

EXPLANATORY MEMORANDUM

Minute No. _____ of 2012 - Minister for Financial Services and Superannuation

Subject - *Superannuation (Unclaimed Money and Lost Members) Act 1999*

Superannuation (Unclaimed Money and Lost Members) Amendment Regulations 2012 (No. _____)

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 Regulations 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 Regulations also make a number of minor amendments which make the 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 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 Regulations are set out in Attachment A.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations would commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Minute recommends that Regulations be made in the form proposed.

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

[Minister's initials]

ATTACHMENT A

Details of the *Superannuation (Unclaimed Money and Lost Members) Amendment Regulations 2012 (No.)*

Regulation 1 – Name of Regulations

This regulation specifies that the title of the Regulations is the *Superannuation (Unclaimed Money and Lost Members) Amendment Regulations 2012 (No.)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered.

Regulation 3 – Amendment of *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*

This regulation provides that Schedule 1 to these Regulations amends the *Superannuation (Unclaimed Money and Lost Members) Regulations 1999*.

Schedule 1 – Amendments

Item [1]

This item inserts a new Preliminary Part heading. The objective in inserting this heading is to make the Regulations easier to navigate and understand.

Item [2] – Regulation 3 - Definitions

This item omits a redundant purposive regulation and renumbers a definitional regulation concerning the term *Act* which when used in the Regulations refers to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

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

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

Item [14]

Regulation 11 – Unclaimed money and lost member accounts -prescribed schemes

This regulation inserts 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.

Regulation 12 – Unclaimed superannuation money of former temporary residents - prescribed schemes

This regulation inserts 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.