

EXPOSURE DRAFT



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Superannuation (Unclaimed Money and Lost Members) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

David Hurley
Governor-General

By His Excellency's Command

Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliamentary Secretary to the Treasurer

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *Superannuation (Unclaimed Money and Lost Members) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Commissioner;
- (b) fund;
- (c) superannuation provider.

In this instrument:

Act means the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

CPI number means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Bureau of Statistics.

Treasury bond rate, for a particular day, means:

- (a) if any Treasury bonds with a 10 year term were issued on that day—the annual yield on those bonds; or

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Part 1 Preliminary

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- (b) otherwise—the annual yield on Treasury bonds with a 10 year term, as published by the Reserve Bank of Australia for that day.

5 Eligibility age

For the purposes of paragraphs 10(1)(a) and (b) of the Act, the prescribed age for a member of a fund is the greater of:

- (a) 65 years; and
- (b) if the governing rules of the fund specify that a benefit is payable to a member only at a specified age that is greater than 65 years—that age.

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Information to be included in notices **Part 2**

Section 6

Part 2—Information to be included in notices

6 Recovery of overpayments

- (1) For the purposes of paragraphs 18B(4)(a), 20L(4)(a) and 24K(4)(a) of the Act, a notice must include the following information:
 - (a) the name of the person in respect of whom the Commissioner made the payment;
 - (b) the name of the debtor;
 - (c) the amount of the excess payment that is sought to be recovered from the debtor;
 - (d) a statement that the Commissioner may recover that amount from the debtor as a debt due by the debtor to the Commonwealth 28 days after the notice is given to the debtor.

- (2) In this section:

debtor has the same meaning as in the section of the Act under which the notice is given.

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Part 3 Prescribed visas

Section 7

Part 3—Prescribed visas

7 Temporary residents—prescribed visas

For the purposes of subsection 20AA(2) and subparagraphs 20H(1)(a)(ii) and 20H(2)(b)(iii) of the Act, the following visas, as described in Schedule 2 to the *Migration Regulations 1994*, are prescribed:

- (a) Subclass 405 (Investor Retirement) visa;
- (b) Subclass 410 (Retirement) visa.

Part 4—Interest on unclaimed amounts

8 Interest on unclaimed amounts—interest periods ending on 30 June 2013

- (1) For the purposes of subsection 20H(2AA) of the Act, this section applies to work out the interest on an amount (the ***unclaimed amount***) that:
- (a) the superannuation provider was, before 1 July 2013, required to pay to the Commissioner under section 20F of the Act; and
 - (b) the Commissioner received under section 20F of the Act before, on or after that day; and
 - (c) the Commissioner pays under subsection 20H(2) of the Act, on or after the day this instrument commenced, to or on behalf of a person whom the Commissioner is satisfied is (or was just before dying):
 - (i) an Australian citizen; or
 - (ii) the holder of a permanent visa under the *Migration Act 1958*.
- The interest worked out under this section on the unclaimed amount is in addition to any interest worked out under section 9 on the unclaimed amount.
- (2) However, this section does not apply to an amount:
- (a) to which section 18A, 20K or 24J of the Act applies; or
 - (b) mentioned in subsection 65AA(2) of the *Superannuation Guarantee (Administration) Act 1992*.
- (3) The interest is to be worked out for the period (the ***interest period***) that:
- (a) started on the later of:
 - (i) the day when the superannuation provider was required to pay the unclaimed amount to the Commissioner under section 17, 20F or 24E of the Act; and
 - (ii) the day when the superannuation provider was required to pay the unclaimed amount to the Commissioner in accordance with a notice under subsection 255-10(2) or (2A) in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) ended on 30 June 2013.
- (4) The interest is to be worked out by adding together the interest for each financial year during the interest period.
- (5) The interest for each financial year is to be worked out using the following formula, and rounding the result to the nearest cent (with 0.5 cents being rounded up):
- $$\frac{\text{Amount} \times \text{Days interest payable} \times \text{Interest rate}}{\text{Days in the financial year}}$$
- where:
- amount*** means the unclaimed amount plus the interest (if any) worked out for each earlier financial year for which interest is payable.

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Part 4 Interest on unclaimed amounts

Section 9

days interest payable means the number of days in the financial year for which interest is payable.

days in the financial year means the number of days in the financial year.

interest rate, for a financial year, means:

- (a) the Treasury bond rate for the last working day of the financial year immediately before the financial year for which interest is payable; or
- (b) if that rate is less than 0%—0%.

9 Interest on unclaimed amounts—interest periods starting on or after 1 July 2013

- (1) For the purposes of subsections 17(2AB) and (2AC), 20H(2AA), 20QF(5) and (6) and 24G(3A) and (3B) of the Act, this section applies to work out the interest on an amount (the *unclaimed amount*) that:
 - (a) the superannuation provider is, or on or after 1 July 2013 was, required to pay to the Commissioner under subsection 17(1), or section 20F, 20QD or 24E, of the Act; and
 - (b) the Commissioner receives under subsection 17(1), or section 20F, 20QD or 24E, of the Act; and
 - (c) the Commissioner pays under subsection 17(2), 20H(2), 20QF(2) or 24G(2) of the Act on or after the day this instrument commenced.
- (2) However, this section does not apply to an amount:
 - (a) to which section 18A, 20K or 24J of the Act applies; or
 - (b) mentioned in subsection 65AA(2) of the *Superannuation Guarantee (Administration) Act 1992*.
- (3) The interest is to be worked out for the period (the *interest period*) that:
 - (a) starts, or started, on the later of:
 - (i) 1 July 2013; and
 - (ii) the day when the superannuation provider was required to pay the unclaimed amount to the Commissioner under section 17, 20F, 20QD or 24E of the Act; and
 - (iii) the day when the superannuation provider was required to pay the unclaimed amount to the Commissioner in accordance with a notice under subsection 255-10(2) or (2A) in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) ends on the third day after the Commissioner last authorised the unclaimed amount to be paid under subsection 17(2), 20H(2), 20QF(2) or 24G(2) of the Act.

A day mentioned in subparagraph (a)(ii) or (iii) or paragraph (b) may be the day this section commences, or any other day occurring before or after that day.
- (4) The interest is to be worked out by adding together the interest for each financial year during the interest period.

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- (5) The interest for each financial year is to be worked out using the following formula, and rounding the result to the nearest cent (with 0.5 cents being rounded up):

$$\frac{\text{Amount} \times \text{Days interest payable} \times \text{Interest rate}}{\text{Days in the financial year}}$$

where:

amount means the unclaimed amount plus the interest (if any) worked out for each earlier financial year for which interest is payable.

days interest payable means the number of days in the financial year for which interest is payable.

days in the financial year means the number of days in the financial year.

interest rate, for a financial year, means:

- (a) the percentage change in the CPI number between the two March quarters most recently published before the first day of the financial year (rounded up to 4 decimal places); or
- (b) if that percentage change is less than 0%—0%.

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Part 5 Payment of low balances in inactive accounts to the Commissioner

Section 10

Part 5—Payment of low balances in inactive accounts to the Commissioner

10 Inactive low balance accounts in regulated superannuation funds

For the purposes of subparagraph 20QA(1)(a)(vi) of the Act, the conditions of release of benefits specified in the following items of the table in Part 1 of Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* are prescribed:

- (a) item 101 (retirement);
- (b) item 102 (death);
- (c) item 102A (terminal medical condition);
- (d) item 103 (permanent incapacity);
- (e) item 105 (severe financial hardship);
- (f) item 106 (attaining age 65);
- (g) item 108 (termination of gainful employment);
- (h) item 109 (temporary incapacity);
- (i) item 110 (attaining preservation age).

11 Inactive low balance accounts in approved deposit funds

For the purposes of subparagraph 20QA(1)(b)(iv) of the Act, the conditions of release of benefits specified in the following items of the table in Part 2 of Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* are prescribed in relation to a fund that is an approved deposit fund:

- (a) item 201 (retirement);
- (b) item 202 (death);
- (c) item 202A (terminal medical condition);
- (d) item 203 (permanent incapacity);
- (e) item 205 (severe financial hardship);
- (f) item 206 (attaining age 65);
- (g) item 208 (attaining preservation age).

12 Inactive low balance accounts in retirement savings accounts

For the purposes of subparagraph 20QA(1)(b)(iv) of the Act, the conditions of release of benefits specified in the following items of the table in Schedule 2 to the *Retirement Savings Accounts Regulations 1997* are prescribed in relation to a fund that is an RSA:

- (a) item 101 (retirement);
- (b) item 102 (death);
- (c) item 102A (terminal medical condition);
- (d) item 103 (permanent incapacity);
- (e) item 105 (severe financial hardship);

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Payment of low balances in inactive accounts to the Commissioner **Part 5**

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- (f) item 106 (attaining age 65);
- (g) item 107 (termination of gainful employment);
- (h) item 108 (temporary incapacity);
- (i) item 110 (attaining preservation age).

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Part 6 Reunification of superannuation balances

Section 13

Part 6—Reunification of superannuation balances

13 Transferring balances to an active account—eligible fund

For the purposes of paragraph 24NA(2)(c) of the Act, the prescribed period is the period:

- (a) beginning on the first day of the financial year immediately preceding the financial year in which the payment by the Commissioner under subsection 24NA(2) of the Act is made; and
- (b) ending on the day immediately preceding the day on which the payment by the Commissioner under subsection 24NA(2) of the Act is made.

14 Transferring balances to an active account—more than one eligible fund

- (1) For the purposes of subsection 24NA(3) of the Act, if:
 - (a) under subsection 24NA(1) of the Act, the Commissioner holds a superannuation amount (within the meaning of that subsection) in respect of a person; and
 - (b) there is more than one fund in relation to which paragraphs 24NA(2)(b), (c), (d) and (e) of the Act are satisfied in respect of the person (there is more than one *eligible fund*);the Commissioner must pay the superannuation amount in respect of the person in accordance with this regulation.
- (2) The Commissioner must pay the superannuation amount in respect of the person to the following eligible fund for crediting to the person:
 - (a) if the Commissioner has made any payment under subsection 17(2) or section 20H, 20QF, 24G or 24NA of the Act to an eligible fund for crediting to the person during the financial year in which the Commissioner pays the superannuation amount under subsection 24NA(2) of the Act:
 - (i) if there is only one such eligible fund—that eligible fund; or
 - (ii) if there is more than one such eligible fund—the eligible fund to which the Commissioner has most recently made any of those payments;
 - (b) if paragraph (a) does not apply—the eligible fund that most recently received an amount in respect of the person during the period consisting of:
 - (i) the financial year in which the Commissioner pays the superannuation amount under subsection 24NA(2) of the Act; and
 - (ii) the immediately preceding financial year;
 - (c) if paragraphs (a) and (b) do not apply—the eligible fund that holds the largest account balance for the person at the end of the last completed financial year preceding the day on which the Commissioner pays the superannuation amount under subsection 24NA(2) of the Act;
 - (d) if paragraphs (a), (b) and (c) do not apply—the eligible fund determined by the Commissioner.

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Part 7—Prescribed public sector superannuation schemes

15 Unclaimed money—prescribed schemes

For the purposes of section 18AA of the Act, each public sector superannuation scheme mentioned in the table is prescribed.

Prescribed public sector superannuation schemes		
Item	Scheme	Act or governing rules under which scheme is established
1	Emergency Services Superannuation Scheme	<i>Emergency Services Superannuation Act 1986</i> (Vic.)
2	New Scheme	<i>State Superannuation Act 1988</i> (Vic.)
3	Revised Scheme	<i>State Superannuation Act 1988</i> (Vic.)
4	State Employees Retirement Benefits Fund	<i>State Employees Retirement Benefits Act 1979</i> (Vic.)
5	Transport Superannuation Fund	<i>Transport Superannuation Act 1988</i> (Vic.)
6	GESB Super (Retirement Access) Scheme	<i>State Superannuation Act 2000</i> (WA)
7	GESB Super Scheme	<i>State Superannuation Act 2000</i> (WA)
8	West State Super Scheme	<i>State Superannuation Act 2000</i> (WA)
9	Police Superannuation Scheme	<i>Police Superannuation Act 1990</i> (SA)
10	SA Ambulance Service Superannuation Scheme	<i>Superannuation Act 1988</i> (SA)
11	SA Metropolitan Fire Service Superannuation Scheme	<i>Superannuation Act 1988</i> (SA)
12	Southern State Superannuation Scheme	<i>Southern State Superannuation Act 2009</i> (SA)
13	Lump Sum Scheme	<i>Superannuation Act 1988</i> (SA)
14	Pension Scheme	<i>Superannuation Act 1988</i> (SA)
15	Super SA Select	Trust Deed and Rules dated 18 December 2012

16 Unclaimed superannuation of former temporary residents—prescribed schemes

For the purposes of section 20JA of the Act, each public sector superannuation scheme mentioned in the table is prescribed.

Prescribed public sector superannuation schemes		
Item	Scheme	Act under which scheme is established
1	Public Sector Superannuation Scheme	<i>Superannuation Act 1990</i>
2	Emergency Services	<i>Emergency Services Superannuation Act 1986</i> (Vic.)

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Part 7 Prescribed public sector superannuation schemes

Section 17

Prescribed public sector superannuation schemes		
Item	Scheme	Act under which scheme is established
	Superannuation Scheme	
3	New Scheme	<i>State Superannuation Act 1988 (Vic.)</i>
4	Revised Scheme	<i>State Superannuation Act 1988 (Vic.)</i>
5	State Employees Retirement Benefits Fund	<i>State Employees Retirement Benefits Act 1979 (Vic.)</i>
6	Transport Superannuation Fund	<i>Transport Superannuation Act 1988 (Vic.)</i>
7	State Public Sector Superannuation Scheme	<i>Superannuation (State Public Sector) Act 1990 (Qld)</i>
8	GESB Super (Retirement Access) Scheme	<i>State Superannuation Act 2000 (WA)</i>
9	GESB Super Scheme	<i>State Superannuation Act 2000 (WA)</i>
10	West State Super Scheme	<i>State Superannuation Act 2000 (WA)</i>

17 Lost member accounts—prescribed schemes

For the purposes of section 24HA of the Act, each public sector superannuation scheme mentioned in the table is prescribed.

Prescribed public sector superannuation schemes		
Item	Scheme	Act under which scheme is established
1	Emergency Services Superannuation Scheme	<i>Emergency Services Superannuation Act 1986 (Vic.)</i>
2	New Scheme	<i>State Superannuation Act 1988 (Vic.)</i>
3	Revised Scheme	<i>State Superannuation Act 1988 (Vic.)</i>
4	State Employees Retirement Benefits Fund	<i>State Employees Retirement Benefits Act 1979 (Vic.)</i>
5	Transport Superannuation Fund	<i>Transport Superannuation Act 1988 (Vic.)</i>
6	GESB Super (Retirement Access) Scheme	<i>State Superannuation Act 2000 (WA)</i>
7	GESB Super Scheme	<i>State Superannuation Act 2000 (WA)</i>
8	West State Super Scheme	<i>State Superannuation Act 2000 (WA)</i>