

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Corporations Act 2001

Retirement Savings Accounts Act 1997

Superannuation Industry (Supervision) Act 1993

Superannuation Laws Amendment (Unclaimed Superannuation Money) Regulation 2015

Section 1364 of the *Corporations Act 2001* (the Corporations Act), section 200 of the *Retirement Savings Accounts Act 1997* and section 353 of the *Superannuation Industry (Supervision) Act 1993* (the Authorising Acts) each provide that the Governor-General may make regulations prescribing matters required or permitted by each of the Authorising Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to each of the Authorising Acts.

The purpose of the *Superannuation Laws Amendment (Unclaimed Superannuation Money) Regulation 2015* (Regulation) is to:

- amend the *Retirement Savings Accounts Regulations 1997* (RSAR) and the *Superannuation Industry (Supervision) Regulations 1994* (SISR) to recognise online and electronic interactions between superannuation providers and members or RSA holders; and to remove the outdated requirement that members be ‘employer-sponsored’ for the purposes of identifying lost members; and
- amend the SISR to allow trustees of eligible rollover funds (ERFs) to transfer member account balances to active accounts in other superannuation funds without a member’s consent and include an exemption for this type of transfer to the significant event disclosure requirements in the *Corporation Regulations 2001* (the Corporations Regulations).

Lost member definitions

The RSAR and the SISR set out the circumstances when an RSA holder or member of a superannuation fund is taken to be a ‘lost RSA holder’ or ‘lost member’. These circumstances include when an RSA holder or member is uncontactable or an inactive member.

The Regulation amends the meaning of ‘lost RSA holder’ and ‘lost member’ in the RSAR and the SISR to: recognise online and electronic interactions between superannuation providers and members; and to remove the employer-sponsored requirement for the purposes of identifying lost members.

Transfers from eligible rollover funds

The SISR provides that a member’s benefits in a superannuation fund must not be transferred from the fund without the member’s consent. However, there are several exceptions to this. The Regulation amends the SISR to include a further exception for

trustees of ERFs to transfer member account balances to active accounts in another superannuation fund without a member's consent.

The Regulation also amends the Corporation Regulations to include an exemption for this type of transfer to the requirement to disclose material changes and significant events in relation to superannuation products and RSAs in the Corporations Regulations.

Details of the Regulation are set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after registration. Items 2 and 3, and 5 to 7 apply on and after 30 June 2016. Item 8 applies to transfers of benefits made on or after the day the Regulation commences.

Details of the Superannuation Laws Amendment (Unclaimed Superannuation Money) Regulation 2015

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Superannuation Laws Amendment (Unclaimed Superannuation Money) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides that each provision of the Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Section 3 – Authority

This section provides that the Regulation is made under the *Corporations Act 2001*, the *Retirement Savings Accounts Act 1997* and the *Superannuation Industry (Supervision) Act 1993* (SISA).

Section 4 – Schedule

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

Schedule 1 – Amendments

Lost member definitions

The Regulation amends the *Retirement Savings Accounts Regulations 1997* (RSAR) and the *Superannuation Industry (Supervision) Regulations 1994* (SISR) to amend the definitions of ‘lost RSA holder’ and ‘lost member’ to recognise online and electronic interactions between superannuation providers and members and to remove the outdated requirement that members be ‘employer-sponsored’ for the purposes of identifying lost members.

Regulation 1.06 of the RSAR and regulation 1.03A of the SISR set out the meanings of ‘lost RSA holder’ and ‘lost member’. Both terms have similar meanings and set out the circumstances when a member of a superannuation fund or RSA holder is taken to be a lost member. These circumstances include when a member or RSA holder is ‘uncontactable’ or an ‘inactive member or ‘inactive RSA holder’.

A member or RSA holder is ‘uncontactable’ if:

- the fund or RSA provider has never had an address for the member; or
- a written communication has been sent by the fund or RSA provider to the member or RSA holder’s last known address and returned unclaimed; and
- the fund or RSA provider has not received a contribution or rollover in respect of the member or RSA holder within the last 12 months.

A member or RSA holder is an ‘inactive member’ or ‘inactive RSA holder’ if:

- they have been a member of the fund or an RSA holder for more than two years; and

- the fund or RSA provider has not received a contribution or rollover in respect of the member in the last 5 years.

A member of a superannuation fund must also have joined the fund as a standard employer-sponsored member to be an inactive member.

Items 2 and 5 of the Regulation will amend the circumstances when an RSA holder or member is ‘uncontactable’, and therefore a lost RSA holder or lost member, to specifically exclude circumstances where the RSA holder or member has interacted with the RSA provider or fund within the last 12 months in a format other than written communication. For example, if a member has used their superannuation fund’s website to access their account or update their contact details.

Items 3 and 7 of the Regulation will provide clarity that written communications for the purposes of the definition of a lost RSA holder or lost member can include a written communication by non-electronic or electronic means. This would include a written communication sent by the provider or fund to an electronic address for the account holder or member for the purposes determining whether an RSA holder or member is ‘uncontactable’ under sub-subparagraph 1.06(1)(a)(i)(B) of the RSAR and sub-subparagraph 1.03A(1)(a)(i)(B) of the SISR.

Item 6 of the Regulation amends paragraph 1.03A(1)(b) of the SISR to remove the outdated requirement that an inactive lost member of a superannuation fund must have joined the fund as a standard employer-sponsored member. A member is an employer-sponsored member if an employer-sponsor contributes under an arrangement between the employer-sponsor and the fund.

Transfers from eligible rollover funds

The Regulation amends the SISR to allow trustees of ERFs to transfer member account balances to active accounts in other superannuation funds or with an RSA provider without consent. ERFs are superannuation entities that operate as temporary repositories for the superannuation of members who have lost connection with their superannuation accounts.

Regulation 6.29 of the SISR provides that a member’s benefits in a fund must not be transferred from the fund unless the member has given their consent to the transfer. However, transfers to successor funds and certain transfers under prudential standards in the SISA are permitted without the member’s consent.

Item 8 of the Regulation amends regulation 6.29 of the SISR to include an exception for trustees of eligible rollover funds to transfer a member’s superannuation interest in the fund to an active account without the member’s consent. A transfer will only be permitted if the trustee of the ERF believes, on reasonable grounds, that the member has an interest in the receiving fund or with the RSA provider and the receiving fund or RSA provider has received at least one contribution or rollover in respect of the member within the last 12 months. It is envisaged that a trustee of an ERF taking advantage of this exception would have an agreement with the receiving fund or RSA provider to share information for this purpose.

Ongoing disclosure exemption

Section 1017B of the Corporations Act imposes an ongoing obligation on issuers of financial products to notify the holders of a product of material changes or significant events in relation to products. Part 10 of Schedule 10A of the Corporations

Regulations modifies the requirements of section 1017B of the Corporations Act in relation to superannuation products and retirement savings accounts.

For superannuation products these events include a transfer of a member to a different category of membership or to a different fund, including a transfer of a member benefits without their consent. An issuer of a superannuation or RSA product is also required to notify members of these events, as soon as it is practicable, prior to the transfer of the benefits taking place.

In the case of the transfers of a superannuation interest in an ERF, prior notification may not be possible or practicable, particularly where the member of the eligible rollover fund was transferred to the eligible rollover fund as a lost member.

Item 1 of the Regulation amends the Corporations Regulations to include an exemption for transfers from ERFs to the requirement to notify members about material changes and significant events in relation to superannuation products and RSAs. However, this does not preclude ERFs from notifying affected members where possible.

Commencement provisions

The Regulation commences on the day after registration. Items 4 and 9 of the Regulation are the application provisions. Items 2 and 3 and 5 to 7 apply on and after 30 June 2016. Account balances of lost RSA holders or lost members meeting the new definition on 30 June 2016 will need to be reported, and in the case of small lost accounts also paid, to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and corresponding regulations generally by 31 October 2016 (unless the lost RSA holder or lost member is found).

Item 8 applies to transfers of benefits made on or after the day the Regulation commences.