commonwealth legislation as a consequence of the New Act.

1.16 Many of the amendments made by this Bill are as a consequence of the New Act consolidating existing provisions relating to unclaimed money and lost superannuation members (lost members) which are currently spread over 4 items of legislation. The existing provisions are set out in Part 22 of the SIS Act, regulation 11.08 of the Superannuation Industry (Supervision) Regulations (the SIS Regulations), Part 8 of the RSA Act and regulation 6.09 of the Retirement Savings Accounts Regulations (the RSA Regulations).

Preliminary

Overview

1.17 Part 1 of this Bill sets out the preliminary provisions of the Act. *[Clauses 1 and 2]*

Purpose of the provisions

1.18 The purpose of the provisions is to provide the citation of the short title of the Act and the commencement of the Act.

Explanation of the provisions

Short title of the Act

1.19 When this Bill is enacted, it will be called the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999* (the Act). *[Clause 1]*

Commencement of the Act

1.20 Subject to limited exceptions, the Act commences when the New Act commences. *[Subclauses 2(1) and (2)]*

1.21 The exceptions are set out in *subclauses 2(3), (4), (5) and (6)* and are explained at paragraphs 1.7 to 1.12.

Chapter 2

Amendment of Acts

Overview

2.1 Part 2 of this Bill sets out the effect of the Schedules to the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999* (the Act). [**Clause 3**]

Purpose of the provisions

2.2 The purpose of Part 2 is to explain how the Schedules to the Act are to be interpreted.

Explanation of the provisions

Schedule(s)

2.3 **Clause 3** is a standard provision in Commonwealth legislation containing Schedules and provides that subject to the commencement provisions of this Bill, each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Chapter 3

Transitional and application provisions

Overview

3.1 Part 3 of this Bill sets out the transitional and application provisions of the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999* (the Act). **[Clauses 4 to 9]**

Purpose of the provisions

3.2 The purpose of the provisions is to deal with the transition from the administration of unclaimed money and lost members under the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) and the *Retirement Savings Accounts Act 1997* (the RSA Act) to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (the New Act).

Explanation of the provisions

Interpretation

3.3 Unless the contrary intention appears, the expressions used in Part 3 of this Bill have the same meaning as those used in the New Act. The term ***New Act*** means the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. **[Clause 4]**

Transitional-payments of unclaimed money to States and Territories etc.

3.4 Currently, a precondition for State and Territory unclaimed money registers receiving unclaimed money is that the relevant State or Territory legislation must satisfy the requirements of subsections 225(9), (9A) and (9B) of the SIS Act and subsections 84(1), (2) and (3) of the RSA Act. Similar requirements are contained in section 18 of the New Act.

3.5 If State and Territory unclaimed money legislation does not satisfy the requirements of section 18 of the New Act on commencement of the New Act, the legislation will despite that non-satisfaction, continue to apply to unclaimed money until the end of a transitional period of 2 years or the State or Territory unclaimed money legislation satisfies the requirements, whichever is the earlier. **[Clause 5]**

3.6 As section 18 of the New Act is in similar terms to existing subsections 225(9), (9A) and (9B) of the SIS Act and subsections 84(1), (2) and (3) of the RSA Act, existing State and Territory unclaimed money legislation may satisfy the requirements.

3.7 If the unclaimed money legislation of a State or Territory does not satisfy the requirements of section 18 of the New Act, the 2 year transitional period will provide the State or Territory with an opportunity to amend the legislation to make it satisfy the requirements.

Transitional-treatment of unclaimed money and particulars relating to lost members under the RSA Act and the SIS Act

3.8 Unclaimed money and information in respect of unclaimed money and lost members given under the RSA Act and the SIS Act are taken to have been given under the New Act [*clauses 6 and 7*]. This ensures that where a superannuation provider has reported and paid unclaimed money or the details of lost members under the RSA Act or the SIS Act the provider does not have to provide the particulars or pay the unclaimed money to the relevant authorities again.

Application of certain items of Schedule 1

3.9 Existing provisions in the *Income Tax Assessment Act 1936* (ITAA 1936), the RSA Act, the *Small Superannuation Accounts Act 1995* and the SIS Act which apply in relation to the reporting and payment of unclaimed money on a half-yearly cycle (eg. Part 8 of the RSA Act and Part 22 of the SIS Act) will cease to have that effect as a result of the consequential amendments made by *items 8, 10, 12, 13, 14, 34, 35, 39, 44, 45, 46, 47, 48, 49 and 73 of Schedule 1* to this Bill. These amendments are necessary because there will be new provisions applying in relation to the reporting and payment of unclaimed money in the New Act. However, as the New Act applies prospectively from the next half-year after Royal Assent of the New Act (section 3 of the New Act), to ensure a seamless transition, the existing provisions will continue to apply up to and including the half-year in which Royal Assent of the New Act occurs. [*Clauses 2 and 8*]

Chapter 4

Amendments

Overview

4.1 Schedules 1, 2 and 3 to this Bill set out amendments to various Commonwealth legislation.

Purpose of the provisions

4.2 The purpose of the items of the Schedules is to ensure that Commonwealth legislation is amended as a consequence of the *Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999* (the Act) and the consolidation of various provisions in Commonwealth legislation into the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (New Act) and to correct a drafting error.

Schedule 1 Amendments

4.3 Schedule 1 to this Bill amends 7 Acts as a consequence of the New Act.

Financial Transaction Reports Act 1988

4.4 Subsection 18(4B) of the *Financial Transaction Reports Act 1988* is amended to update references to unclaimed money provisions of the *Retirement Savings Accounts Act 1997* (the RSA Act) repealed by this Bill with references to the New Act. **[Items 1 and 2]**

Income Tax Assessment Act 1936

4.5 Section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936) provides interpretation provisions for the tax treatment of superannuation payments.

4.6 Subsections 27A(3B) and (3C) of the ITAA 1936 are amended to update references to unclaimed money provisions of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) repealed by this Bill with references to the New Act and to include superannuation payments from State and Territory unclaimed money registers within the definition of 'eligible termination payment' (in subsection 27A(1) of the ITAA 1936) consistent with the current inclusion in that definition of superannuation payments from the Commonwealth unclaimed money register **[item 3]**.

This ensures that superannuation payments from State and Territory registers are subject to the same taxation arrangements applying to other superannuation payments from complying superannuation funds, retirement savings accounts and the Commonwealth unclaimed money register.

4.7 This Bill inserts new subsections 27A(3D) and (3E) into the ITAA 1936 for the avoidance of doubt that the definition of ‘eligible service period’ (in subsection 27A(1) of the ITAA 1936) of a person with unclaimed money does not include the period in which the money is held by an unclaimed money authority as unclaimed money. A person’s eligible service period is relevant under the ITAA 1936 for the purpose of calculating a person’s pre-July 1983 and post-June 1983 components which are used for the purpose of calculating tax in relation to eligible termination payments. **[Item 4]**

4.8 Section 27CC of the ITAA 1936 is amended by this Bill to update references to unclaimed money provisions of the SIS Act repealed by this Bill and the former administrator of those provisions the Insurance and Superannuation Commissioner, with references to the New Act and the administrator of that Act, the Commissioner of Taxation. The amendments also ensure that as with payments of unclaimed money to the Commonwealth unclaimed money register, payments of unclaimed money to State and Territory registers do not trigger tax consequences. **[Items 5 and 6]**

4.9 Sub-subparagraph 140M(1)(a)(i)(B) of the ITAA 1936 is amended to update references to unclaimed money provisions of the SIS Act repealed by this Bill and the former administrator of those provisions the Insurance and Superannuation Commissioner, with references to the New Act and the administrator of that Act, the Commissioner of Taxation. The amendments also ensure that as with payments of unclaimed money from the Commonwealth unclaimed money register, payments of unclaimed money of not more than \$5,000 from State and Territory registers will not be required to be reported to the Commissioner of Taxation for reasonable benefit limits purposes. This is consistent with existing sub-subparagraph 140M(1)(a)(i)(B) of the ITAA 1936 and eases the administrative burden on State and Territory registers by recognising that the majority of payments from unclaimed money registers are small amounts. **[Item 7]**

4.10 Sections 202 and 202DH of the ITAA 1936 are amended to update references to unclaimed money provisions of the SIS Act and the RSA Act repealed by this Bill with references to the New Act. The amendments also extend the use of tax file numbers (TFNs) to the Commonwealth lost members register and unclaimed money paid to State and Territory unclaimed money registers. Part 25A of the SIS Act and Part 11 of the RSA Act currently authorise the Commonwealth unclaimed money register and superannuation providers to use TFNs for superannuation purposes. **[Items 8 to 11]**

Retirement Savings Accounts Act 1997

4.11 This Bill repeals Part 8 of the RSA Act (which deals with unclaimed money in retirement savings accounts) and makes consequential amendments as a result of the consolidation of the provisions of Part 8 into the New Act. *[Items 12 to 35]*

Small Superannuation Accounts Act 1995

4.12 This Bill amends the *Small Superannuation Accounts Act 1995* to update references to unclaimed money provisions of the SIS Act repealed by this Bill and the former administrator of those provisions the Insurance and Superannuation Commissioner, with references to the New Act and the administrator of that Act, the Commissioner of Taxation. *[Items 36 to 39]*

Superannuation Act 1976 and Superannuation Act 1990

4.13 This Bill amends the *Superannuation Act 1976* and the *Superannuation Act 1990* to recognise the consolidation of the provisions of Part 22 of the SIS Act into the New Act and to update references to section 225 of the SIS Act which is repealed by this Bill with references to the New Act. *[Items 40 to 43]*

Superannuation Industry (Supervision) Act 1993

4.14 This Bill repeals Part 22 of the SIS Act (which deals with unclaimed money in regulated superannuation funds and approved deposit funds) and makes consequential amendments as a result of the consolidation of the provisions of Part 22 into the New Act. *[Items 44 to 74]*

Taxation Administration Act 1953

4.15 This Bill amends sections 8WA and 8WB of the *Taxation Administration Act 1953* (TAA 1953) as a consequence of amendments made by this Bill to section 202 of the ITAA 1936 to allow TFNs to be used for the purposes of the Commonwealth lost members register and unclaimed money paid to State and Territory unclaimed money registers. Whenever a new purpose is added to the purposes for which TFNs may be used (which are set out in section 202 of the ITAA 1936), consequential amendments are required to sections 8WA and 8WB of the TAA 1953 to make the use of TFNs for that purpose lawful. *[Items 75 and 76]*

Schedule 2 Amendments relating to the enactment of the Public Service Act 1999

4.16 Schedule 2 to this Bill makes consequential amendments to the New Act on the commencement of the Public Service Bill 1999 which replaces the *Public Service Act 1922* by replacing references and the terminology of the *Public Service Act 1922* with those of the *Public Service Act 1999*. **[Items 1 and 2]**

Schedule 3 Other amendments

4.17 Schedule 3 to this Bill remedies a drafting error which resulted in the insertion of 2 paragraph (k)s into section 202 of the ITAA 1936. Consequential amendments are also made to sections 8WA and 8WB of the TAA 1953 as a result of the correction. **[Items 1 to 6]**

4.18 Schedule 3 repeals the first occurring paragraph (k) (which relates to sections 900AP and 900AQ of the *Social Security Act 1991*) as the paragraph is now redundant and renames the second occurring paragraph (k) (which relates to the *Retirement Savings Accounts Act 1997*) as paragraph (ka) to avoid confusion with the former 2 paragraph (k)s.

4.19 Schedule 3 has been divided into 2 Parts according to the relevant commencement time of the provisions. Part 1 contains provisions which commence at the same time as the *Retirement Savings Account (Consequential Amendments) Act 1997* (the Act which on 2 June 1997 inserted the second occurring paragraph (k)). Part 2 contains provisions which commence on Royal Assent of this Bill.

4.20 The effect of Schedule 3 is to repeal the first occurring paragraph (k) with effect from Royal Assent of this Bill and correct the drafting error with effect from the date of the drafting error (2 June 1997).

