

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 319**

Issued by the Authority of the Deputy Prime Minister and Treasurer

*Banking Act 1959*

*First Home Saver Accounts Act 2008*

*Banking Sector Legislation Amendment Regulation 2012 (No. 1)*

Both section 71 of the *Banking Act 1959* (Banking Act) and section 131 of the *First Home Saver Accounts 2008* (FHSA Act) provide, in part, 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.

#### **Amendment of *Banking Regulations 1966***

Under subsection 69(1B) of the Banking Act, moneys to the credit of an account specified in the regulations are unclaimed moneys if, and only if, the conditions specified in the regulations are specified. The amendments to the regulation specify conditions for a number of accounts to become unclaimed moneys.

***Linked Accounts*** A linked account is an account which is opened or maintained as a premise of opening and maintaining another account in the same authorised deposit-taking institution (ADI). The other account is also a linked account. The accounts are linked in accordance with the terms and conditions of either or both the accounts.

If an account is linked to another account which is opened in a different ADI, neither of accounts are linked account for this regulation. A linked account is assessed as unclaimed only when the account and its linked account/s have no deposits and withdrawals for at least three years.

An offset account is a deposit account that is linked to a loan or other borrowings. The balance of the offset account is typically set off against the balance of the loan when calculating interest on the loan. If an offset account is linked to another account (e.g. a loan account) and it is a requirement of the offset account that the account holder must hold or maintain another account (e.g. the loan account) with the same ADI, the offset account will meet the definition of a linked account and only treated as unclaimed moneys if neither the loan nor the offset account has had a deposit or withdrawal (other than the debiting of a fee or the crediting of interest) for a period of at least three years.

***Sub Accounts*** A sub account is an account which is operated or maintained as part of an account (the parent account). A parent account could include a number of sub accounts. A sub account is assessed as unclaimed only when the sub account and the parent account and all other sub accounts have no deposits and withdrawals for at least three years. If the sub account or the parent account or any one of the other sub accounts has a deposit or withdrawal within the three years, the sub account should not be assessed as unclaimed.

***Frozen Accounts*** A frozen account is an account that is not allowed to accept deposits and withdrawals by order of a court or the operation of a law. This includes arrangements that are equivalent in substance, such as where transactions are restricted by a court or a tribunal or are only

allowed with the permission of a court or a tribunal. While the account remains frozen, it will not meet the condition that there have been no withdrawals or deposits for three years after the account was unfrozen.

A frozen account is assessed as unclaimed only when the account has no deposits or withdrawals for at least three years after the account has been unfrozen. That means the inactive period of three years for a frozen account starts when the order or operation of a law ceases effect and the account regains the ability to accept deposits and withdrawals.

**Children's Accounts** A children's account is an account which meets both of the following conditions: the terms and conditions of the account specifies that the account should be held by or for the benefit of a person under 18; and the account is opened in the name of a person who is under 18 at the time of opening or by the trustee of a trust for the benefit of a person who is under 18 at the time. A children's account is assessed as unclaimed only when the account has no deposits or withdrawals for a period of seven years.

**Term Deposits** Subsection 69(1B) of the Banking Act provides that subsection 69(1) and 69(1A) do not apply to a deposit specified in the regulations. Term deposits are specified under subsection 69(1B). This means a term deposit is not an account to which subsections 69(1) or 69(1A) apply and therefore is excluded from the capture of unclaimed moneys.

#### **Amendment of *First Home Saver Accounts Regulations 2008***

Subsection 17A(3) of the FHSA Act states that the regulations may provide that the balance of a specified First Home Saver Account (FHSA) held by a person is unclaimed money only if the specified conditions are satisfied. The amendments to the regulation set the conditions for FHSAs to become unclaimed money.

All FHSAs are specified for subsection 17A(3). The specified FHSAs must meet one of the requirements in subparagraphs 32(1)(c)(i) to (iii) of or one of the requirements in subparagraphs 32A(1)(e)(i) to (iii) of the FHSA Act to become unclaimed. Moneys can only be paid out of a FHSA where contributions (or deemed contributions) have been made in at least four financial years. To ensure the intent of the FHSA Act is met, accounts must meet the specified requirements (i.e. the *4 year requirement*) before the unclaimed money provisions will apply.

The specified FHSAs must also meet the three year inactive period to become unclaimed. The whole inactive three year period will count after the *4 year requirement* is met. The inactive three year period only starts counting when the account holder is eligible to receive a payment from the FHSA. However, if the FHSA holder stops making contributions, then restarts contributions, the inactive period will restart. The FHSA will not become unclaimed moneys if the 4 year requirement is not met, even if no contributions have been made for three years.

Examples illustrating under what circumstances moneys can be considered as unclaimed are at [Attachment B](#).

Consultations were undertaken with the Australian Bankers' Association, Abacus – Australian Mutuals and ADIs on the specified conditions for the accounts to become unclaimed moneys. The Regulation has been introduced in response to the matters identified during these consultations.

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

The Regulation commences on the day after it is registered.

## **ATTACHMENT A**

### **Details of the *Banking Sector Legislation Amendment Regulation 2012 (No. 1)***

#### **Section 1 – Name of Regulation**

This section specifies the name of the Regulation as the *Banking Sector Legislation Amendment Regulation 2012 (No. 1)*

#### **Section 2 – Commencement**

This section provides that the Regulation commence on the day after it is registered.

#### **Section 3 – Amendment of *Banking Regulations 1966***

This section provides that Schedule 1 amends the *Banking Regulations 1966*.

#### **Schedule 1 – Amendments**

Item 1 inserts a Miscellaneous section which includes Regulation 20 and 21. Regulation 20 sets specified conditions for linked accounts, sub accounts, frozen accounts and children's accounts to become unclaimed. Regulation 21 excludes a term deposit from being assessed as unclaimed money.

#### **Section 4 – Amendment of *First Home Saver Accounts Regulations 2008***

This section provides that Schedule 2 amends the *First Home Saver Accounts Regulations 2008*.

#### **Schedule 2 – Amendments**

Item 1 inserts Part 1A (Key concepts and other definitions) which consist of Regulation 3A that sets the conditions for a FHSA being assessed as unclaimed money.

A specified FHSA is a FHSA that meets the four year requirement in subsection 32(1)(c) or 32A(1)(3) of the FHSA Act. A specified FHSA will only be unclaimed money when no contributions have been made for three years after the four year requirement has been met.

## **ATTACHMENT B**

### ***Linked Accounts***

Example 1: As part of the terms and conditions of its online savings account, ABC Credit Union requires that, to open or maintain an online savings account, an account holder must also hold a transaction account with ABC Credit Union. As holding the transaction account is a condition of holding the online account, the transaction account and the online account are both linked accounts.

Example 2: XYZ bank requires customers that hold an XYZ Bank online account can only transact via a transaction account. It does not require that the transaction account must also be held with XYZ Bank, but does require that the details of the transaction account must be registered with XYZ Bank. In this case, neither account is a linked account for the purposes of this regulation as it is not a condition of the online account that the transaction account must be held with XYZ Bank.

Example 3: The above ABC Credit Union's transaction and online savings accounts are unclaimed only when both of them have no deposits and withdrawals for three years. If either of them has at least a deposit or withdrawal transaction (other than interest or fees) within the three years, neither of them should be assessed as unclaimed moneys.

### ***Children's Accounts***

Example 4: ABC bank offers a youth account.

- If the terms and conditions specify that the account may only be held by or for a person under age 16, and if a person of age 14 (or a trustee on the person's behalf) opens the account, then the account is a children's account.
- If the terms and conditions specify that the account may only be held by a person between the ages of 12 and 21, then the account is not a children's account, regardless of the age of the account holder.
- If the terms and conditions specify that the account may only be held by or for a person under the age of 18, but the account holder (or beneficiary) has turned 19 (thus putting them in breach of the terms of the account), the account is not a children's account.
- If the term and conditions do not specify that the account is for a person under age 18, in spite of a person's age, the account is not a children's account.

### ***FHSAs***

Example 5: Hannah opens a FHSA and makes a contribution in each of 2012-13, 2013-14, 2014-15 and 2015-16. She does not make any further contributions. After the third year of no contributions (2018-19), the account then becomes unclaimed money and will be transferred to ASIC.

However, if Hannah opens a FHSA and makes contributions in each of 2012-13 and 2014-15, no contributions in each of 2015-16 and 2016-17 and then makes contributions in 2017-18 and 2018-19, the account will only become unclaimed money if Hannah makes no contributions for three further years (2021-22).

Example 6: Shawn opens a FHSA and makes a contribution in the first year, 2012-13. He makes no contribution in 2013-14. In 2014-15, Shawn purchases a house and is deemed to have made a

contribution (in accordance with subsection 32A(e)(i)) in 2014-15, 2015-16 and 2016-17. The account will only become unclaimed monies if no contributions are made for three years after 2016-17.

Example 7: Campbell opens a FHSA and makes one contribution. He makes no contributions for four years. The FHSA would not be unclaimed money because the four year requirement has not been met.

# **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

## ***Banking Act 1959***

### ***First Home Saver Accounts Act 2008***

#### ***Banking Sector Legislation Amendment Regulation 2012 (No. 1)***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Subsection 69(1B) of the Banking Act 1959 (Banking Act) allows regulations to set specific conditions for certain accounts to be assessed as unclaimed moneys. The Regulation will set the specific conditions for linked accounts, sub accounts, frozen accounts and children's accounts to be assessed as unclaimed moneys.

Subsection 69(1E) of the Banking Act allows regulations to exclude certain deposits from applicable to unclaimed moneys provisions. A term deposit is specified in the Regulation.

Subsection 17A(3) of the First Home Savers Accounts Act 2008 allows regulations to set specific conditions for a First Home Saver Account to be assessed as unclaimed. The Regulation sets the specific conditions.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Mr Wayne Swan, Deputy Prime Minister and Treasurer**