



# **Superannuation (Unclaimed Money and Lost Members) Act 1999**

**No. 127, 1999**

## **Compilation No. 34**

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## About this compilation

### This compilation

This is a compilation of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* that shows the text of the law as amended and in force on 23 June 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**An Act to provide for a register of unclaimed money, a register of lost members for superannuation funds and certain payments relating to superannuation, and for related purposes**

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

**2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

**3 Application**

Part 3 does not apply in respect of the half-year in which this Act receives the Royal Assent.

**4 Act to bind Crown**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Act permits the Crown to be prosecuted for an offence.

**5 Extension to Territories**

This Act extends to all the external Territories.

## 6 Objects of Act

The objects of this Act are to provide for:

- (a) the keeping of registers of details relating to:
  - (i) unclaimed money; and
  - (ii) certain amounts relating to superannuation of persons (*former temporary residents*) who used to be holders of temporary visas under the *Migration Act 1958* and have left Australia; and
  - (iii) certain amounts relating to superannuation of persons who used to be lost members;so that the money and amounts can be claimed by persons entitled to them; and
- (b) the keeping of a register of details relating to lost members, so that the benefits of lost members can be claimed by persons entitled to them; and
- (c) the matching of unclaimed money and persons entitled to it; and
- (d) the matching of benefits of lost members and persons entitled to them; and
- (da) the matching of benefits of inactive low-balance account members and persons entitled to them; and
- (e) the payment to the Commissioner of:
  - (i) unclaimed money; and
  - (ii) certain amounts relating to superannuation of former temporary residents; and
  - (iii) certain amounts relating to superannuation of lost members; and
  - (iv) certain amounts relating to superannuation of inactive low-balance account members; and
- (ea) the safekeeping of such money and amounts paid to the Commissioner until the Commissioner can pay the money and amounts to persons entitled to them; and
- (eb) the payment of:
  - (i) unclaimed money; and

- (ii) certain amounts relating to superannuation of lost members; and
- (iii) certain amounts relating to superannuation of inactive low-balance account members;  
into funds in which the member is active; and
- (f) the co-ordination of the collection of unclaimed money between the Commonwealth, States and Territories; and
- (g) the co-ordination of the matching of unclaimed money and persons entitled to it between the Commonwealth, States and Territories.

## 7 Outline of Act

The following is a simplified outline of this Act.

### *Unclaimed money register*

At the times determined by the Commissioner, superannuation providers must give the Commissioner of Taxation details relating to any unclaimed money they hold in respect of members who have reached the eligibility age or who have died.

Unclaimed money is money in an inactive account which the superannuation provider is unable to ensure is received by a person entitled to receive it.

Superannuation providers must pay to the Commissioner of Taxation any unclaimed money they hold. Later, the Commissioner must, if satisfied that it is possible to do so, pay the amount he or she has received in respect of a person to:

- (a) the person; or
- (b) to a fund identified by the person; or
- (c) if the person has died—to the person's death beneficiaries or legal personal representative.

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If a State or Territory law regulates unclaimed money in a way consistent with this Act, superannuation providers that are trustees of public sector superannuation schemes may give details relating to the money, and pay the money, to the relevant State or Territory authority instead of paying it to the Commissioner of Taxation.

The Commissioner of Taxation may publish, or make available, details relating to unclaimed money in respect of members who have reached the eligibility age or who have died.

*Superannuation of former temporary residents*

The Commissioner of Taxation must give the superannuation provider for a fund a notice identifying a member of the fund if satisfied that the member is a former temporary resident.

The superannuation provider must give the Commissioner a statement and pay the Commissioner the amount that would be payable to the member if the member had requested payment in connection with leaving Australia (subject to reductions for amounts paid or payable from the fund in respect of the member).

If the Commissioner is satisfied he or she has received a payment under this Act for such a member, the Commissioner must pay the amount he or she has received (and interest, in some cases) to the member, to a fund identified by the member or, if the member has died, to the member's death beneficiaries or legal personal representative.

The Commissioner of Taxation may publish, or make available, details relating to amounts paid to the Commissioner in respect of such members.

*Lost members register*

The Commissioner of Taxation may publish, or make available, details relating to lost members.

*Superannuation of lost members*

At the times determined by the Commissioner, superannuation providers must give the Commissioner of Taxation details relating to:

- (a) small accounts of lost members; and
- (b) inactive accounts of unidentifiable lost members.

Superannuation providers must pay to the Commissioner of Taxation the value of any such accounts. Later, the Commissioner must, if satisfied that it is possible to do so, pay an amount he or she has received in respect of a person:

- (a) to a fund identified by the person; or
- (b) if the person has reached eligibility age or the amount is less than \$200—to the person; or
- (c) if the person has died—to the person's death beneficiaries or legal personal representative.

*Superannuation of inactive low-balance members*

At times determined by the Commissioner, superannuation providers must give the Commissioner of Taxation details relating to inactive low-balance accounts.

Superannuation providers must pay to the Commissioner of Taxation the value of any such accounts. Later, the Commissioner must, if satisfied that it is possible to do so, pay an amount the Commissioner has received in respect of a person:

- (a) to a fund identified by the person; or
- (b) if the person has reached eligibility age or the amount is less than \$200—to the person; or
- (c) if the person has died—to the person's death beneficiaries or legal personal representative.

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*Reunification of amounts held by the Commissioner*

If, having taken the steps required in relation to unclaimed amounts, or amounts held by the Commissioner for lost members or inactive low-balance members, the Commissioner still holds an amount, the Commissioner must pay that amount to a fund in which the member for whom the Commissioner holds the amount is active, or in accordance with the regulations.

*Prescribed public sector superannuation schemes*

The trustees of certain public sector superannuation schemes may comply with this Act in the same way as superannuation providers.

## Part 2—Interpretation

### 8 Definitions

In this Act, unless the contrary intention applies:

**account**, in a fund that is an RSA, means:

- (a) if the RSA is an account—that account; or
- (b) if the RSA is a policy (within the meaning of the RSA Act)—that policy.

**accrue**, in relation to a benefit for a member of a defined benefits superannuation scheme, has the meaning given by section 9.

**ADI** (authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

**annuity** has the same meaning as in the SIS Act.

**approved deposit fund** has the same meaning as in the SIS Act.

**approved form** has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

**choice product** has the same meaning as in the SIS Act.

**Commissioner** means the Commissioner of Taxation.

**Commonwealth public sector superannuation scheme** means a scheme for the payment of superannuation, retirement or death benefits, where the scheme is established:

- (a) by or under a law of the Commonwealth; or
- (b) under the authority of:
  - (i) the Commonwealth; or
  - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth.

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**contribution** includes a deposit into an account held at an ADI or a prescribed financial institution and a payment of a premium to a life insurance company.

**data processing device** means any article or material (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device.

**defined benefit member** means a member entitled, on retirement or termination of his or her employment, to be paid a benefit defined, wholly or in part, by reference to either or both of the following:

- (a) the amount of:
  - (i) the member's salary at a particular date, being the date of the termination of the member's employment or of the member's retirement on an earlier date; or
  - (ii) the member's salary averaged over a period before retirement;
- (b) a stated amount.

**defined benefits superannuation scheme** means:

- (a) a public sector superannuation scheme that:
  - (i) is a regulated superannuation fund or an exempt public sector superannuation scheme; and
  - (ii) has at least one defined benefit member; or
- (b) a regulated superannuation fund (other than a public sector superannuation scheme):
  - (i) that has at least one defined benefit member; and
  - (ii) some or all of the contributions to which are not allocated to any individual member but are paid into and accumulated in the fund in the form of an aggregate amount.

**eligibility age** has the meaning given by section 10.

**eligible service period** has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

**engage in conduct** means:



- (a) do an act; or
- (b) omit to perform an act.

***exempt public sector superannuation scheme*** has the same meaning as in section 10 of the SIS Act.

***financial sector supervisory agency*** has the same meaning as in section 3 of the *Australian Prudential Regulation Authority Act 1998*.

***former temporary resident*** has the meaning given by section 20AA.

***fund*** means:

- (a) a regulated superannuation fund; or
- (b) an approved deposit fund; or
- (c) an RSA.

***general interest charge*** means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

***governing rules***:

- (a) in relation to a fund (other than an RSA), scheme or trust—means any trust instrument, other document or legislation, or combination of them, governing the establishment and operation of the fund, scheme or trust; and
- (b) in relation to a fund that is an RSA—means the terms and conditions of the RSA.

***half-year*** means a period of 6 months ending on 30 June or 31 December.

***holder*** has the same meaning as in the RSA Act.

***inactive low-balance account***: see subsections 20QA(1) and (1A).

***inactive low-balance member*** has the meaning given by subsection 20QA(2).

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**inactive low-balance product** has the meaning given by subsection 20QA(3).

**leave Australia** has the same meaning as in the *Migration Act 1958*.

**legal personal representative** of a person who has died means an executor or administrator of the person's estate.

**life insurance company** means:

- (a) a body corporate registered under section 21 of the *Life Insurance Act 1995*; or
- (b) a public authority:
  - (i) that is constituted by a law of a State or Territory; and
  - (ii) that carries on life insurance business within the meaning of section 11 of that Act.

**lost member** means a member of a fund who is:

- (a) a lost RSA holder within the meaning of the *Retirement Savings Accounts Regulations 1997*; or
- (b) a lost member within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*.

**lost member account** has the meaning given by section 24B.

**member** means:

- (a) a member of a superannuation fund; or
- (b) a depositor with an approved deposit fund; or
- (c) a holder of an RSA.

**MySuper product** has the same meaning as in the SIS Act.

**non-member spouse** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

**payment split** means a payment split under Part VIII B of the *Family Law Act 1975*.

**pension** has the same meaning as in the SIS Act.

**premises** includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) any land or place (whether enclosed or built on or not); and
- (c) a part of a structure, building, aircraft, vehicle or vessel or of such a place.

**premium** means a premium in respect of a policy (within the meaning of the *Life Insurance Act 1995*) and includes an instalment of premium.

**prescribed financial institution** means a body prescribed by the regulations for the purposes of this definition.

**produce** includes permit access to.

**public sector superannuation scheme** has the same meaning as in the SIS Act.

**regulated exempt public sector superannuation scheme** has the same meaning as in Part 25A of the SIS Act.

**regulated superannuation fund** has the same meaning as in the SIS Act.

**RSA** has the same meaning as in the RSA Act.

**RSA Act** means the *Retirement Savings Accounts Act 1997*.

**RSA provider** has the same meaning as in the RSA Act.

**scheduled statement day** has the meaning given by:

- (a) in relation to a statement required by Part 3, 3B or 4A—section 15A; and
- (b) in relation to a statement required by Part 3A—section 20B.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.

**splittable payment** has the same meaning as in Part VIIIIB of the *Family Law Act 1975*.

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**State or Territory authority** means a State, a Territory, an authority of a State or an authority of a Territory.

**State or Territory public sector superannuation scheme** has the meaning given by subsection 18(7).

**Superannuation Complaints Tribunal** means the Superannuation Complaints Tribunal established by the *Superannuation (Resolution of Complaints) Act 1993*.

**superannuation fund** has the same meaning as in the SIS Act.

**superannuation interest** means:

- (a) an interest in a superannuation fund; or
- (b) an interest in an approved deposit fund; or
- (c) an RSA.

**superannuation provider** means:

- (a) the trustee of a regulated superannuation fund; or
- (b) the trustee of an approved deposit fund; or
- (c) an RSA provider.

**tax file number** has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

**trustee** has the same meaning as in the SIS Act.

**unclaimed money** has the meaning given by sections 12 and 14.

**unclaimed money day** has the meaning given by section 15A.

**unfunded public sector scheme** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992*.

## 9 Accrual of benefits in defined benefits superannuation schemes

In this Act, a reference to an accrual of benefits in respect of a member of a defined benefits superannuation scheme does not include a reference to allocations of investment earnings or charging of costs.

**10 Meaning of *eligibility age***

- (1) In this Act, *eligibility age* means:
  - (a) in the case of a man—65 years or, if another age is prescribed by the regulations, the age so prescribed; or
  - (b) in the case of a woman—60 years or, if another age is prescribed by the regulations, the age so prescribed.
- (2) In determining whether a member of a fund has reached eligibility age:
  - (a) if the superannuation provider does not know whether the member is a man or a woman—the member is taken to be a man; and
  - (b) if the superannuation provider does not know the member's date of birth—the superannuation provider may determine that the member:
    - (i) attained a particular age on a particular date (if the superannuation provider reasonably believes that to be the case); or
    - (ii) turned 18 on the day on which he or she first became a member of the fund; or
    - (iii) turned 18 on the day on which the superannuation provider first received an amount in respect of him or her; or
    - (iv) turned 18 at the start of his or her eligible service period.

*Duty to obtain date of birth and sex of member of fund*

- (3) If a superannuation provider does not know the date of birth or sex of a member of a fund, the provider should make reasonable attempts to obtain that information.

*Duty to keep records of date of birth and sex of member of fund*

- (4) If a superannuation provider knows the date of birth or sex of a member of a fund, the provider should keep records of that information.

## Part 3—Payment of unclaimed money to the Commissioner

### Division 1—Preliminary

#### 11 Object of Part

The object of this Part is to set out a procedure for dealing with unclaimed money in funds.

Note: A fund includes an RSA (see the definition of *fund* in section 8).

#### 12 Meaning of *unclaimed money*—general meaning

- (1) An amount payable to a member of a fund is taken to be *unclaimed money* if:
  - (a) the member has reached the eligibility age; and
  - (c) the superannuation provider has not received an amount in respect of the member (and, in the case of a defined benefits superannuation scheme, no benefit has accrued in respect of the member) within the last 2 years; and
  - (d) after the end of a period of 5 years since the superannuation provider last had contact with the member, the provider has been unable to contact the member again after making reasonable efforts.
- (2) If:
  - (a) a payment split applies to a splittable payment in respect of an interest that a person has as a member of a fund; and
  - (b) as a result, the non-member spouse (or his or her legal personal representative if he or she has died) is entitled to be paid an amount; and
  - (c) after making reasonable efforts and after a reasonable period has passed, the superannuation provider concerned is unable to ensure that the non-member spouse or his or her legal

personal representative, as the case may be, receives the amount;

then the amount payable is taken to be *unclaimed money*.

### **13 Superannuation provider must make reasonable efforts to contact the member or to ensure that a benefit is received**

- (1) A superannuation provider for a fund must make reasonable efforts to contact a member of the fund if:
  - (a) paragraphs 12(1)(a) and (c) are satisfied in relation to the member; and
  - (b) 5 years have passed since the provider last had contact with the member.
- (1A) If paragraphs 12(2)(a) and (b) are satisfied, the superannuation provider must make reasonable efforts to ensure that the non-member spouse or his or her legal personal representative, as the case may be, receives the amount.

#### *Offence*

- (2) A superannuation provider commits an offence if the superannuation provider fails to comply with the obligation set out in subsection (1) or (1A).

Penalty for contravention of this subsection: 100 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

### **14 Meaning of *unclaimed money*—deceased member**

An amount payable in respect of a member of a fund is taken to be *unclaimed money* if:

- (a) the member has died; and
- (b) the superannuation provider determines that, under the governing rules of the fund or by operation of law, a benefit

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(other than a pension or annuity) is immediately payable in respect of the member; and

- (c) the superannuation provider has not received an amount in respect of the member (and, in the case of a defined benefits superannuation scheme, no benefit has accrued in respect of the member) within the last 2 years; and
- (d) after making reasonable efforts and after a reasonable period has passed, the superannuation provider is unable to ensure that the benefit is received by the person who is entitled to receive the benefit.

Note: A superannuation provider will be unable to ensure that the person receives the benefit if, for example, the provider cannot find the person after making reasonable efforts to do so and after a reasonable period has passed.

### **15 Superannuation provider must make reasonable efforts to ensure that the person receives the benefit**

- (1) If paragraphs 14(a), (b) and (c) are satisfied in relation to a member of a fund, the superannuation provider must make reasonable efforts to ensure that the person entitled to receive the benefit does receive the benefit.

#### *Offence*

- (2) A superannuation provider commits an offence if the superannuation provider fails to comply with the obligation set out in subsection (1).

Penalty for contravention of this subsection: 100 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

### **15A Setting dates for statements and payments**

The Commissioner may, by legislative instrument, specify:



- (a) days as being *unclaimed money days* for the purposes of this Part and Parts 3B and 4A; and
- (b) for each unclaimed money day—a day (the *scheduled statement day*) by the end of which a statement required by this Part or Part 3B or 4A, in relation to the unclaimed money day, is to be given to the Commissioner.

## Division 2—Statement of unclaimed money

### 16 Statement of unclaimed money

*Superannuation provider must give statement to Commissioner*

- (1) A superannuation provider must, for each unclaimed money day, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:
- (a) all unclaimed money as at the end of the day;
  - (b) the administration of any of the following in connection with the unclaimed money:
    - (i) this Part;
    - (ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;
    - (iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.
- Note 1: Subsection (1) does not apply if the superannuation provider gives a statement, and makes a payment, to a State or Territory authority as provided for in section 18 (State or Territory public sector superannuation schemes).
- Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement required under subsection (1) includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act and Division 284 in Schedule 1 to that Act.
- Note 3: The approved form may also require the statement to include certain tax file numbers: see subsection 25(1) of this Act.
- (2) The statement is not required to contain information relevant to unclaimed money that ceases to be unclaimed money during the period that:
- (a) begins from the unclaimed money day; and
  - (b) ends immediately before the day on which the statement is given to the Commissioner.

- (2A) If, at the end of the unclaimed money day:
- (a) there is no unclaimed money, the statement must say so; or
  - (b) there is only unclaimed money that ceases to be unclaimed money during the period mentioned in subsection (2), the statement must say so.

Note: If the fund is a regulated superannuation fund that has fewer than 5 members, see subsection (2B).

- (2B) Subsection (1) does not apply if, at the end of the unclaimed money day:
- (a) the fund is a regulated superannuation fund that has fewer than 5 members; and
  - (b) either:
    - (i) there is no unclaimed money; or
    - (ii) there is only unclaimed money that ceases to be unclaimed money during the period mentioned in subsection (2).

*When statement must be given*

- (3) The superannuation provider must give the Commissioner the statement by the end of the scheduled statement day for the unclaimed money day.

Note 1: The Commissioner may defer the time for giving the statement: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

*Certain former temporary residents*

- (7) This section does not apply to unclaimed money described in subsection 12(1) payable to a person identified in a notice the Commissioner has given the superannuation provider under section 20C.

Note: Section 20E requires the superannuation provider to give the Commissioner a statement about the superannuation interest of a

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person identified in a notice given to the provider under section 20C (which is about notices identifying former temporary residents).

**16A Error or omission in statement**

*Scope*

- (1) This section applies if:
  - (a) a superannuation provider gives the Commissioner a statement under section 16; and
  - (b) the superannuation provider becomes aware of a material error, or material omission, in any information in the statement.

*Superannuation provider must give information*

- (2) The superannuation provider must, in the approved form, give the Commissioner the corrected or omitted information.
- (3) Information required by subsection (2) must be given no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

**Division 3—Payment of unclaimed money****17 Payment of unclaimed money***Provider must pay Commissioner*

- (1) A superannuation provider must pay the Commissioner (for the Commonwealth) the amount, in relation to each unclaimed money day, worked out under subsection (1A). The amount is due and payable at the end of the scheduled statement day for the unclaimed money day.

Note 1: Subsection (1) does not apply if the superannuation provider gives a statement, and makes a payment, to a State or Territory authority as provided for in section 18 (State or Territory public sector superannuation schemes).

Note 2: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 3: The Commissioner may defer the time at which the amount is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 4: Section 18A provides for refunds of overpayments by the superannuation provider to the Commissioner.

- (1A) Work out the amount using the following formula:

All unclaimed money as at the  
end of the unclaimed money day – Former unclaimed money

where:

**former unclaimed money** means any of the unclaimed money that, between the unclaimed money day and the day on which the superannuation provider gives the statement in relation to the unclaimed money day to the Commissioner under subsection 16(1):

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- (a) the superannuation provider pays to a person who is entitled to it; or
  - (b) otherwise ceases to be unclaimed money (other than because the provider pays the money to the Commissioner under subsection (1)).
- (1B) Subsection (1) does not require the superannuation provider to pay the Commissioner an amount on account of unclaimed money described in subsection 12(1) payable to a person identified in a notice the Commissioner has given the provider under section 20C.

Note: Such money is payable to the Commissioner under section 20F.

*Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner*

- (1C) Subsections (2) and (2AA) apply in relation to a person if:
- (a) a superannuation provider paid unclaimed money to the Commissioner under subsection (1) in respect of the person; and
  - (b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the unclaimed money in accordance with subsection (2).
- (2) The Commissioner must pay the unclaimed money:
- (a) to a single fund if:
    - (i) the person has not died; and
    - (ii) the person directs the Commissioner to pay to the fund; and
    - (iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (b) in accordance with subsection (2AA) if:
    - (i) the person has died; and
    - (ii) the Commissioner is satisfied that, if the superannuation provider had not paid the unclaimed money to the Commissioner, the provider would have been required to pay an amount or amounts (***death benefits***) to one or

more other persons (*death beneficiaries*) because of the deceased person's death; or

- (c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or
- (d) in any other case—to the person.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (2AA) In a case covered by paragraph (2)(b), the Commissioner must pay the unclaimed money under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

$$\text{Amount of unclaimed money payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

Note: If there is only one death beneficiary, the whole of the unclaimed money is payable to that beneficiary.

- (2AB) If:

- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a fund, a legal personal representative or a person; and
- (b) the payment is in accordance with paragraph (2)(a), (c) or (d);

the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (2AB) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (2AC) If:

- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a death beneficiary; and
- (b) the payment is in accordance with paragraph (2)(b);

the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

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Note: Money for payments under subsection (2AC) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(2AD) Regulations made for the purposes of subsection (2AB) or (2AC) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(2AE) Interest under subsection (2AB) or (2AC) does not accrue in relation to a period before 1 July 2013.

(2A) Subsections (1C) to (2AA) do not apply to unclaimed money that is to be, is or has been taken into account in determining whether the Commissioner must make a payment under subsection 20H(2) or (3).

Note: Subsections 20H(2) and (3) provide for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under this section and subsection 20F(1) in respect of a person who is identified in a notice under section 20C or who used to be the holder of a temporary visa.

*Discharge of superannuation provider from liability*

(4) Upon payment to the Commissioner of an amount as required under this section, the superannuation provider is discharged from further liability in respect of that amount.

**17A Payments of unclaimed money—late payments**

*General interest charge on late payment*

(1) If any of the amount a superannuation provider must pay under subsection 17(1) remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the time it is due and payable; and
- (b) ends at the end of the last day on which either of the following remains unpaid:
  - (i) the amount unpaid when it is due and payable;
  - (ii) general interest charge on any of the amount.



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*Offence of failing to make payment to Commissioner*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection 17(1);  
and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for an offence against subsection (2):      100 penalty  
units.

## Division 4—Various rules for special cases

### 18 State or Territory public sector superannuation schemes

- (1) This section applies to a superannuation provider if:
  - (a) the superannuation provider is the trustee of a State or Territory public sector superannuation scheme; and
  - (b) a law of a State or Territory satisfies the requirements set out in subsections (4) and (5).
- (2) The superannuation provider does not have to comply with subsection 16(1) or 17(1) in relation to an unclaimed money day if the provider, in accordance with that law of a State or Territory:
  - (a) gives to a State or Territory authority a statement that complies with items 1 and 2 of the table in subsection (4) in relation to the first half year that ends on or after the unclaimed money day; and
  - (b) pays the amount worked out under item 3 of that table to the State or Territory authority.

#### *First requirement*

- (4) The first requirement is that the law contains provisions with the effects set out in the following table:

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<b>Provisions relating to first requirement</b>		
<b>Item</b>	<b>Subject of provision</b>	<b>Effect of provision</b>
1	Preparing a statement	At the end of each half-year, a superannuation provider must prepare a statement (in a form approved by a State or Territory authority) of all unclaimed money that is held in the fund that is managed or provided by the superannuation provider.

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**Provisions relating to first requirement**

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<b>Item</b>	<b>Subject of provision</b>	<b>Effect of provision</b>
2	Providing a statement	The statement must be given to a State or Territory authority: (a) for a half-year ending on 30 June in a calendar year—before 1 November in that calendar year; and (b) for a half-year ending on 31 December in a calendar year—before 1 May in the following calendar year.
3	Payments	When the statement is given, the superannuation provider must pay to the State or Territory authority an amount worked out in accordance with a formula corresponding to the formula in subsection 17(1), as in force just before the commencement of Schedule 5 to the <i>Tax Laws Amendment (2009 Measures No. 1) Act 2009</i> .
4	Register	The State or Territory authority must keep a register that contains particulars of: (a) the unclaimed money paid to it by the superannuation provider; and (b) each member in respect of whom there is unclaimed money.

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*Second requirement*

- (5) The second requirement is that the law contains provisions:
- (a) corresponding to the provisions of this Act, as in force just before the commencement of Schedule 5 to the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*, set out in the following table; and
  - (b) with the effects set out in the table:

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**Provisions relating to second requirement**

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<b>Item</b>	<b>Provision</b>	<b>Effect of corresponding provision</b>
1	Subsection 16(2)	Requires the statement to contain particulars relating to any unclaimed money paid after the end of the half-year as are required by the form approved by the State or Territory authority
2	Subsection 16(4)	Empowers the State or Territory authority to extend the period in which the statement must be lodged
3	Subsection 17(2)	Requires the State or Territory authority to pay unclaimed money to a person in circumstances corresponding to those set out in that subsection
4	Subsection 17(3)	Requires the State or Territory authority to refund amounts in circumstances corresponding to those set out in that subsection

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*Discharge of superannuation provider from liability*

(6) Upon payment to the State or Territory authority of an amount as required under this section, the superannuation provider is discharged from further liability in respect of that amount.

(7) In this section:

***State or Territory public sector superannuation scheme*** means a scheme for the payment of superannuation, retirement or death benefits, where the scheme is established:

- (a) by or under a law of a State or a law of a Territory; or
- (b) under the authority of:
  - (i) the government of a State or Territory; or
  - (ii) a municipal corporation, another local governing body or a public authority constituted by or under a law of a State or a law of a Territory.

**18AA Prescribed public sector superannuation schemes**

(1) Sections 6, 10 to 12, 14, 16 to 17 and 18A to 18C and subsections 19(1) to (3), 24C(6), 24E(5) and 25(2) apply as if:

- (a) a public sector superannuation scheme that is:
    - (i) prescribed for the purposes of this section; and
    - (ii) not a fund;  
were a fund; and
- Note 1: The regulations may prescribe a scheme by reference to a class of schemes: see subsection 13(3) of the *Legislation Act 2003*.
- Note 2: The trustee of a State or Territory public sector superannuation scheme that is a fund must comply with this Part, subject to section 18.
- (b) the trustee of the scheme were the superannuation provider; and
  - (c) a member of the scheme were a member of the fund.
- (2) Despite subsection (1), in the case of a State or Territory public sector superannuation scheme:
- (a) section 16 (Statement of unclaimed money):
    - (i) permits, rather than requires, the trustee to give a statement to the Commissioner; and
    - (ii) does not permit the trustee to give a statement to the Commissioner if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner; and
  - (b) section 17 (Payment of unclaimed money):
    - (i) does not apply in relation to an unclaimed money day if the trustee does not give a statement in relation to the unclaimed money day to the Commissioner under subsection 16(1); and
    - (ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and
    - (iii) does not apply to an amount to the extent that the governing rules of the scheme prohibit the trustee from paying the amount to the Commissioner.

## **18A Refund of overpayment made by superannuation provider**

- (1) This section applies if:
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- (a) a superannuation provider for a fund (the *first fund*) has made a payment under subsection 17(1) in respect of a person; and
  - (b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that subsection in respect of the person.
- (2) The Commissioner must pay the excess:
- (a) to the superannuation provider; or
  - (b) to a superannuation provider for another fund if the Commissioner is satisfied that:
    - (i) the first fund no longer exists; and
    - (ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

**18B Commissioner may recover overpayment**

- (1) This section applies if:
- (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  - (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person.
- (2) The Commissioner may recover all or part of the excess from a person (the *debtor*) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.
- (3) The persons from whom the Commissioner may recover are as follows:
- (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);

- (b) the superannuation provider for the fund to which the payment was made;
  - (c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.
- (4) The conditions for recovery are that:
- (a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and
  - (b) at least 28 days have passed since the notice was given; and
  - (c) the amount recovered is not more than the amount specified in the notice.
- (5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.
- (6) The Commissioner may revoke a notice described in paragraph (4)(a).
- (7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.
- (8) A notice described in paragraph (4)(a) is not a legislative instrument.

### **18C Superannuation provider to return payment from Commissioner that cannot be credited**

#### *Scope*

- (1) This section applies if:
- (a) a payment (the ***Commissioner's payment***) is made to a fund under subsection 17(2) in accordance with a person's direction; and

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- (b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the *repayment time*) that is the end of the 28th day after the day on which the Commissioner's payment was made.

*Repayment*

- (2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

- (3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

*General interest charge*

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the repayment time; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid at the repayment time;
    - (ii) general interest charge on any of the amount.



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## **Part 3AA—Register of unclaimed money**

### **19 Register of unclaimed money**

- (1) The Commissioner must keep a register that contains particulars of:
  - (a) unclaimed money paid by a superannuation provider to the Commissioner under Part 3; and
  - (b) each person in respect of whom there is unclaimed money; and
  - (c) amounts paid to the Commissioner under section 20F (unclaimed superannuation of former temporary residents); and
  - (d) each person in respect of whom there is an amount referred to in paragraph (c) of this subsection; and
  - (da) amounts paid to the Commissioner under section 20QD (amounts from inactive low-balance accounts); and
  - (db) each person in respect of whom there is an amount referred to in paragraph (da) of this subsection; and
  - (e) amounts paid to the Commissioner under section 24E (lost member accounts); and
  - (f) each person in respect of whom there is an amount referred to in paragraph (e) of this subsection.

Note: The register may contain a person's tax file number (see section 27).

- (2) The register may also contain information:
  - (a) originally contained in registers referred to in item 4 of the table in subsection 18(4), that are kept by State or Territory authorities; and
  - (b) given to the Commissioner by those authorities.
- (3) The register may also contain other information given to the Commissioner that is of the type contained in the register.
- (4) The register may also contain the following:

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- (a) information relating to members of a regulated exempt public sector superannuation scheme;
  - (b) particulars that, if the scheme were a fund, would be particulars of unclaimed money in respect of the scheme;
  - (c) information given to the Commissioner by the trustee of the scheme.
- (5) A trustee of a regulated exempt public sector superannuation scheme may, in the approved form, give the information referred to in paragraph (4)(c) to the Commissioner.

Note: The approved form may permit the trustee to set out:

- (a) the tax file number of the scheme; and
- (b) the tax file number of any member of the scheme who has quoted his or her tax file number to the trustee.

See subsection 26(1).

**20 Commissioner may give information to State and Territory authorities**

The Commissioner may give information contained in the register referred to in section 19 to a State or Territory authority if the State or Territory concerned has a law satisfying the requirements of subsections 18(4) and (5).

## **Part 3A—Payment of unclaimed superannuation of former temporary residents**

### **Division 1—Preliminary**

#### **20A Simplified outline**

The following is a simplified outline of this Part:

The Commissioner must give the superannuation provider for a fund a notice if the Commissioner is satisfied that a former temporary resident has a superannuation interest in the fund.

If the Commissioner gives such a notice, the superannuation provider must:

- (a) give the Commissioner a statement about the interest by the next date set for the purpose by the Commissioner; and
- (b) pay the Commissioner the amount that would have been payable from the fund to the person if the person had requested payment in connection with his or her departure from Australia, reduced by amounts already payable in respect of the person.

On payment, the superannuation provider ceases to be liable for the amount paid.

The person can claim the amount (and interest, in some cases) from the Commissioner.

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**20AA Meaning of *former temporary resident***

(1) In this Act:

***former temporary resident***: a person is a ***former temporary resident*** if:

- (a) before, on or after the commencement of this section, the person:
    - (i) was, under the *Migration Act 1958*, the holder of a temporary visa, except a visa prescribed under subsection (2) of this section, that has ceased to be in effect; and
    - (ii) left Australia after starting to be the holder of the visa (whether the visa ceased to be in effect before, when or after the person left); and
  - (b) at least 6 months have passed since the later of the following events (or either of them if they occurred at the same time):
    - (i) the visa ceased to be in effect;
    - (ii) the person left Australia; and
  - (c) the person:
    - (i) is not, under that Act, the holder of a temporary visa or permanent visa; and
    - (ii) is neither an Australian citizen nor a New Zealand citizen; and
    - (iii) has not made a valid application for a permanent visa that has not been finally determined under that Act.
- (2) The regulations may prescribe a visa for the purposes of subparagraph (a)(i) of the definition of ***former temporary resident*** in subsection (1).

Note: The regulations may prescribe a visa by reference to a class of visas: see subsection 13(3) of the *Legislation Act 2003*.

**20B Setting dates for statements and payments**

The Commissioner may, by legislative instrument, specify days (*scheduled statement days*) by the end of which statements required by this Part are to be given to the Commissioner.

## **Division 2—Notices to superannuation providers about certain persons**

### **20C Commissioner must give notices about certain former temporary residents**

- (1) The Commissioner must give a superannuation provider for a fund a written notice if the Commissioner is satisfied that:
- (a) there are reasonable grounds for believing that a particular person has a superannuation interest in the fund; and
  - (b) the person is a former temporary resident.

- (2) The notice must:
- (a) identify the person; and
  - (b) include the information (if any) prescribed by the regulations for the purposes of this paragraph.

Note: The notice may contain the tax file number of the person and of the fund: see section 25A.

- (3) Subsection (1) does not apply if:
- (a) the superannuation provider is:
    - (i) the trustee of a State or Territory public sector superannuation scheme; or
    - (ii) the superannuation provider for an unfunded public sector scheme; and
  - (b) the scheme is not prescribed for the purposes of section 20JA.

- (4) A notice under subsection (1) cannot be amended.

Note: Section 20J deals with revocation of a notice given under this section.

- (5) A notice under subsection (1) is not a legislative instrument.

## **Division 3—Effects of notice being given to superannuation provider**

### **20D Application**

This Division applies if the Commissioner gives a superannuation provider for a fund a notice under section 20C in connection with a person's superannuation interest in the fund.

### **20E Superannuation provider must give statement to Commissioner by scheduled statement day**

#### *Giving statement to Commissioner*

- (1) The superannuation provider must give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:
  - (a) the person's superannuation interest in the fund;
  - (b) the administration of any of the following in connection with the person's superannuation interest in the fund:
    - (i) this Part;
    - (ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;
    - (iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

Note 1: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement includes false or misleading information: see sections 8K and 8N of that Act and Division 284 in Schedule 1 to that Act.

Note 2: The approved form may also require the statement to include certain tax file numbers: see subsection 25(2A).

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*When statement must be given*

- (2) The superannuation provider must give the Commissioner the statement by the end of:
- (a) the next scheduled statement day after the notice is given; or
  - (b) if the Commissioner gives the notice less than 28 days before the next scheduled statement day—the following scheduled statement day.

Example: Suppose that 1 May and 1 November each year are the scheduled statement days, and that the Commissioner gives the notice to the superannuation provider on 15 April in a year. The superannuation provider must give the Commissioner the statement by the end of 1 November that year (rather than 1 May that year).

Note 1: The Commissioner may defer the time for giving the statement: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see section 8C of that Act and Division 286 in Schedule 1 to that Act.

*Statement required even if person does not have interest*

- (3) The superannuation provider must give the Commissioner the statement even if:
- (a) the person does not have a superannuation interest when the superannuation provider must give the statement; or
  - (b) the superannuation provider is not required by subsection 20F(1) to pay the Commissioner an amount in respect of the person.

**20F Superannuation provider must pay Commissioner unclaimed superannuation**

- (1) The superannuation provider must pay the Commissioner (for the Commonwealth) the excess (if any) of the amount worked out under subsection (2) for the person's superannuation interest over the total worked out under subsection (3) for the interest by the time at which the excess is due and payable. The excess is due and payable at the end of:



- (a) the next scheduled statement day after the notice is given; or
- (b) if the Commissioner gives the notice less than 28 days before the next scheduled statement day—the following scheduled statement day; or
- (c) if a day is identified for the superannuation provider under the regulations that is later than the day described in paragraph (a) and later than the day described in paragraph (b) if it is relevant—that later day.

Note 1: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 2: The Commissioner may defer the time at which the excess is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: Section 20K provides for refunds of overpayments by the superannuation provider to the Commissioner.

- (2) Work out the amount that would have been payable to the person from the fund in respect of the superannuation interest had the person requested payment in connection with the person's departure from Australia. For this purpose:
  - (a) work out the amount that would have been payable at the time (the **calculation time**) immediately before:
    - (i) the time at which a payment under subsection (1) in respect of the person is due and payable (assuming that such a payment must be made); or
    - (ii) for a payment to be made under subsection (1) before it is due and payable—the time the payment is to be made; and
  - (b) assume that the request were made before the calculation time; and
  - (c) assume that the person had not died before the calculation time.

- (3) Total:

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- (a) the amount (if any) that is payable from the fund because regulations made for the purposes of the RSA Act or the SIS Act require or permit a benefit connected with the person's superannuation interest to be cashed; and
- (b) if the person has actually died, the amount (if any) that has been paid from the fund in respect of the person because of the person's death; and
- (c) the amount (if any) of the person's superannuation interest that supports a superannuation income stream (within the meaning of regulations made for the purposes of the *Income Tax Assessment Act 1997*); and
- (d) the amount (if any) worked out in accordance with the regulations made for the purposes of this paragraph.

Work out the amounts described in paragraphs (a), (b), (c) and (d) as at the calculation time.

- (4) For the purposes of subsections (2) and (3):
  - (a) disregard Subdivision 12-FA in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (b) take account only of the person's entitlement to payment remaining after any reduction by a payment split under Part VIIIIB of the *Family Law Act 1975* (disregarding subsection 90XB(3) of that Act).

Note 1: Subdivision 12-FA in Schedule 1 to the *Taxation Administration Act 1953* is about withholding amounts from departing Australia superannuation payments.

Note 2: Part VIIIIB of the *Family Law Act 1975* is about splitting amounts payable in respect of a superannuation interest between the parties to a marriage. Subsection 90XB(3) of that Act provides that the Part has effect subject to this Act.

*Regulations for the purposes of paragraph (1)(c)*

- (4A) Regulations for the purposes of paragraph (1)(c) may provide for a day to be identified by the Commissioner or the Australian Prudential Regulation Authority. This does not limit the provision that the regulations may make for identification of a day for those purposes.

*General interest charge on late payment*

- (5) If any of the amount the superannuation provider must pay under subsection (1) remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the time it is due and payable; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid when it is due and payable;
    - (ii) general interest charge on any of the amount.

*Offence of failing to pay on time*

- (6) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty: 100 penalty units.

**20G Effect of payment by superannuation provider**

On payment of an amount to the Commissioner as required by subsection 20F(1), the superannuation provider is discharged from further liability to the person, and to anyone else in respect of the person, in respect of that amount.

## **Division 4—Payment by Commissioner**

### **20H Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner**

- (1) This section applies in relation to a person if the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that:
- (a) either:
    - (i) the person has been identified in a notice under section 20C; or
    - (ii) the person was, under the *Migration Act 1958*, the holder of a temporary visa, except a visa prescribed by the regulations, that ceased to be in effect at least 6 months ago, and the person left Australia at least 6 months ago but after starting to be the holder of the visa; and
  - (b) the total of:
    - (i) the amounts (if any) paid to the Commissioner under subsection 17(1) (before, on or after the commencement of this section) in respect of the person; and
    - (ii) the amounts (if any) paid to the Commissioner under subsection 20F(1) in respect of the person; and
    - (iia) the amounts (if any) paid to the Commissioner under section 20QD in respect of the person; and
    - (iia) the amounts (if any) paid to the Commissioner under section 24E in respect of the person;exceeds the total of:
    - (iii) the amounts (if any) paid by the Commissioner under subsection 17(2) (before, on or after the commencement of this section) in respect of the person; and
    - (iv) the amounts (if any) paid by the Commissioner under all the earlier operations (if any) of subsections (2) and (3) of this section in respect of the person (disregarding an amount paid under subsection (3), to the extent the

amount was attributable to interest that would have been payable under subsection (2A) apart from subsection (3)); and

- (v) the amounts (if any) paid by the Commissioner under section 20K in respect of the person; and
- (va) the amounts (if any) paid by the Commissioner under subsection 20QF(2) in respect of the person; and
- (vi) the amounts (if any) paid by the Commissioner under subsection 24G(2) in respect of the person.

(2) The Commissioner must pay the excess:

- (a) to the person; or
- (b) to a single fund that is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*), if the person directs the Commissioner to pay to the fund and the Commissioner is satisfied that the person is:
  - (i) an Australian citizen; or
  - (ii) a New Zealand citizen; or
  - (iii) under the *Migration Act 1958*, the holder of a permanent visa or a visa prescribed by the regulations; or
- (c) to the person's legal personal representative, if the person has died.

(2AA) If the Commissioner makes a payment under subsection (2) on or after 1 July 2013, the Commissioner must also pay to the person, fund or legal personal representative the amount of interest (if any) worked out in accordance with the regulations.

(2AB) Regulations made for the purposes of subsection (2AA) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(2A) If the Commissioner makes a payment under subsection (2) before 1 July 2013, the Commissioner must also pay to the person, fund or legal personal representative the amount (if any) of interest worked out under subsection (2B), if the Commissioner is satisfied that:

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- (a) the person is (or was just before dying) an Australian citizen or, under the *Migration Act 1958*, the holder of a permanent visa; and
  - (b) after 30 June 2007 either:
    - (i) the person left Australia; or
    - (ii) the person was, under the *Migration Act 1958*, the holder of a temporary visa.
- (2B) Work out, in accordance with the regulations, the amount of interest:
- (a) on so much (if any) of the excess as is attributable (directly or indirectly) to one or more amounts paid to the Commissioner under subsection 20F(1) and not to payments to or by the Commissioner under subsection 17(1) or (2), section 20QD or subsection 20QF(2), or section 24E or subsection 24G(2); and
  - (b) at a rate equal to the annual yield on Treasury bonds with a 10-year term or, if another rate is prescribed by the regulations, that other rate.
- Note:       The regulations may provide for various matters relevant to working out the interest, such as working out the periods for which particular rates apply to particular amounts of principal (which will affect any compounding of the interest, among other things).
- (2C) Regulations for the purposes of subsection (2B) may prescribe different rates for different periods over which the interest accrues, including a nil rate for any period starting when the person turns 65. This does not limit the ways in which the regulations may provide for working out the amount of interest under that subsection.
- (3) However, if the person has died and the Commissioner is satisfied that one or more superannuation providers that made any of the payments described in subparagraphs (1)(b)(i), (ii), (iiaa) and (iia) would, if they had not made those payments, have been required because of the person's death to pay an amount to one or more other persons (the ***death beneficiaries***), the Commissioner must pay each death beneficiary:

- (a) the total of the amounts the Commissioner is satisfied the superannuation providers would have been required to pay the death beneficiary; or
- (b) if the total of the excess and any interest that would be payable under subsection (2AA) or (2A) apart from this subsection is less than the sum of the totals described in paragraph (a) for all the death beneficiaries—the amount worked out for the death beneficiary using the formula in subsection (4).

Note: Money for payments under this section is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (4) The formula is:

$$\begin{array}{l} \text{Total of the excess and} \\ \text{any interest that would} \\ \text{be payable under} \\ \text{subsection (2A) apart} \\ \text{from subsection (3)} \end{array} \times \frac{\begin{array}{l} \text{Total described in paragraph (3)(a)} \\ \text{for the death beneficiary} \end{array}}{\begin{array}{l} \text{Sum of the totals described in} \\ \text{paragraph (3)(a) for all the death beneficiaries} \end{array}}$$

*Withholding tax from payment*

- (5) For the purposes of subparagraph (1)(b)(iv), an amount withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* from a payment under this section is taken to have been paid by the Commissioner.
- (6) To avoid doubt, subsection (2) has effect subject to Division 12 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 12 in Schedule 1 to the *Taxation Administration Act 1953* requires entities paying departing Australia superannuation payments and excess untaxed roll-over amounts to withhold amounts from those payments.

## **Division 5—Various rules for special cases**

### **20J Revoking Commissioner’s notice to superannuation provider about person**

#### *Requirement for revocation*

- (1) The Commissioner must revoke a notice given to a superannuation provider about a person under section 20C if the Commissioner is satisfied that either:
  - (a) the circumstances for giving the notice did not exist; or
  - (b) the circumstances for giving a notice about the person to the superannuation provider under that section no longer exist.

#### *Means of revocation*

- (2) The revocation must be made by written notice given to the superannuation provider.

#### *Effect of revocation*

- (3) If the Commissioner revokes a notice given to a superannuation provider about a person under section 20C, this Act has effect as if the notice had never been given.

#### *No revocation if payment already made*

- (4) However, the revocation of a notice given to a superannuation provider about a person under section 20C has no effect if a condition in subsection (5) or (6) exists.
- (5) One condition is that, before the revocation, the superannuation provider has made a payment to the Commissioner under subsection 20F(1) because of the notice.
- (6) The other condition is that:
  - (a) notice of the revocation is given to the superannuation provider less than 28 days before the scheduled statement



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day by the end of which an amount would be due and payable under subsection 20F(1) because of the notice under section 20C, apart from:

- (i) the revocation; and
  - (ia) paragraph 20F(1)(c); and
  - (ii) any deferral under section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*; and
- (b) before the end of that day, the superannuation provider:
- (i) gives the Commissioner a statement purportedly under section 20E because of the notice under section 20C; or
  - (ii) pays the Commissioner an amount purportedly under subsection 20F(1) because of the notice under section 20C.
- (7) Subsection (1) does not require the Commissioner to revoke a notice under section 20C if the revocation would not have effect because of subsection (4) of this section.

**20JA Prescribed public sector superannuation schemes**

- (1) Section 6, subsections 16(7), 17(2A) and 19(1) and (3), this Part (other than subsections 20F(5) and (6)) and subsections 24C(6), 24E(5) and 25(2A) apply as if:
- (a) a public sector superannuation scheme that:
    - (i) is prescribed for the purposes of this section; and
    - (ii) in the case of a Commonwealth public sector superannuation scheme—is not a fund, or is an unfunded public sector scheme;were a fund; and

Note 1: The regulations may prescribe a scheme by reference to a class of schemes: see subsection 13(3) of the *Legislation Act 2003*.

Note 2: This Part applies to a Commonwealth public sector superannuation scheme that is not an unfunded public sector scheme whether or not the scheme is prescribed: see section 20C.

- (b) the trustee of the scheme were the superannuation provider; and

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- (c) a person who has an interest in the scheme had a superannuation interest in the fund.
- (2) Despite subsection (1), in the case of a State or Territory public sector superannuation scheme:
  - (a) section 20C (notices about certain former temporary residents) permits, rather than requires, the Commissioner to give a notice to the trustee; and
  - (b) section 20E (statement):
    - (i) permits, rather than requires, the trustee to give a statement to the Commissioner; and
    - (ii) does not permit the trustee to give a statement to the Commissioner if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner; and
  - (c) section 20F (payment of unclaimed superannuation):
    - (i) does not apply in relation to a notice given to the trustee under section 20C if the trustee does not give a statement in relation to the notice to the Commissioner under section 20E; and
    - (ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and
    - (iii) does not apply to an amount to the extent that the governing rules of the scheme prohibit the trustee from paying the amount to the Commissioner.

**20K Refund of overpayment made by superannuation provider**

- (1) This section applies if:
  - (a) a superannuation provider has made a payment under subsection 20F(1) because of a notice about a person and a fund; and
  - (b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that subsection because of the notice.
- (2) The Commissioner must pay the excess:

- (a) to the superannuation provider for the fund; or
- (b) if the Commissioner is satisfied that:
  - (i) the fund no longer exists; and
  - (ii) another fund provides rights relating to the person equivalent to those provided by the fund whose superannuation provider made the payment under subsection 20F(1);to the superannuation provider for the other fund.

Note: Money for payments under this section is appropriated by section 16 of the *Taxation Administration Act 1953*.

## **20L Commissioner may recover overpayment under section 20H**

- (1) This section applies if:
  - (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  - (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person.
- (2) The Commissioner may recover all or part of the excess from a person (the *debtor*) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.
- (3) The persons from whom the Commissioner may recover are as follows:
  - (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);
  - (b) the superannuation provider for the fund to which the payment was made or, if that payment, or an amount wholly or partly attributable to that payment, was transferred to another fund, the superannuation provider for that other fund.
- (4) The conditions for recovery are that:

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- (a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and
  - (b) at least 28 days have passed since the notice was given; and
  - (c) the amount recovered is not more than the amount specified in the notice.
- (5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.
- (6) The Commissioner may revoke a notice described in paragraph (4)(a).
- (7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.
- (8) A notice described in paragraph (4)(a) is not a legislative instrument.

**20M Superannuation provider to return payment from Commissioner that cannot be credited**

- (1) This section applies if:
- (a) a payment (the **Commissioner's payment**) is made to a fund under subsection 20H(2), (2AA) or (2A) in accordance with a person's direction; and
  - (b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the **repayment time**) that is the end of the 28th day after the day on which the Commissioner's payment was made.
- (2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration*

*Act 1953.* Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

- (3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

*General interest charge*

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the repayment time; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid at the repayment time;
    - (ii) general interest charge on any of the amount.

## Division 6—Administration

### 20N Disclosure of migration and citizenship information

- (1) A person described in subsection (2) may disclose to the Commissioner, for the purposes of facilitating the administration of the legislation described in subsection (3), information described in subsection (4).

Note: The administration of the legislation may involve the Commissioner in disclosing the information, for example in a notice given under section 20C to a superannuation provider.

- (2) The persons who may disclose are:
- (a) the Immigration Secretary (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (b) an APS employee in the Immigration Department (within the meaning of that Act).
- (3) The legislation is:
- (a) this Act; and
  - (b) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*; and
  - (c) the *Income Tax Assessment Act 1997*, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Act or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.
- (4) The information is information relevant to any of the following matters:
- (a) whether or not a particular person is or was the holder of a particular kind of visa under the *Migration Act 1958* at a particular time or in a particular period;
  - (b) whether or not a particular person is or was an Australian citizen at a particular time or in a particular period;
  - (c) whether or not a particular person is or was a New Zealand citizen at a particular time or in a particular period;

- (d) whether or not a particular person left Australia at a particular time or in a particular period;
- (e) whether or not there was, at a particular time or in a particular period, a valid application by a particular person for a permanent visa that had not been finally determined under the *Migration Act 1958*;
- (f) confirmation, by reference to any employment of, or work done by, a person, that he or she is the same person as a particular person who is or was the holder of a temporary visa under the *Migration Act 1958* at a particular time or in a particular period.

## **20P Review of Commissioner's notices and decisions**

A person who is dissatisfied with a notice given, or a decision made, by the Commissioner in the administration of Division 2, 4 or 5 of this Part may object against the notice or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Example: Decisions made by the Commissioner in the administration of Divisions 4 and 5 include:

- (a) decisions that the conditions exist for him or her to make a payment under subsection 20H(2) or (3), revoke (under section 20J) a notice given under section 20C or make a refund under section 20K; and
- (b) refusal of an application mentioned in section 20H; and
- (c) decisions about recovery under section 20L of an overpayment under section 20H.

## **Part 3B—Payment of low balances in inactive accounts to the Commissioner**

### **Division 1—Preliminary**

#### **20Q Object of Part**

The object of this Part is to set up a procedure for dealing with inactive low-balance accounts.

#### **20QA Meaning of *inactive low-balance account*, *inactive low-balance member* and *inactive low-balance product***

- (1) An account in a fund is taken to be an *inactive low-balance account* if:
  - (a) for a fund that is a regulated superannuation fund:
    - (i) the fund has 5 or more members; and
    - (ii) the account is held on behalf of a member of the fund; and
    - (iii) the account relates, in whole or in part, to a MySuper product or choice product held by that member; and
    - (iv) the superannuation provider has not received an amount in respect of the member for crediting to that product within the last 16 months; and
    - (v) the balance of the account that relates to that product is less than \$6,000; and
    - (vi) the member has not satisfied any of the conditions of release of benefits specified in a standard made under paragraph 31(2)(h) of the SIS Act that are prescribed for the purposes of this subparagraph; and
    - (vii) the account does not support or relate to a defined benefit interest (within the meaning of section 291-175 of the *Income Tax Assessment Act 1997*); and



- (viii) no benefit that despite section 68AAA of the SIS Act could, because of the application of subsection 68AAA(2), (7) or (8) of that Act, be provided to, or in respect of, the member under the product by taking out or maintaining insurance is provided in that way; and
  - (ix) no benefit that despite section 68AAB of the SIS Act could, because of the application of subsection 68AAB(5) or (6) of that Act, be provided to, or in respect of, the member under the product by taking out or maintaining insurance is provided in that way; and
- (b) for a fund that is an RSA or approved deposit fund:
- (i) the account is held on behalf of a member of the fund; and
  - (ii) the superannuation provider has not received an amount in respect of the member within the last 16 months; and
  - (iii) the balance of the account is less than \$6,000; and
  - (iv) the member has not satisfied any of the conditions of release of benefits specified in a standard made under paragraph 38(2)(f) of the *Retirement Savings Accounts Act 1997* (for an RSA), or paragraph 32(2)(c) of the SIS Act (for an approved deposit fund), that are prescribed for the purposes of this paragraph; and
  - (v) the account does not support or relate to a defined benefit interest (within the meaning of section 291-175 of the *Income Tax Assessment Act 1997*).

Note: The balance of an account does not reflect any earnings, fees or charges that have not yet been credited to, or debited from, the account.

- (1A) However, an account in a fund that is a regulated superannuation fund is taken not to be an ***inactive low-balance account*** if:
- (a) the account is held on behalf of a member of the fund; and
  - (b) any of the following occurred in relation to the member in the last 16 months:

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- (i) the member changed the member's investment options under the fund;
  - (ii) the member made changes in relation to the member's insurance coverage under the fund;
  - (iii) the member made or amended a binding beneficiary nomination;
  - (iv) the member, by written notice given to the superannuation provider, made an election that the account was not an inactive low-balance account.
- (2) A person on whose behalf a superannuation provider holds an inactive low-balance account is an ***inactive low-balance member***.
- (3) In a regulated superannuation fund, each MySuper product or choice product to which an inactive low-balance account relates in whole or in part, and in relation to which subparagraphs (1)(a)(iv), (v), (viii) and (ix) are satisfied, is an ***inactive low-balance product*** in the inactive low-balance account.

## **Division 2—Statements on inactive low-balance accounts**

### **20QB Statements on inactive low-balance accounts**

*Superannuation provider must give statement to the Commissioner*

- (1) A superannuation provider must, for each unclaimed money day, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:
- (a) each inactive low-balance account as at the end of the day;
  - (b) the administration of any of the following in connection with each inactive low-balance account:
    - (i) this Part;
    - (ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;
    - (iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.
- Note 1: For State or Territory public sector superannuation schemes, see sections 20QG and 20QH.
- Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement required under subsection (1) includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act and Division 284 in Schedule 1 to that Act.
- Note 3: The approved form may also require the statement to include certain tax file numbers: see subsection 25(2B) of this Act.
- (2) The statement is not required to contain information relevant to inactive low-balance accounts that cease to be inactive low-balance accounts during the period that:
- (a) begins from the unclaimed money day; and
  - (b) ends immediately before the day on which the statement is given to the Commissioner.

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- (3) If, at the end of the unclaimed money day:
- (a) there are no balances held in inactive low-balance accounts, the statement must say so; or
  - (b) the only inactive low-balance accounts that hold balances cease to be inactive low-balance accounts during the period mentioned in subsection (2), the statement must say so.

Note: If the fund is a regulated superannuation fund that has fewer than 5 members, see subsection (4).

- (4) This section does not apply if, at the end of the unclaimed money day:
- (a) the fund is a regulated superannuation fund that has fewer than 5 members; and
  - (b) either:
    - (i) there are no balances held in inactive low-balance accounts; or
    - (ii) the only inactive low-balance accounts that hold balances cease to be inactive low-balance accounts during the period mentioned in subsection (2).

*When statement must be given*

- (5) The superannuation provider must give the Commissioner the statement by the end of the scheduled statement day for the unclaimed money day.

Note 1: The Commissioner may defer the time for giving the statement: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

*Relationship to rest of Act*

- (6) This section does not apply in relation to:
- (a) an amount that is unclaimed money at the end of the unclaimed money day; or

- (b) amounts payable to a person identified in a notice the Commissioner has given the superannuation provider under section 20C; or
- (c) an amount payable to the Commissioner in respect of a lost member under section 24E.

- Note 1: Section 16 requires the superannuation provider to give the Commissioner a statement about unclaimed money.
- Note 2: Section 20E requires the superannuation provider to give the Commissioner a statement about the superannuation interest of a person identified in a notice given to the provider under section 20C (which is about notices identifying former temporary residents).
- Note 3: Section 24C requires the superannuation provider to give the Commissioner statements about lost member accounts.

## **20QC Error or omission in statement**

### *Scope*

- (1) This section applies if:
  - (a) a superannuation provider gives the Commissioner a statement under section 20QB; and
  - (b) the superannuation provider becomes aware of a material error, or material omission, in any information in the statement.

### *Superannuation provider must give information*

- (2) The superannuation provider must, in the approved form, give the Commissioner the corrected or omitted information.
- (3) Information required by subsection (2) must be given no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must

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be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

## **Division 3—Payment in respect of inactive low-balance accounts**

### **20QD Payment in respect of inactive low-balance accounts**

*Provider must pay Commissioner*

- (1) A superannuation provider must pay the Commissioner (for the Commonwealth) the amount worked out under subsection (2) in respect of a person if:
- (a) an account is an inactive low-balance account as at the end of an unclaimed money day; and
  - (b) the account is held by the provider on behalf of the person; and
  - (c) the account is still an inactive low-balance account at the time (the *calculation time*) immediately before the earlier of:
    - (i) the time (if any) the payment is made; and
    - (ii) the time at which the payment is due and payable (assuming that the payment must be made).

The amount is due and payable at the end of the scheduled statement day for the unclaimed money day.

Note 1: For State or Territory public sector superannuation schemes, see sections 20QG and 20QH.

Note 2: Subsection 20QE(2) makes it an offence not to comply with a requirement under this subsection.

Note 3: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 4: The Commissioner may defer the time at which the amount is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 5: Section 20QJ provides for refunds of overpayments by the superannuation provider to the Commissioner.

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- (2) The amount payable in respect of the person is the amount that would have been payable by the superannuation provider if:
- (a) for a fund that is a regulated superannuation fund—the person had requested that the balance held in respect of each inactive low-balance product in the account be rolled over or transferred to a complying superannuation fund (within the meaning of the SIS Act); and
  - (b) for a fund that is an RSA or approved deposit fund—the person had requested that the balance held in the account be rolled over or transferred to a complying superannuation fund (within the meaning of the SIS Act).
- (3) For the purposes of subsection (2):
- (a) work out the amount that would have been payable at the calculation time; and
  - (b) assume that the request were made before the calculation time; and
  - (c) assume that the inactive low-balance member had not died before the calculation time.

*Family Law payment splits*

- (4) If, as a result of a payment split that applies in relation to the account, the non-member spouse (or his or her legal personal representative if he or she has died) is, or could in the future be, entitled to be paid an amount, then:
- (a) for the purposes of subsection (2), take account only of the inactive low-balance member's entitlement to payment remaining after any reduction by the payment split (disregarding subsection 90MB(3) of the *Family Law Act 1975*); and
  - (b) the superannuation provider must also pay an amount (the ***non-member spouse amount***) to the Commissioner in respect of the non-member spouse; and
  - (c) the non-member spouse amount is due and payable at the same time as the amount payable under subsection (1); and



(d) the amount of the non-member spouse amount is the amount of the reduction mentioned in paragraph (a).

Note 1: Part VIIIB of the *Family Law Act 1975* is about splitting amounts payable in respect of a superannuation interest between the parties to a marriage. Subsection 90MB(3) of that Act provides that the Part has effect subject to this Act.

Note 2: Subsection 20QE(2) of this Act makes it an offence not to comply with a requirement under this subsection.

*Miscellaneous*

(5) This section does not require the superannuation provider to pay the Commissioner:

- (a) an amount that is unclaimed money at the end of the unclaimed money day; or
- (b) an amount payable to a person identified in a notice the Commissioner has given the provider under section 20C; or
- (c) an amount payable to the Commissioner in respect of a lost member under section 24E.

Note 1: Unclaimed money is payable to the Commissioner under subsection 17(1).

Note 2: An amount mentioned in paragraph (5)(b) is payable to the Commissioner under section 20F.

(6) Upon payment to the Commissioner of an amount as required under this section, the superannuation provider is discharged from further liability in respect of that amount.

(7) For the purposes of this section, ignore accounts with nil balances, or balances below nil, as at the calculation time mentioned in subsection (1).

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**20QE Payment in respect of inactive low-balance accounts—late payments**

*General interest charge on late payment*

- (1) If any of the amount a superannuation provider must pay under section 20QD remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the time it is due and payable; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid when it is due and payable;
    - (ii) general interest charge on any of the amount.

*Offence of failing to make payment to Commissioner*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection 20QD(1) or (4); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for an offence against subsection (2):      100 penalty units.

**20QF Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner**

- (1) This section applies in relation to a person if:
- (a) a superannuation provider paid an amount to the Commissioner under section 20QD in respect of the person; and
  - (b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the amount in accordance with subsection (2).

- (2) The Commissioner must pay the amount:
- (a) to a single fund if:
    - (i) the person has not died; and
    - (ii) the person directs the Commissioner to pay to the fund; and
    - (iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (b) in accordance with subsection (4) if:
    - (i) the person has died; and
    - (ii) the Commissioner is satisfied that, if the superannuation provider had not paid the amount to the Commissioner, the provider would have been required to pay an amount or amounts (death benefits) to one or more other persons (death beneficiaries) because of the deceased person's death; or
  - (c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or
  - (d) to the person if this paragraph applies (see subsection (3)).

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (3) Paragraph (2)(d) applies if:
- (a) subparagraph (2)(a)(ii) does not apply; and
  - (b) any of the following subparagraphs apply:
    - (i) the person has reached the eligibility age;
    - (ii) the amount is less than \$200;
    - (iii) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the person; and
  - (c) the person has not died.
- (4) In a case covered by paragraph (2)(b), the Commissioner must pay the amount under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

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$$\text{Amount payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

Note: If there is only one death beneficiary, the whole of the amount is payable to that beneficiary.

- (5) If:
- (a) the Commissioner makes a payment under subsection (2) to a fund, a legal personal representative or a person; and
  - (b) the payment is in accordance with paragraph (2)(a), (c) or (d);

the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (5) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (6) If:
- (a) the Commissioner makes a payment under subsection (2) to a death beneficiary; and
  - (b) the payment is in accordance with paragraph (2)(b);

the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (6) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (7) Regulations made for the purposes of subsection (5) or (6) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.
- (8) This section does not apply to an amount that is to be, is or has been, taken into account in determining whether the Commissioner must make a payment under subsection 20H(2) or (3).

Note: Subsections 20H(2) and (3) provide for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under subsections 17(1), 20F(1), 20QD(1) and 24E(1) in respect of a person who:

- (a) is identified in a notice under section 20C; or
- (b) used to be the holder of a temporary visa.

## **Division 4—Various rules for special cases**

### **20QG State or Territory public sector superannuation schemes**

Subject to section 20QH, sections 20QB and 20QD do not apply to a superannuation provider in relation to an unclaimed money day if, because of section 18, the superannuation provider does not have to comply with subsection 16(1) or 17(1) in relation to the unclaimed money day.

### **20QH Prescribed public sector superannuation schemes**

(1) Section 6, subsections 19(1) to (3), this Part (other than sections 20QE and 20QG) and subsection 25(2B) apply as if:

- (a) a public sector superannuation scheme that:
  - (i) is prescribed for the purposes of this section; and
  - (ii) in the case of a Commonwealth public sector superannuation scheme—is not a fund; were a fund; and

Note: The regulations may prescribe a scheme by reference to a class of schemes: see subsection 13(3) of the *Legislation Act 2003*.

- (b) the trustee of the scheme were the superannuation provider; and
  - (c) a member of the scheme were a member of the fund.
- (2) Despite subsection (1), in the case of a State or Territory public sector superannuation scheme:
- (a) section 20QB (statements on inactive low-balance accounts):
    - (i) permits, rather than requires, the trustee to give a statement to the Commissioner; and
    - (ii) does not permit the trustee to give a statement to the Commissioner if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner; and
  - (b) section 20QD (payment of balances from inactive low-balance accounts):

- (i) does not apply in relation to an unclaimed money day if the trustee does not give a statement in relation to the unclaimed money day to the Commissioner under section 20QB; and
  - (ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and
  - (iii) does not apply to an amount to the extent that the governing rules of the scheme prohibit the trustee from paying the amount to the Commissioner.
- (3) Subparagraphs (2)(a)(i) and (b)(ii) do not apply in relation to an unclaimed money day if, disregarding this section:
- (a) the public sector superannuation scheme is a fund; and
  - (b) the superannuation provider has to comply with subsections 16(1) and 17(1) in relation to the unclaimed money day.

### **20QJ Refund of overpayment made by superannuation provider**

- (1) This section applies if:
- (a) a superannuation provider for a fund (the *first fund*) has made a payment to the Commissioner under section 20QD in respect of a person; and
  - (b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that section in respect of the person.
- (2) The Commissioner must pay the excess:
- (a) to the superannuation provider; or
  - (b) to a superannuation provider for another fund if the Commissioner is satisfied that:
    - (i) the first fund no longer exists; and
    - (ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

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**20QK Commissioner may recover overpayment**

- (1) This section applies if:
  - (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  - (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person.
- (2) The Commissioner may recover all or part of the excess from a person (the *debtor*) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.
- (3) The persons from whom the Commissioner may recover are as follows:
  - (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);
  - (b) the superannuation provider for the fund to which the payment was made;
  - (c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.
- (4) The conditions for recovery are that:
  - (a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and
  - (b) at least 28 days have passed since the notice was given; and
  - (c) the amount recovered is not more than the amount specified in the notice.
- (5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.



- (6) The Commissioner may revoke a notice described in paragraph (4)(a).
- (7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.
- (8) A notice described in paragraph (4)(a) is not a legislative instrument.

## **20QL Superannuation provider to return payment from Commissioner that cannot be credited**

### *Scope*

- (1) This section applies if:
  - (a) a payment (the **Commissioner's payment**) is made to a fund under subsection 20QF(2) or (5) in accordance with a person's direction; and
  - (b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the **repayment time**) that is the end of the 28th day after the day on which the Commissioner's payment was made.

### *Repayment*

- (2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

- (3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or

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includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

*General interest charge*

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the repayment time; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid at the repayment time;
    - (ii) general interest charge on any of the amount.

**20QM Compensation for acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## **Part 4—Register of lost members**

### **23 Register of lost members**

The Commissioner must keep a register of lost members.

### **24 Commissioner may give information to State or Territory authorities**

The Commissioner may give information contained in the register to a State or Territory authority if the State or Territory has a law satisfying the requirements of subsections 18(4) and (5).

## Part 4A—Payment of lost member accounts to the Commissioner

### Division 1—Preliminary

#### 24A Object of Part

The object of this Part is to set out a procedure for dealing with:

- (a) small accounts of lost members; and
- (b) inactive accounts of unidentifiable lost members.

#### 24B Meaning of *lost member account*

##### *Small accounts*

- (1) An account in a fund is taken to be a ***lost member account*** if:
  - (a) the member on whose behalf the account is held is a lost member; and
  - (b) the balance of the account is less than \$6,000; and
  - (c) the account does not support or relate to a defined benefit interest (within the meaning of section 291-175 of the *Income Tax Assessment Act 1997*).

Note: The balance of an account does not reflect any earnings, fees or charges that have not yet been credited to, or debited from, the account.

##### *Inactive accounts of unidentifiable members*

- (2) An account in a fund is also taken to be a ***lost member account*** if:
  - (a) the member on whose behalf the account is held is a lost member; and
  - (b) the superannuation provider has not received an amount in respect of the member within the last 12 months; and
  - (c) the superannuation provider is satisfied that it will never be possible for the provider, having regard to the information

reasonably available to the provider, to pay an amount to the member; and

- (d) the account does not support or relate to a defined benefit interest (within the meaning of section 291-175 of the *Income Tax Assessment Act 1997*).

## Division 2—Statement of lost member accounts

### 24C Statement of lost member accounts

*Superannuation provider must give statement to Commissioner*

- (1) A superannuation provider must, for each unclaimed money day, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:
- (a) each lost member account as at the end of the day;
  - (b) the administration of any of the following in connection with each lost member account:
    - (i) this Part;
    - (ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;
    - (iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.
- Note 1: For State or Territory public sector superannuation schemes, see sections 24H and 24HA.
- Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement required under subsection (1) includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act and Division 284 in Schedule 1 to that Act.
- Note 3: The approved form may also require the statement to include certain tax file numbers: see subsection 25(4) of this Act.
- (2) The statement is not required to contain information relevant to lost member accounts that cease to be lost member accounts during the period that:
- (a) begins from the unclaimed money day; and
  - (b) ends immediately before the day on which the statement is given to the Commissioner.

- (3) If, at the end of the unclaimed money day:
- (a) there are no lost member accounts, the statement must say so;  
or
  - (b) there are only lost member accounts that cease to be lost member accounts during the period mentioned in subsection (2), the statement must say so.

Note: If the fund is a regulated superannuation fund that has fewer than 5 members, see subsection (4).

- (4) This section does not apply if, at the end of the unclaimed money day:
- (a) the fund is a regulated superannuation fund that has fewer than 5 members; and
  - (b) either:
    - (i) there are no lost member accounts; or
    - (ii) there are only lost member accounts that cease to be lost member accounts during the period mentioned in subsection (2).

*When statement must be given*

- (5) The superannuation provider must give the Commissioner the statement by the end of the scheduled statement day for the unclaimed money day.

Note 1: The Commissioner may defer the time for giving the statement: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

*Relationship to rest of Act*

- (6) This section does not apply in relation to:
- (a) an amount that is unclaimed money at the end of the unclaimed money day; or

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- (b) amounts payable to a person identified in a notice the Commissioner has given the superannuation provider under section 20C.

Note: Section 16 requires the superannuation provider to give the Commissioner a statement about unclaimed money.

Note 2: Section 20E requires the superannuation provider to give the Commissioner a statement about the superannuation interest of a person identified in a notice given to the provider under section 20C (which is about notices identifying former temporary residents).

**24D Error or omission in statement**

*Scope*

- (1) This section applies if:
- (a) a superannuation provider gives the Commissioner a statement under section 24C; and
  - (b) the superannuation provider becomes aware of a material error, or material omission, in any information in the statement.

*Superannuation provider must give information*

- (2) The superannuation provider must, in the approved form, give the Commissioner the corrected or omitted information.
- (3) Information required by subsection (2) must be given no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.



## **Division 3—Payment in respect of lost member accounts**

### **24E Payment in respect of lost member accounts**

*Provider must pay Commissioner*

- (1) A superannuation provider must pay the Commissioner (for the Commonwealth) the amount worked out under subsection (2) in respect of a person if:
- (a) an account is a lost member account as at the end of an unclaimed money day; and
  - (b) the account is held by the provider on behalf of the person; and
  - (c) the person is still a lost member at the time (the ***calculation time***) immediately before the earlier of:
    - (i) the time (if any) the payment is made; and
    - (ii) the time at which the payment is due and payable, (assuming that the payment must be made).

The amount is due and payable at the end of the scheduled statement day for the unclaimed money day.

Note 1: For State or Territory public sector superannuation schemes, see sections 24H and 24HA.

Note 2: Subsection 24F(2) makes it an offence not to comply with a requirement under this subsection.

Note 3: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 4: The Commissioner may defer the time at which the amount is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 5: Section 24J provides for refunds of overpayments by the superannuation provider to the Commissioner.

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*Amount of payment*

- (2) The amount payable in respect of the lost member is the amount that would have been payable by the superannuation provider if the lost member had requested that the balance of the account be rolled over or transferred to a complying superannuation fund (within the meaning of the SIS Act).
- (3) For the purposes of subsection (2):
  - (a) work out the amount that would have been payable at the calculation time; and
  - (b) assume that the request were made before the calculation time; and
  - (c) assume that the lost member had not died before the calculation time.

*Family Law payment splits*

- (4) If, as a result of a payment split that applies in relation to the account, the non-member spouse (or his or her legal personal representative if he or she has died) is, or could in the future be, entitled to be paid an amount, then:
  - (a) for the purposes of subsection (2), take account only of the lost member's entitlement to payment remaining after any reduction by the payment split (disregarding subsection 90XB(3) of the *Family Law Act 1975*); and
  - (b) the superannuation provider must also pay an amount (the **non-member spouse amount**) to the Commissioner in respect of the non-member spouse; and
  - (c) the non-member spouse amount is due and payable at the same time as the amount payable under subsection (1); and
  - (d) the amount of the non-member spouse amount is the amount of the reduction mentioned in paragraph (a).

Note 1: Part VIII B of the *Family Law Act 1975* is about splitting amounts payable in respect of a superannuation interest between the parties to a marriage. Subsection 90XB(3) of that Act provides that the Part has effect subject to this Act.

Note 2: Subsection 24F(2) makes it an offence not to comply with a requirement under this subsection.

*Miscellaneous*

(5) This section does not require the superannuation provider to pay the Commissioner:

- (a) an amount that is unclaimed money at the end of the unclaimed money day; or
- (b) an amount payable to a person identified in a notice the Commissioner has given the provider under section 20C.

Note 1: Unclaimed money is payable to the Commissioner under subsection 17(1).

Note 2: An amount mentioned in paragraph (5)(b) is payable to the Commissioner under section 20F.

(6) Upon payment to the Commissioner of an amount as required under this section, the superannuation provider is discharged from further liability in respect of that amount.

(7) For the purposes of this section, ignore accounts with nil balances, or balances below nil, as at the calculation time mentioned in subsection (1).

## **24F Payment in respect of lost member accounts—late payments**

*General interest charge on late payment*

(1) If any of the amount a superannuation provider must pay under section 24E remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the time it is due and payable; and
- (b) ends at the end of the last day on which either of the following remains unpaid:
  - (i) the amount unpaid when it is due and payable;
  - (ii) general interest charge on any of the amount.

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*Offence of failing to make payment to Commissioner*

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection 24E(1) or (4); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty for an offence against subsection (2):            100 penalty units.

**24G Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner**

- (1) This section applies in relation to a person if:
- (a) a superannuation provider paid an amount to the Commissioner under section 24E in respect of the person; and
  - (b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the amount in accordance with subsection (2).
- (2) The Commissioner must pay the amount:
- (a) to a single fund if:
    - (i) the person has not died; and
    - (ii) the person directs the Commissioner to pay to the fund; and
    - (iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (b) in accordance with subsection (3) if:
    - (i) the person has died; and
    - (ii) the Commissioner is satisfied that, if the superannuation provider had not paid the amount to the Commissioner, the provider would have been required to pay an amount or amounts (death benefits) to one or more other

persons (death beneficiaries) because of the deceased person's death; or

- (c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or
- (d) to the person if this paragraph applies (see subsection (2A)).

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.

- (2A) Paragraph (2)(d) applies if:
  - (a) subparagraph (2)(a)(ii) does not apply; and
  - (b) any of the following subparagraphs apply:
    - (i) the person has reached the eligibility age;
    - (ii) the amount is less than \$200;
    - (iii) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the person; and
  - (c) the person has not died.
- (3) In a case covered by paragraph (2)(b), the Commissioner must pay the amount under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

$$\text{Amount payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

Note: If there is only one death beneficiary, the whole of the amount is payable to that beneficiary.

- (3A) If:
  - (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a fund, a legal personal representative or a person; and
  - (b) the payment is in accordance with paragraph (2)(a), (c) or (d);the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

**Part 4A** Payment of lost member accounts to the Commissioner

**Division 3** Payment in respect of lost member accounts

**Section 24G**

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Note: Money for payments under subsection (3A) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(3B) If:

- (a) the Commissioner makes a payment under subsection (2) on or after 1 July 2013 to a death beneficiary; and
  - (b) the payment is in accordance with paragraph (2)(b);
- the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under subsection (3B) is appropriated by section 16 of the *Taxation Administration Act 1953*.

(3C) Regulations made for the purposes of subsection (3A) or (3B) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

(3D) Interest under subsection (3A) or (3B) does not accrue in relation to a period before 1 July 2013.

(4) This section does not apply to an amount that is to be, is or has been, taken into account in determining whether the Commissioner must make a payment under subsection 20H(2) or (3).

Note: Subsections 20H(2) and (3) provide for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under subsections 17(1), 20F(1) and 24E(1) in respect of a person who:

- (a) is identified in a notice under section 20C; or
- (b) used to be the holder of a temporary visa.

## **Division 4—Various rules for special cases**

### **24H State or Territory public sector superannuation schemes**

Subject to section 24HA, sections 24C and 24E do not apply to a superannuation provider in relation to an unclaimed money day if, because of section 18, the superannuation provider does not have to comply with subsection 16(1) or 17(1) in relation to the unclaimed money day.

### **24HA Prescribed public sector superannuation schemes**

- (1) Section 6, subsections 19(1) to (3), this Part (other than sections 24F and 24H) and subsection 25(4) apply as if:
  - (a) a public sector superannuation scheme that:
    - (i) is prescribed for the purposes of this section; and
    - (ii) in the case of a Commonwealth public sector superannuation scheme—is not a fund; were a fund; and

Note: The regulations may prescribe a scheme by reference to a class of schemes: see subsection 13(3) of the *Legislation Act 2003*.

  - (b) the trustee of the scheme were the superannuation provider; and
  - (c) a member of the scheme were a member of the fund.
- (2) Despite subsection (1), in the case of a State or Territory public sector superannuation scheme:
  - (a) section 24C (Statement of lost member accounts):
    - (i) permits, rather than requires, the trustee to give a statement to the Commissioner; and
    - (ii) does not permit the trustee to give a statement to the Commissioner if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner; and
  - (b) section 24E (Payment in respect of lost member accounts):

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- (i) does not apply in relation to an unclaimed money day if the trustee does not give a statement in relation to the unclaimed money day to the Commissioner under section 24C; and
  - (ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and
  - (iii) does not apply to an amount to the extent that the governing rules of the scheme prohibit the trustee from paying the amount to the Commissioner.
- (3) Subparagraphs (2)(a)(i) and (b)(ii) do not apply in relation to an unclaimed money day if, disregarding this section:
- (a) the public sector superannuation scheme is a fund; and
  - (b) the superannuation provider has to comply with subsections 16(1) and 17(1) in relation to the unclaimed money day.

**24J Refund of overpayment made by superannuation provider**

- (1) This section applies if:
- (a) a superannuation provider for a fund (the *first fund*) has made a payment to the Commissioner under section 24E in respect of a person; and
  - (b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that section in respect of the person.
- (2) The Commissioner must pay the excess:
- (a) to the superannuation provider; or
  - (b) to a superannuation provider for another fund if the Commissioner is satisfied that:
    - (i) the first fund no longer exists; and
    - (ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Note: Money for payments under subsection (2) is appropriated by section 16 of the *Taxation Administration Act 1953*.



## **24K Commissioner may recover overpayment**

- (1) This section applies if:
  - (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  - (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person.
- (2) The Commissioner may recover all or part of the excess from a person (the *debtor*) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.
- (3) The persons from whom the Commissioner may recover are as follows:
  - (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);
  - (b) the superannuation provider for the fund to which the payment was made;
  - (c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.
- (4) The conditions for recovery are that:
  - (a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and
  - (b) at least 28 days have passed since the notice was given; and
  - (c) the amount recovered is not more than the amount specified in the notice.
- (5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.

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- (6) The Commissioner may revoke a notice described in paragraph (4)(a).
- (7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.
- (8) A notice described in paragraph (4)(a) is not a legislative instrument.

**24L Superannuation provider to return payment from Commissioner that cannot be credited**

*Scope*

- (1) This section applies if:
  - (a) a payment (the **Commissioner's payment**) is made to a fund under subsection 24G(2) or (3A) in accordance with a person's direction; and
  - (b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the **repayment time**) that is the end of the 28th day after the day on which the Commissioner's payment was made.

*Repayment*

- (2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

- (3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or

includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

*General interest charge*

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the repayment time; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid at the repayment time;
    - (ii) general interest charge on any of the amount.

**24M Compensation for acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**Part 4B** Reunification of superannuation balances

**Division 1** Preliminary

Section 24N

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**Part 4B—Reunification of superannuation balances**

**Division 1—Preliminary**

**24N Object of this Part**

The object of this Part is to set out a procedure for transferring amounts received by the Commissioner under Parts 3, 3B and 4A in respect of a person into a single active account held by a superannuation provider in respect of the person.

## **Division 2—Transferring balances to an active account**

### **24NA Transferring balances to an active account**

- (1) This section applies in relation to a person if:
  - (a) the Commissioner is satisfied that:
    - (i) a superannuation provider has paid an amount to the Commissioner under subsection 17(1) (unclaimed money) and, after applying Part 3 and section 20H, the Commissioner holds an amount under that Part in respect of the person (a ***superannuation amount***); or
    - (ii) a superannuation provider has paid an amount to the Commissioner under section 20QD (an amount from an inactive low-balance account) and, after applying Part 3B and section 20H, the Commissioner holds an amount under that Part in respect of the person (a ***superannuation amount***); or
    - (iii) a superannuation provider has paid an amount to the Commissioner under section 24E (an amount from a lost member account) and, after applying Part 4A and section 20H, the Commissioner holds an amount under that Part in respect of the person (a ***superannuation amount***); and
  - (b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the superannuation amount in accordance with subsection (2).
- (1A) The Commissioner must pay the superannuation amount in accordance with subsection (2) within 28 days after the Commissioner is satisfied it is possible to pay that amount in accordance with that subsection.
- (2) The Commissioner must pay each superannuation amount in respect of the person to a single fund if:
  - (a) the person has not died; and

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- (b) the superannuation provider for the fund holds an account on behalf of the person in the fund; and
  - (c) the superannuation provider for the fund has received an amount in respect of the person during the prescribed period; and
  - (d) the balance of the account will be equal to or greater than \$6,000 if all of the superannuation amounts in respect of the person are paid into the account; and
  - (e) under the terms of the fund, and under the law of the Commonwealth, the fund can accept payment of the superannuation amount in respect of the person.
- (3) If there is more than one fund in relation to which paragraphs (2)(b), (c), (d) and (e) are satisfied in respect of a person, then despite subsection (2), the Commissioner must pay each superannuation amount in respect of the person in accordance with the regulations.
- (4) If the Commissioner makes a payment to a fund under subsection (2) or regulations made for the purposes of subsection (3), the Commissioner must also pay to the fund the amount of interest (if any) worked out in accordance with the regulations.
- Note: Money for payments under this section is appropriated by section 16 of the *Taxation Administration Act 1953*.
- (5) Regulations made for the purposes of subsection (4) may prescribe different rates for different periods over which the interest accrues. For this purpose, *rate* includes a nil rate.

**24NB Superannuation provider to return payment from Commissioner that cannot be credited**

*Scope*

- (1) This section applies if:
- (a) a payment (the *Commissioner's payment*) is made to a fund under subsection 24NA(2), subsection 24NA(4) or

regulations made for the purposes of subsection 24NA(3);  
and

- (b) the superannuation provider for the fund has not credited the payment to an account to which the payment relates for the benefit of the person by the time (the *repayment time*) that is the end of the 28th day after the day on which the Commissioner's payment was made.

*Repayment*

- (2) The superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

- (3) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

*General interest charge*

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
- (a) starts at the repayment time; and
  - (b) ends at the end of the last day on which either of the following remains unpaid:
    - (i) the amount unpaid at the repayment time;
    - (ii) general interest charge on any of the amount.

## Part 5—Tax file numbers

### 25 Forms etc. may require tax file number

#### *Unclaimed money statement—Commonwealth*

- (1) The approved form of statement by a superannuation provider for the purposes of section 16 may require the statement to contain the tax file number of:
  - (aa) the superannuation provider; and
  - (a) the fund; and
  - (b) a member of the fund if:
    - (i) the statement relates to the member; and
    - (ii) the member has quoted his or her tax file number to the superannuation provider.

#### *Unclaimed money statement—States and Territories*

- (2) The form of statement by a superannuation provider that is approved by a State or Territory authority for the purposes of section 18 may require the statement to contain the tax file number of:
  - (a) the fund; and
  - (b) a member of the fund if:
    - (i) the statement relates to the member; and
    - (ii) the member has quoted his or her tax file number to the superannuation provider.

#### *Statement about unclaimed superannuation of former temporary visa holder*

- (2A) The approved form of statement by a superannuation provider for the purposes of subsection 20E(1) relating to a person's superannuation interest may require the statement to contain the tax file number of:



- (a) the superannuation provider; and
- (b) the fund; and
- (c) the person, if:
  - (i) the person has quoted his or her tax file number to the superannuation provider; or
  - (ii) the Commissioner has given the superannuation provider the person's tax file number in a notice about the person under section 20C.

*Statement about inactive low-balance accounts*

- (2B) The approved form of statement by a superannuation provider for the purposes of section 20QB may require the statement to contain the tax file number of:
- (a) the superannuation provider; and
  - (b) the fund; and
  - (c) a member of the fund if:
    - (i) the statement relates to an account, in the fund, held on behalf of the member; and
    - (ii) the member has quoted his or her tax file number to the superannuation provider.

*Lost member accounts statements*

- (4) The approved form of statement by a superannuation provider for the purposes of section 24C may require the statement to contain the tax file number of:
- (a) the superannuation provider; and
  - (b) the fund; and
  - (c) a member of the fund if:
    - (i) the statement relates to an account, in the fund, held on behalf of the member; and
    - (ii) the member has quoted his or her tax file number to the superannuation provider.

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**25A Notices under section 20C may include tax file numbers**

A notice the Commissioner gives under section 20C about a person and his or her superannuation interest in a fund may include the tax file number of the person and the tax file number of the fund.

**26 Provision of tax file numbers by trustees of regulated exempt public sector superannuation schemes**

- (1) The approved form for the purposes of subsection 19(5), in relation to information or particulars referred to in subsection 19(4) about a member of a regulated exempt public sector superannuation scheme, may permit the trustee of the scheme to give to the Commissioner the tax file number of:
  - (a) the scheme; and
  - (b) the member (if the member has quoted his or her tax file number to the trustee).
- (2) The trustee of a regulated exempt public sector superannuation scheme may, in the form approved by a State or Territory authority, give to a State or Territory authority the tax file number of:
  - (a) the scheme; and
  - (b) a member of the scheme (if the member has quoted his or her tax file number to the trustee);in connection with the operation, or possible future operation, of a register of the authority mentioned in item 4 of the table in subsection 18(4).

**27 Registers may contain tax file numbers**

The particulars of a person that may be included in the registers mentioned in section 19 and Part 4, and in item 4 of the table in subsection 18(4), include the person's tax file number.

**28 Use of tax file numbers**

The Commissioner may use for the purposes of this Act a person's tax file number that has been quoted to the Commissioner for any other purpose.

**29 Requesting tax file numbers**

- (1) The Commissioner may request any of the following persons to quote his or her tax file number to the Commissioner in connection with the operation, or the possible future operation, of this Act or the regulations:
  - (a) a person who claims to be entitled to unclaimed money particulars of which are contained in the register referred to in section 19;
  - (aa) a person making an application mentioned in subsection 20H(1) or 24G(1) (about payment by the Commissioner);
  - (b) a person who claims to be a lost member whose particulars are contained in the register referred to in Part 4.
- (2) If:
  - (a) a person claims to be entitled to unclaimed money; and
  - (b) particulars of the money are contained in a register of a State or Territory authority mentioned in item 4 of the table in subsection 18(4);the State or Territory authority may request the person to quote his or her tax file number to the authority in connection with the operation, or the possible future operation, of the register. The request may only be made in the approved form.
- (3) A person is not obliged to comply with a request made under subsection (1) or (2).
- (4) To avoid doubt, non-compliance with a request made under subsection (1) or (2) does not prevent a person from being paid unclaimed money or prevent a payment from being made under subsection 20H(2), (2AA), (2A) or (3).

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**30 Quoting tax file numbers**

A person quotes his or her tax file number to another person in connection with the operation, or the possible future operation of:

- (a) this Act or the regulations; or
- (b) a register mentioned in item 4 of the table in subsection 18(4);

if the person informs the other person of the number in a manner approved in writing by the Commissioner.

## **Part 7—Administration**

### **40 General administration of Act**

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

### **41 Annual report**

After the end of each financial year, the Commissioner must give the Treasurer a report on the working of this Act during the year for presentation to the Parliament.

## Part 8—Miscellaneous

### 42 Act not to operate so as to contravene Constitution

This Act does not apply in any circumstance where its application would result in a contravention of the Constitution.

### 43 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

### 44 Publication etc. of information in registers

- (1) The Commissioner may authorise information in the registers mentioned in section 19 and Part 4 to be:
  - (a) published in the *Gazette*; or
  - (b) made available to the public (whether or not on the payment of a fee) in such other manner as the Commissioner determines; or
  - (c) made available to a particular person (whether or not on the payment of a fee) in such manner as the Commissioner determines.

The authorisation may extend to so much of the information in the registers as the Commissioner considers appropriate.

*Tax file numbers must not be published or made available*

- (2) Subsection (1) does not apply to tax file numbers.

**48 Records to be kept and retained by superannuation provider***Superannuation provider to keep records*

- (1) A superannuation provider must keep records that record and explain all transactions and other acts engaged in by the provider, or required to be engaged in by the provider, under this Act.

*How records to be kept*

- (2) The records must be kept in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language.

*Period for retention of records*

- (3) A superannuation provider who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the later of:
  - (a) the end of 5 years after they were prepared or obtained; or
  - (b) the completion of the transactions or acts to which those records relate.

*When records need not be kept*

- (4) This section does not require a superannuation provider to retain records if the Commissioner has notified the provider that the retention of the records is not required.

*Offence*

- (5) A superannuation provider commits an offence if the superannuation provider fails to comply with an obligation set out in this section.

Penalty for contravention of this subsection: 60 penalty units.

Note 1: In a prosecution for an offence against subsection (5), the defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

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- Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- Note 3: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.
- Note 4: See also sections 8L, 8M, 8Q, 8R, 8T and 8V of the *Taxation Administration Act 1953* and section 288-25 in Schedule 1 to that Act.

### 49 Money paid to Commissioner not held on trust

To avoid doubt, money paid under this Act to the Commissioner is not, and has never been, held on trust.

### 49A Money transferred to State or Territory authorities

(1) This section applies if:

- (a) a person was a member of a fund, or a superannuation fund, (the ***original fund***); and
- (b) the superannuation provider of the fund, or the trustee of the superannuation fund, (the ***original provider***) transferred an interest of the member in the original fund to a State or Territory authority; and

Example: The law of the State or Territory required the original provider to transfer unclaimed money of the member to the State or Territory authority.

- (c) a State or Territory authority (the ***currently responsible authority***) (whether or not the State or Territory authority mentioned in paragraph (b)) would be required, under:

- (i) the governing rules of the original fund; or
- (ii) the law of the State or Territory;

to make a payment to or in respect of the member in circumstances in which, before the transfer, the original provider would have been required to make a payment to or in respect of the member.

Example: A requirement to pay unclaimed money to a member who claims it.

(2) Section 18AA and, in the case of a State or Territory public sector superannuation scheme, sections 20JA and 24HA, apply as if:



- (a) the currently responsible authority were the trustee of a State or Territory public sector superannuation scheme; and
- (b) the scheme were:
  - (i) prescribed for the purposes of those sections; and
  - (ii) not a fund; and
- (c) the member of the original fund were a member of the scheme; and
- (d) anything done by, to or in relation to the original provider in relation to the original fund had been done by, to or in relation to the currently responsible authority in relation to the scheme; and
- (e) a reference in those sections to the governing rules of the original fund were a reference to the laws of the State or Territory.

## **50 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;and, in particular, prescribing:
  - (c) fees in respect of any matter under this Act; and
  - (d) how notices, applications, statements or other documents are to be given to the Commissioner; and
  - (e) penalties, not exceeding a fine of 5 penalty units, for offences against the regulations.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for and in relation to the keeping of one or more registers by the Commissioner, where the registers relate to matters arising under this Act or the regulations. In particular, the regulations may make provision for the following:
  - (a) a register to be kept in such form and manner as the Commissioner directs;
  - (b) persons to inspect a register;

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- (c) persons to obtain information contained in a register;
- (d) fees to be charged for such an inspection or for providing such information.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Superannuation (Unclaimed Money and Lost Members) Act 1999	127, 1999	13 Oct 1999	13 Oct 1999 (s 2)	
Superannuation (Unclaimed Money and Lost Members) Consequential and Transitional Act 1999	128, 1999	13 Oct 1999	s 4–7: 13 Oct 1999 (s 2(1)) Sch 2: 5 Dec 1999 (s 2(4)(b))	s 4–7
Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001	114, 2001	18 Sept 2001	28 Dec 2002 (s 2)	—
Australian Prudential Regulation Authority Amendment Act 2003	42, 2003	24 June 2003	Sch 2 (item 23) and Sch 3: 1 July 2003 (s 2(1) item 2)	Sch 3
Tax Laws Amendment (Simplified Superannuation) Act 2007	9, 2007	15 Mar 2007	Sch 7 (items 2–7): 15 Mar 2007 (s 2(1) item 9)	Sch 7 (item 7)
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 3 (items 58–60): 15 Mar 2007 (s 2(1) item 8)	Sch 3 (item 60)
Temporary Residents' Superannuation Legislation Amendment Act 2008	151, 2008	11 Dec 2008	Sch 1 (items 1–11, 13–22): 18 Dec 2008 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Tax Laws Amendment (2009 Measures No. 1) Act 2009	27, 2009	26 Mar 2009	Sch 2 (items 1–41, 67–70): 27 Mar 2009 (s 2(1) item 5)	Sch 2 (items 67–70)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 222): 27 Feb 2010 (s 2(1) item 2)	—
Tax Laws Amendment (2009 Budget Measures No. 2) Act 2009	133, 2009	14 Dec 2009	Sch 3 (items 1–26, 44, 45): 14 Dec 2009 (s 2(1) item 3)	Sch 3 (items 44, 45)
Superannuation Legislation Amendment Act 2010	117, 2010	16 Nov 2010	Sch 1 (items 1–14, 21(1)) and Sch 4 (item 30): 17 Nov 2010 (s 2(1) items 2, 8)	Sch 1 (item 21(1))
<b>as amended by</b>				
Tax Laws Amendment (2011 Measures No. 2) Act 2011	41, 2011	27 June 2011	Sch 5 (item 420): 27 June 2011 (s 2(1) item 23)	—
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (items 87–91): 17 Dec 2010 (s 2(1) item 2)	—
Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012	176, 2012	4 Dec 2012	Sch 4 (items 1–4, 7, 8): 5 Dec 2012 (s 2(1) items 8, 10) Sch 4 (items 5, 6): 30 Dec 2012 (s 2(1) item 9)	Sch 4 (item 8)

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

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Compilation No. 34

Compilation date: 23/06/2020

Registered: 03/07/2020

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Tax and Superannuation Laws Amendment (2013 Measures No. 1) Act 2013	88, 2013	28 June 2013	Sch 1 (items 20–32): 28 June 2013 (s 2(1) item 2)	—
Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013	118, 2013	29 June 2013	Sch 1 (items 13, 14, 110): 29 June 2013 (s 2(1) item 2)	Sch 1 (item 110)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (item 172) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b> Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b> Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Treasury Legislation Amendment (Repeal Day) Act 2015	2, 2015	25 Feb 2015	Sch 2 (items 64, 65): 1 July 2015 (s 2(1) item 4)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 342): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 591–594): 5 Mar 2016 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (2015 Measures No. 4) Act 2015	135, 2015	13 Oct 2015	Sch 3 (item 1): 31 Dec 2015 (s 2(1) item 3) Sch 3 (item 2): 31 Dec 2016 (s 2(1) item 4)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 301): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (item 100): 21 Oct 2016 (s 2(1) item 1)	—
Tax and Superannuation Laws Amendment (2016 Measures No. 2) Act 2017	15, 2017	28 Feb 2017	Sch 4 (items 85, 92): 1 Apr 2017 (s 2(1) item 12)	Sch 4 (item 92)

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

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## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018	13, 2018	5 Mar 2018	s 4: 5 Mar 2018 (s 2(1) item 1) Sch 3 (items 30, 32): <u>awaiting commencement</u> (s 2(1) item 8)	s 4 and Sch 3 (item 32)
Treasury Laws Amendment (2018 Measures No. 1) Act 2018	23, 2018	29 Mar 2018	Sch 1 (items 31, 32): 1 Apr 2018 (s 2(1) item 5) Sch 1 (items 75–79): 30 Mar 2018 (s 2(1) item 9)	Sch 1 (items 75–79)
Civil Law and Justice Legislation Amendment Act 2018	130, 2018	25 Oct 2018	Sch 6 (items 67–70): 22 Nov 2018 (s 2(1) item 10)	—
Treasury Laws Amendment (2018 Measures No. 4) Act 2019	8, 2019	1 Mar 2019	Sch 4 (items 8–17): 1 Apr 2019 (s 2(1) item 5)	Sch 4 (items 16, 17)
Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019	16, 2019	12 Mar 2019	Sch 3 (items 16–33, 38): 13 Mar 2019 (s 2(1) item 2)	Sch 3 (item 38)
<b>as amended by</b> Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (item 62): 23 June 2020 (s 2(1) item 4)	—
Treasury Laws Amendment (Putting Members' Interests First) Act 2019	79, 2019	2 Oct 2019	Sch 1 (items 6–10): 3 Oct 2019 (s 2(1) item 1)	Sch 1 (items 8–10)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Treasury Laws Amendment (2019 Measures No. 2) Act 2019	94, 2019	28 Oct 2019	Sch 5 (items 1, 2): 29 Oct 2019 (s 2(1) item 5)	—
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (items 54–60): 23 June 2020 (s 2(1) item 4)	Sch 3 (items 56, 58)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
Title .....	am No 151, 2008
<b>Part 1</b>	
s 4 .....	am No 59, 2015
s 6 .....	am No 151, 2008; No 133, 2009; No 16, 2019
s 7 .....	am No 9, 2007; No 151, 2008; No 27, 2009; No 133, 2009; No 117, 2010; No 8, 2019; No 16, 2019
<b>Part 2</b>	
s 8 .....	am No 42, 2003; No 151, 2008; No 27, 2009; No 75, 2009; No, 133, 2009; No 117, 2010; No 145, 2010; No 2, 2015; <u>No 13, 2018</u> ; No 8, 2019; No 16, 2019
<b>Part 3</b>	
<b>Division 1</b>	
Division 1 heading .....	ad No 27, 2009
s 12 .....	am No 114, 2001; No 9, 2007; No 133, 2009
s 13 .....	am No 114, 2001; No 9, 2007; No 27, 2009; No 133, 2009; No 4, 2016; No 61, 2016
s 14 .....	am No 133, 2009
s 15 .....	am No 4, 2016; No 61, 2016
s 15A.....	ad No 27, 2009 am No 133, 2009; No 16, 2019
<b>Division 2</b>	
Division 2 heading .....	ad No 27, 2009
s 16 .....	am No 151, 2008; No 27, 2009; No 64, 2020
s 16A.....	ad No 27, 2009
<b>Division 3</b>	
Division 3 heading .....	ad No 27, 2009
s 17 .....	am No 151, 2008; No 27, 2009; No 176, 2012; No 88, 2013
s 17A.....	ad No 27, 2009

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 4</b>	
Division 4 heading.....	ad No 27, 2009
s 18 .....	am No 15, 2007; No 27, 2009; No 117, 2010
s 18AA.....	ad No 117, 2010
	am No 126, 2015
s 18A.....	ad No 27, 2009
s 18B.....	ad No 27, 2009
s 18C.....	ad No 27, 2009
<b>Part 3AA</b>	
Part 3AA heading.....	ad No 27, 2009
s 19 .....	am No 27, 2009; No 133, 2009; No 16, 2019
<b>Part 3A</b>	
Part 3A.....	ad No 151, 2008
<b>Division 1</b>	
s 20A.....	ad No 151, 2008
	am No 27, 2009
s 20AA.....	ad No 27, 2009
	am No 126, 2015
s 20B.....	ad No 151, 2008
<b>Division 2</b>	
s 20C.....	ad No 151, 2008
	am No 27, 2009; No 117, 2010
<b>Division 3</b>	
s 20D.....	ad No 151, 2008
s 20E.....	ad No 151, 2008
	am No 27, 2009
s 20F .....	ad No 151, 2008
	am No 130, 2018
s 20G.....	ad No 151, 2008
<b>Division 4</b>	
s 20H.....	ad No 151, 2008

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am No 133, 2009; No 176, 2012; No 88, 2013; No 16, 2019
<b>Division 5</b>	
s 20J.....	ad No 151, 2008
s 20JA.....	ad No 117, 2010 am No 126, 2015
s 20K.....	ad No 151, 2008
s 20L.....	ad No 151, 2008 am No 27, 2009
s 20M.....	ad No 151, 2008 am No 88, 2013
<b>Division 6</b>	
s 20N.....	ad No 151, 2008 am No 117, 2010; No 15, 2017
s 20P.....	ad No 151, 2008 am No 88, 2013
<b>Part 3B</b>	
Part 3B.....	ad No 16, 2019
<b>Division 1</b>	
s 20Q.....	ad No 16, 2019
s 20QA.....	ad No 16, 2019 am No 79, 2019; No 64, 2020
<b>Division 2</b>	
s 20QB.....	ad No 16, 2019 am No 64, 2020
s 20QC.....	ad No 16, 2019
<b>Division 3</b>	
s 20QD.....	ad No 16, 2019
s 20QE.....	ad No 16, 2019
s 20QF.....	ad No 16, 2019
<b>Division 4</b>	
s 20QG.....	ad No 16, 2019

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 20QH.....	ad No 16, 2019
s 20QJ.....	ad No 16, 2019
s 20QK.....	ad No 16, 2019
s 20QL.....	ad No 16, 2019
s 20QM.....	ad No 16, 2019
<b>Part 4</b>	
Part 4 heading.....	rs No 133, 2009; No 8, 2019
Part 4.....	rs No 8, 2019
s 21.....	rep No 8, 2019
s 22.....	rep No 8, 2019
s 23.....	am No 27, 2009 rs No 8, 2019
s 24.....	rs No 8, 2019
<b>Part 4A</b>	
Part 4A.....	ad No 133, 2009
<b>Division 1</b>	
s 24A.....	ad No 133, 2009
s 24B.....	ad No 133, 2009 am No 176, 2012; No 118, 2013; No 135, 2015; No 16, 2019
<b>Division 2</b>	
s 24C.....	ad No 133, 2009 am No 117, 2010; No 64, 2020
s 24D.....	ad No 133, 2009
<b>Division 3</b>	
s 24E.....	ad No 133, 2009 am No 117, 2010; No 88, 2013; No 130, 2018
s 24F.....	ad No 133, 2009
s 24G.....	ad No 133, 2009 am No 176, 2012; No 88, 2013; No 23, 2018
<b>Division 4</b>	
s 24H.....	ad No 133, 2009

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am No 117, 2010
s 24HA.....	ad No 117, 2010
	am No 126, 2015; No 8, 2019
s 24J.....	ad No 133, 2009
s 24K.....	ad No 133, 2009
s 24L.....	ad No 133, 2009
	am No 88, 2013
s 24M.....	ad No 133, 2009
<b>Part 4B</b>	
Part 4B.....	ad No 16, 2019
<b>Division 1</b>	
s 24N.....	ad No 16, 2019
<b>Division 2</b>	
s 24NA.....	ad No 16, 2019
	am No 94, 2019
s 24NB.....	ad No 16, 2019
	am No 94, 2019
<b>Part 5</b>	
s 25.....	am No 151, 2008; No 27, 2009; No 133, 2009; No 8, 2019; No 16, 2019
s 25A.....	ad No 151, 2008
s 26.....	am No 27, 2009; No 8, 2019
s 27.....	am No 8, 2019
s 29.....	am No 151, 2008; No 133, 2009; No 88, 2013; No 8, 2019
Part 6.....	rep No 145, 2010
s 31.....	am No 128, 1999
	rep No 145, 2010
s 32.....	am No 27, 2009
	rep No 145, 2010
s 33.....	rep No 145, 2010
s 34.....	rep No 145, 2010
s 35.....	rep No 145, 2010



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<b>Provision affected</b>	<b>How affected</b>
s 36 .....	rep No 145, 2010
s 37 .....	rep No 27, 2009
s 38 .....	rep No 145, 2010
s 39 .....	rep No 145, 2010
<b>Part 7</b>	
s 40 .....	ad No 145, 2010
<b>Part 8</b>	
s 44 .....	am No 8, 2019
s 45 .....	am No 128, 1999
	rep No 2, 2015
s 46 .....	am No 27, 2009
	rep No 2, 2015
s 47 .....	rep No 2, 2015
s 48 .....	am No 27, 2009; No 4, 2016; No 61, 2016
s 49 .....	rs No 151, 2008; No 62, 2014
s 49A.....	ad No 117, 2010