

Unclaimed Money (Superannuation and RSA Providers) Amendment and Expiry Bill 2013

Explanatory Memorandum

The changes in the Unclaimed Money (Superannuation and RSA Providers) Amendment and Expiry Bill 2013 (the Bill), provide for the transfer of the stock and ongoing responsibility, of lost and unclaimed superannuation money held by Western Australian public authorities and public sector superannuation schemes to the Australian Taxation Office (ATO). This follows agreement between the Commonwealth and the States and Territories to centralise unclaimed superannuation within the ATO, in order to facilitate superannuation fund members being reunited with their lost and unclaimed superannuation.

Unclaimed superannuation is generally a Commonwealth responsibility, through the operation of its Superannuation (Unclaimed Money and Lost Members) Act 1999 (SUMMLA). The term 'unclaimed superannuation money' under the SUMMLA refers to three types of unclaimed money:

- 'general' unclaimed superannuation money, being superannuation money held by a superannuation provider which belongs to a member who has turned 65 years of age, has made no contributions for two years and has not been contactable by the fund for five years;
- unclaimed superannuation of former temporary residents; and
- lost member accounts; that is, small accounts of lost members and inactive accounts of unidentifiable members meeting the relevant criteria under the SUMMLA.

Small or insoluble lost member accounts

From 30 December 2012, a lost member account of a fund is taken to be unclaimed super if it does not relate to a defined benefit interest, the member is a lost member, and;

- the balance of the lost member account is less than \$2,000 (small lost member account), or
- the lost member account has been inactive for a period of 12 months, and the provider is satisfied that it will never be possible to pay an amount to the member (insoluble lost member account).

A person is taken to be a lost member if they are either **uncontactable** or **inactive** (as defined in regulations).

Uncontactable

For a member to be considered uncontactable, the fund must not have received a contribution or rollover for them within the last 12 months and either:

- the fund has never held an address for the member
- two written communications have been returned unclaimed. Note that if one written communication has been sent to the last known address and returned unclaimed, the trustees may choose to class the member as uncontactable.

Inactive

The individual must have joined the fund as a standard employer-sponsored member at the fund, and the fund not received any contributions or rollovers from or for them within the past five years.

Further, the Commonwealth has flagged further increases to the threshold to \$2,500 from 31 December 2015 and \$3,000 from 31 December 2016.

Implementation of the transfer proposal, will bring public sector unclaimed superannuation arrangements into line with those arrangements applying to superannuation schemes regulated under the Commonwealth's *Superannuation Industry (Supervision) Act 2003* (SIS Act). The SIS Act regulated schemes have been required to transfer unclaimed superannuation that meets the SUMLMA definition to the ATO since 1 July 2007.

The unclaimed superannuation money held in Western Australia that will be subject to transfer to the ATO arises from two sources:

1. unclaimed superannuation money paid to the Department of Treasury up until 30 June 2007 under the *Unclaimed Money (Superannuation and RSA Providers) Act 2003* (UMA), that has not been paid to a claimant at the transfer implementation date; and
2. unclaimed superannuation money paid under the *State Superannuation Act 2000* (SSA) that is held in the Government Employees Superannuation (GES) Fund administered by the Government Employees Superannuation Board (GESB), in relation to members of GESB accumulation schemes, prescribed under regulations to the SUMLMA for inclusion in the transfer regime.

Further details on the above unclaimed superannuation sources under the respective statutes are provided in the next sections.

Unclaimed Money (Superannuation and RSA Providers) Act 2003 (UMA)

Up until 30 July 2007, private superannuation providers registered in Western Australia were required under the UMA to pay unclaimed superannuation, meeting the SUMLMA definition of 'unclaimed superannuation' to the State Treasurer.

Following amendments to the SUMLMA by the Commonwealth effective from 1 July 2007, unclaimed superannuation previously paid to a State or Territory Treasurer by private sector funds under State or Territory legislation, was instead required to be paid to the ATO from this date.

Unclaimed superannuation collected under the UMA to 30 June 2007, which has not been paid to a claimant at the transfer implementation date, will be subject to transfer to the ATO. These monies are held in the Consolidated Account and are administered by Treasury.

State Superannuation Act 2000 (SSA)

The second source of State-held lost and unclaimed superannuation, relates to superannuation paid to public sector employees under the SSA, that is held in the GES Fund administered by the GESB.

Under the transfer arrangements, transferral to the ATO of lost and unclaimed superannuation monies held in the GES Fund, will only apply in relation to monies of members of those GESB-administered superannuation schemes prescribed by regulation under the SUMLMA for inclusion in the transfer regime. The GESB schemes prescribed under the SUMLMA for this purpose are the West State Super, GESB Super and GESB Super (Retirement Access) schemes.

The transfer of lost and unclaimed superannuation from the GES Fund to the ATO involves:

- an initial transfer of the stock of accumulated lost and unclaimed superannuation in the GES Fund meeting the SUMLMA definition at the transfer implementation date, in relation to members of the prescribed GESB schemes above; and
- subsequent ongoing transfers of lost and unclaimed superannuation monies in the above schemes meeting the SUMLMA definition, in accordance with ATO reporting and payment requirements.

Overview of amendments in the Bill

Amendments to the *Unclaimed Money (Superannuation and RSA Providers) Act 2003 (UMA)*

Reference

Bill	Page number(s)	3 - 5
	Clause number(s)	3,4 and 5

Comment

The changes in the Bill:

- insert new definitions into the UMA, that refer to appropriate parts of the SUMLMA relevant to the transfer of unclaimed superannuation held by public authorities to the ATO;

- insert provisions into the UMA relating to payment by the Treasurer, of unclaimed superannuation held in the Consolidated Account, to the Commonwealth Commissioner for Taxation and delivery to the Commissioner of all individual superannuation fund member records and documents associated with this payment; and
- provide for the expiry of the UMA once the above has occurred, on the basis that the UMA is no longer relevant when the State has transferred unclaimed superannuation monies under administration of its public sector authorities to the Commonwealth.

Amendments to the *State Superannuation Act 2000 (SSA)*

Reference

Bill	Page number(s)	6 - 7
	Clause number(s)	6 and 7

Comment

The changes in the Bill:

- amend the relevant sections of the SSA to provide for another category of authorised payments from the GES Fund, being payments of lost and unclaimed superannuation monies to the ATO;
- insert new definitions into the SSA that refer to appropriate parts of the SUMLMA relevant to the transfer of lost and unclaimed superannuation held by public sector superannuation funds to the ATO; and
- provide for regulations to be made pursuant to the SSA in relation to administrative matters associated with the transfer to the ATO of benefits in the GESB schemes prescribed for this purpose under the SUMLMA, and closure of impacted members' accounts after the transfer.

Clause Notes

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

PART 1 – PRELIMINARY	
Clause 1 <i>Short title</i>	This clause titles the legislation as the <i>Unclaimed Money (Superannuation and RSA Providers) Amendment and Expiry Act 2013</i> (the Amendment Act).
Clause 2 <i>Commencement</i>	This clause provides for the Amendment Act to come into operation as follows – <ul style="list-style-type: none"> (a) sections 1 and 2 – on the day on which the Amendment Act receives the Royal Assent; and (b) the rest of the Amendment Act – on a day fixed by proclamation, and different days may be fixed for different provisions.

PART 2 - UNCLAIMED MONEY (SUPERANNUATION AND RSA PROVIDERS) ACT 2003 AMENDED	
Clause 3 <i>The Act amended</i>	This clause clarifies that this part of the Amendment Act amends the <i>Unclaimed Money (Superannuation and RSA Providers) Act 2003 (UMA)</i> .
Clause 4 <i>Section 4 amended</i>	<p>Section 4 provides the meanings of terms used in UMA.</p> <ul style="list-style-type: none"> • <u>Subclause 4(1)</u> deletes the existing definition of unclaimed money from section 4 because of style inconsistency (this term is re-inserted into section 4 in its correct format under subclause 4(2) below). • <u>Subclause 4(2)</u> inserts into section 4 the terms used for interpretation in relation to the transfer of unclaimed superannuation monies collected under the UMA to the ATO.
Clause 5 <i>New sections 27 and 28 inserted</i>	<p>New sections 27 and 28 are inserted after existing section 26 to provide, respectively, for the logistical aspects of the transfer of unclaimed superannuation collected under the UMA to the ATO (“winding up”) and the expiry of the UMA once the transfer has occurred. A summary of the provisions in these new sections is given below.</p> <p>New section 27 – Winding up:</p> <ul style="list-style-type: none"> • Payments of unclaimed monies by the Treasurer to a claimant under the UMA will cease once the Amendment Act comes into operation. • Unclaimed monies collected under the UMA still held in the Consolidated Account at the transfer date are to be paid to the ATO within the time frame specified in section 15A of the Commonwealth Act (SUMLMA). • All relevant records and documentation associated with the above payment are to be provided to the ATO by the Treasurer at the time of the payment. • Payments under this section are to be charged to the Consolidated Account and appropriated accordingly.
Clause 5 <i>New sections 27 and 28 inserted</i> (continued)	<p>New section 28 – Act to expire:</p> <ul style="list-style-type: none"> • Provides for expiry of the UMA once the transfer of unclaimed monies to the ATO pursuant to new section 27 has been made. • The above will occur once: <ul style="list-style-type: none"> - the Treasurer is satisfied there is no reason for the UMA to continue; and - a notice to this effect is published in the Government Gazette, upon which the UMA will expire at the end of the day on which the notice is published.

PART 3 – STATE SUPERANNUATION ACT 2000 AMENDED	
<p>Clause 6 <i>The Act amended</i></p>	<p>This clause clarifies that this part of the Amendment Act amends the <i>State Superannuation Act 2000</i> (SSA).</p>
<p>Clause 7 <i>Section 38 amended</i></p>	<p>Section 38 provides that regulations may be made in relation to the items specified in subsection 38(2). This includes benefits and how they are paid or dealt with.</p> <ul style="list-style-type: none"> • <u>Subclause 7(1)</u> is a consequential grammatical amendment as a result of the changes in subclause 7(2) below. • <u>Subclause 7(2)</u> inserts new subsection 38(4)(d) after existing subsection 38(4)(c)(ii), in recognition of a new category of benefit payments from the Government Employees Superannuation (GES) Fund, being payment of lost and unclaimed superannuation to the ATO in relation to members of the GES Fund. • <u>Subclause 7(3)</u> deletes existing subsection 38(5D) containing terms used for interpretation for the purposes of the deleted subsection. These terms are reinserted in new subsection 38(9), which contains in the one place all the interpretive terms used for the purposes of section 38 (see subclause 7(6) below). • <u>Subclause 7(4)</u> deletes existing subsection 38(5F) containing terms used for interpretation for the purposes of the deleted subsection. These terms are reinserted in new subsection 38(9), which contains in the one place all the interpretive terms used for the purposes of section 38 (see subclause 7(6) below). • <u>Subclause 7(5)</u> inserts new subsection 38(6A), after existing subsection 38(5) to provide for any regulations needed to be made under the SSA in support of the transfer to the ATO, of unclaimed monies belonging to members of those GESB schemes prescribed under the SUMLMA for inclusion in the transfer regime. The regulations pertain to providing relevant information to the ATO, the making of payments or any other thing associated with meeting the requirements of the SUMLMA, and closure of impacted members' accounts after the transfer. • <u>Subclause 7(6)</u> inserts new subsection 38(9) after existing subsection 38(8), which contains in the one place all interpretive terms used for the purposes of section 38.