



Superannuation (Unclaimed Money and Lost Members) Act 1999

No. 127, 1999



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

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Superannuation (Unclaimed Money and Lost Members) Act 1999

No. 127, 1999

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

[Assented to 13 October 1999]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

Part 1 Preliminary

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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, of the Northern Territory and of Norfolk Island.
- (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 unclaimed money, so that the money can be claimed by persons entitled to it; 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
- (e) the safe-keeping of unclaimed money until the money is claimed by a person entitled to it; 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 end of each half-year, 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 immediately payable 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. On request by a person entitled to receive that money, the Commissioner must pay it to that person.

If a State or Territory law regulates unclaimed money in a way consistent with this Act, superannuation providers must 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.

Lost members register

The regulations may establish a scheme under which superannuation providers must provide the Commissioner of Taxation with details relating to lost members. An aim of the

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scheme would be to reduce at an early stage the number of accounts which become unclaimed money.

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

Part 2—Interpretation

8 Definitions

In this Act, unless the contrary intention applies:

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 means a form approved by the Commissioner, in writing, under section 49 for the purposes of the provision in which the expression appears.

authorised officer means a person who has been authorised in writing by the Commissioner under section 45 for the purposes of the provision in which the expression occurs.

Commissioner means the Commissioner of Taxation.

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.

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

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:

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- (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*.

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 56 of the *Australian Prudential Regulation Authority Act 1998*.

fund means:

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

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.

life insurance company means:

- (a) a body corporate registered under 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 has the meaning given by section 22.

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.

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.

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produce includes permit access to.

protected document means a document that:

- (a) contains information about a person; and
- (b) is obtained or made by a person referred to in subsection 31(1) in the course of, or because of, the person's duties under or in relation to this Act.

protected information means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person referred to in subsection 31(1) in the course of, or because of, the person's duties under or in relation to this Act.

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, a law of a State or a law of a Territory; or
- (b) under the authority of:
 - (i) the Commonwealth or 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 the Commonwealth, a law of a State or a law of a Territory.

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.

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

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

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 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.

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

Section 10

- (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

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

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
- (b) the superannuation provider determines that, under the governing rules of the fund or by operation of law, a benefit (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) for at least 2 years; and
- (d) after making reasonable efforts and after a reasonable period has passed, the superannuation provider is unable to ensure that the member receives the benefit.

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

13 Superannuation provider must make reasonable efforts to ensure that the member receives the benefit

- (1) If paragraphs 12(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 member receives the benefit.

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Offence

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

Maximum penalty: 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 (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) for at least 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 is guilty of an offence if the superannuation provider fails to comply with the obligation set out in subsection (1).

Maximum penalty: 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.

16 Statement of unclaimed money

- (1) A superannuation provider must give to the Commissioner a statement, in an approved form, of all unclaimed money as at the end of each half-year.

Note: The approved form may require the superannuation provider to set out:

- (a) the tax file number of the superannuation provider; and
- (b) the tax file number of any member of the fund to whom the statement relates and who has quoted his or her tax file number to the superannuation provider.

See subsections 25(1) and (2).

- (2) If:
- (a) the superannuation provider pays any of the unclaimed money to a person who is entitled to it; and
 - (b) the payment is made between the end of the half-year and the day on which the statement is given to the Commissioner;
- the statement must contain such particulars relating to the amounts paid as are required by the form.

When statement must be given

- (3) A statement under subsection (1) must be given:

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- (a) in relation to a half-year ending on 30 June in a calendar year—before 1 November in that calendar year; or
- (b) in relation to a half-year ending on 31 December in a calendar year—before 1 May in the following calendar year.

Commissioner may extend time for lodging statement

- (4) The Commissioner may, in writing, provide for a later day to apply under paragraph (3)(a) or (b). This may be done before, on or after the day specified in the paragraph concerned.

Offence

- (5) A superannuation provider is guilty of an offence if the superannuation provider fails to comply with an obligation set out in subsection (1), (2) or (3). However, an offence is not committed if subsection 18(2) is satisfied.

Maximum penalty: 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.

- (6) To the extent that it relates to subsection (3), subsection (5) does not apply if:
 - (a) the Commissioner has provided under subsection (4) for a later day to apply under paragraph (3)(a) or (b); and
 - (b) the superannuation provider gave the statement under subsection (1) before that later day.

17 Payment of unclaimed money to Commissioner

- (1) On giving the statement to the Commissioner, the superannuation provider must pay to the Commissioner the amount worked out using the following formula:

Amount of unclaimed money specified in statement $-$ Unclaimed money paid by provider

where:

amount of unclaimed money specified in statement means the amount specified in the statement provided in accordance with subsection 16(1).

unclaimed money paid by provider means any amounts specified in the statement in accordance with subsection 16(2).

Payment where money later claimed

- (2) The Commissioner must pay unclaimed money to a person if:
- (a) unclaimed money has been paid to the Commissioner under this section by a superannuation provider; and
 - (b) the Commissioner is satisfied, on application made in the approved form by the person, that, if this section had not been enacted, the superannuation provider would have paid the unclaimed money to the person.

Refund of excess payments

- (3) If a superannuation provider satisfies the Commissioner that an amount paid to the Commissioner under this section exceeds the amount that would have been paid to the person concerned, the Commissioner must refund to the superannuation provider the amount of the excess.

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.

Appropriation of Consolidated Revenue Fund

- (5) The Consolidated Revenue Fund is appropriated for the purposes of this section.

Offence

- (6) A superannuation provider is guilty of an offence if the superannuation provider fails to comply with the obligations set out in subsection (1). However, an offence is not committed if subsection 18(3) is satisfied.

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Maximum penalty: 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.

18 Payment of unclaimed money to a State or Territory authority

- (1) This section applies if a law of a State or Territory satisfies the requirements set out in subsections (4) and (5).
- (2) If the superannuation provider (in accordance with that law) gives to a State or Territory authority a statement that complies with items 1 and 2 of the table in subsection (4), the provider does not have to comply with subsection 16(1).
- (3) If the superannuation provider (in accordance with that law) pays the amount worked out under item 3 of the table to the State or Territory authority, the provider does not have to comply with subsection 17(1).

First requirement

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

Provisions relating to first requirement		
Item	Subject of provision	Effect of provision
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.
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.

Provisions relating to first requirement

Item	Subject of provision	Effect of provision
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).
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.

Second requirement

- (5) The second requirement is that the law contains provisions corresponding to the provisions, and with the effects, set out in the following table:

Provisions relating to second requirement

Item	Provision	Effect of corresponding provision
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.

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 this Part; and
 - (b) each member in respect of whom there is unclaimed money.

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:
- (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 4—Lost members

21 Object of Part

The object of this Part is to set up a scheme, to be established under the regulations, for dealing with lost members of funds.

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

22 Meaning of *lost member*

A member of a fund is taken to be a *lost member* at a particular time if the member is, at that time:

- (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.

23 Regulations may establish a scheme for information about lost members

Regulations may establish a scheme

- (1) The regulations may establish a scheme under which superannuation providers are to give statements, in the approved form, to the Commissioner containing the following information:
 - (a) information relating to each lost member of the superannuation provider;
 - (b) information relating to each lost member's benefits in the funds managed or provided by the superannuation provider;
 - (c) information relating to each member of the superannuation provider who ceases to be a lost member of the provider;
 - (d) information relating to the benefits of each member referred to in paragraph (c) in the funds managed or provided by the superannuation provider;

- (e) information that the Commissioner reasonably believes may assist the Commissioner in administering the register referred to in subsection (2).

Note: The regulations may require the superannuation provider to set out:

- (a) the tax file number of the superannuation provider; and
- (b) the tax file number of any member of the fund to whom the statement relates and who has quoted his or her tax file number to the superannuation provider.

See subsection 25(3).

Lost members register

- (2) The regulations establishing the scheme must provide for the Commissioner to keep a register that:
- (a) must contain the information given to the Commissioner by superannuation providers in accordance with the scheme; and
 - (b) may contain information given to the Commissioner (other than the information referred to in paragraph (a)) that is of the type contained in the register.

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

- (3) The regulations establishing the scheme may provide for the register referred to in subsection (2) to also contain the following:
- (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 lost members in respect of the scheme; and
 - (c) information given to the Commissioner by the trustee of the scheme.
- (4) A trustee of a regulated exempt public sector superannuation scheme may, in the approved form, give the information referred to in paragraph (3)(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(3).

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Offence

- (5) A superannuation provider is guilty of an offence if:
- (a) the superannuation provider fails to comply with a provision of regulations made for the purposes of subsection (1); and
 - (b) the regulations declare that this subsection applies to that provision.

Maximum penalty: 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.

24 Commissioner may give information to State or Territory authorities

The Commissioner may give information contained in the register referred to in subsection 23(2) 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 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:
 - (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.

Lost members statement

- (3) A scheme under section 23 may require the statement by a superannuation provider for the purposes of the scheme 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

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- (ii) the member has quoted his or her tax file number to the superannuation provider.

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 approved form, 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).
- (3) The approved form for the purposes of subsection 23(4), in relation to information or particulars referred to in subsection 23(3) 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).

27 Registers may contain tax file numbers

The particulars of a person that may be included in the registers mentioned in section 19 and subsection 23(2), 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 either 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;
 - (b) a person who claims to be a lost member whose particulars are contained in the register referred to in subsection 23(2).
- (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.

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

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(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 6—Secrecy

31 Persons to whom Part applies

- (1) This Part applies to a person who is or has been:
 - (a) the Commissioner, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation; or
 - (b) an officer or employee of the branch of the Australian Public Service under the direct control of the Commissioner; or
 - (c) otherwise appointed or employed by, or a provider of services for, the Commonwealth.

Oath or declaration

- (2) A person to whom this Part applies must, if and when required by the Commissioner to do so, make an oath or declaration to maintain secrecy in accordance with this Part.
- (3) The Commissioner may determine, in writing:
 - (a) the form of the oath or declaration; and
 - (b) the manner in which the oath or declaration must be made.

32 Information may be recorded or divulged only for purposes of Act

A person to whom this Part applies is guilty of an offence if the person:

- (a) makes a record of any protected information; or
- (b) whether directly or indirectly, divulges or communicates to a person any protected information about another person; and the record is made, or the information is divulged or communicated other than:
 - (c) under or for the purposes of this Act; or
 - (d) in the performance of duties, as a person to whom this Part applies, under or in relation to this Act.

Maximum penalty: Imprisonment for 2 years.

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Note 1: In a prosecution for an offence against this section, the defendant bears an evidential burden in relation to the matters in paragraphs (1)(c) and (d) and sections 34, 35, 36, 37 and 38 (see subsection 13.3(3) of the *Criminal Code*).

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

33 Court may not require information or documents

A person to whom this Part applies is not required:

- (a) to divulge or communicate protected information to a court;
or
- (b) to produce a protected document in court;

except where it is necessary to do so for the purpose of implementing this Act.

34 Information may be divulged to persons performing duties under Acts administered by Commissioner

This Part does not prohibit the Commissioner, or a person authorised by the Commissioner, from divulging or communicating any protected information to a person performing, as a person to whom this Part applies, duties under or in relation to:

- (a) an Act of which the Commissioner has the general administration; or
- (b) regulations made under such an Act;

for the purpose of enabling that person to perform those duties.

35 Information may be divulged to persons performing duties under this Act

Nothing in this Act, or in any other Act of which the Commissioner has the general administration, prohibits the Commissioner or a person authorised by the Commissioner from divulging or communicating any information to a person performing, as a person to whom this Part applies, duties under or in relation to this Act for the purpose of enabling that person to perform those duties.

36 Information may be divulged to court for purposes of this Act

Nothing in this Act, or in any other Act of which the Commissioner has the general administration, prohibits the Commissioner, or a person authorised by the Commissioner, from:

- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
- (b) producing in court a document obtained or made under or for the purposes of such an Act;

where it is necessary to do so for the purpose of implementing this Act.

37 Information may be divulged with consent of superannuation provider or individual

This Part does not prohibit the Commissioner, or a person authorised by the Commissioner, from divulging or communicating any protected information:

- (a) relating to the affairs of a superannuation provider or a trustee of a regulated exempt public sector superannuation scheme if the provider or trustee agrees in writing to the divulging or communicating of the information; or
- (b) relating to an individual if the individual agrees in writing to the divulging or communicating of the information.

38 Information may be divulged to specified persons or bodies

This Part does not prohibit the Commissioner, or a person authorised by the Commissioner, from divulging or communicating any protected information to:

- (a) the Australian Prudential Regulation Authority, for the purposes of the performance of any of its functions or the exercise of any of its powers; or
- (b) the Minister, the Secretary to the Department or an officer of the Department authorised by the Secretary for the purposes of this Part; or
- (c) the Superannuation Complaints Tribunal for the purposes of the performance of any of its functions or the exercise of any of its powers; or

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- (d) the Australian Securities and Investments Commission for the purposes of the performance of any of its functions or the exercise of any of its powers; or
- (e) a financial sector supervisory agency for the purposes of the performance of any of its functions or the exercise of any of its powers; or
- (f) the Australian Statistician, or an officer of the Australian Bureau of Statistics, for purposes, limited to statistics, under the *Census and Statistics Act 1905*.

39 Australian Bureau of Statistics to observe secrecy requirements

If information is divulged or communicated under paragraph 38(f) to the Australian Statistician or to an officer of the Australian Bureau of Statistics, then the information, or the information contained in the document, is taken to be information given for the purposes of the *Census and Statistics Act 1905*.

Part 7—Administration

40 General administration of Act

The Commissioner has the general administration of this Act.

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 subsection 23(2) 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.

45 Authorised officers

The Commissioner may, by writing, authorise a person who is an officer or employee within the meaning of the *Public Service Act 1922* to be an authorised officer for the purposes of a provision or provisions of this Act.

46 Access to premises

- (1) For the purposes of this Act, an authorised officer:
 - (a) may, at any reasonable time, enter and remain on any premises; and
 - (b) is entitled to full and free access at any reasonable time to all documents; and
 - (c) may inspect, examine, make copies of, or take extracts from, any documents.
- (2) An authorised officer is not entitled to enter or remain on any premises if, after having been requested by the occupier to produce proof of his or her authority, the authorised officer does not produce a written authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.
- (3) If an authorised officer enters premises, or proposes to enter premises, the occupier must provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's powers under this section.
- (4) An occupier is guilty of an offence if the occupier fails to comply with the obligation set out in subsection (3).

Maximum penalty: 10 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.

47 Obtaining information and documents*Power of Commissioner to obtain information or documents*

- (1) The Commissioner may, for the purposes of this Act, by written notice, require a person:
 - (a) to give to the Commissioner, within a reasonable period, and in a reasonable manner, stated in the notice, any information that the Commissioner requires; and

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- (b) to attend before the Commissioner, or an authorised officer, at a reasonable time and place stated in the notice, and answer questions; and
- (c) to produce to the Commissioner, at a reasonable time and place stated in the notice, any documents in the custody or under the control of the person.

Power to require information on oath or affirmation

- (2) The Commissioner may require the information or answers to be verified or given on oath or affirmation, and either orally or in writing. For that purpose, the Commissioner or an authorised officer may administer an oath or affirmation.

Nature of oath or affirmation

- (3) The oath to be taken or affirmation to be made by a person is an oath or affirmation that the information or answers the person will give will be true.

Expenses of attendance

- (4) The regulations are to prescribe scales of expenses to be allowed to persons required to attend under this section.

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 is guilty of an offence if the superannuation provider fails to comply with an obligation set out in this section.

Maximum penalty: 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*).

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.

49 Approved forms

- (1) A notice, application, statement or other document is in the ***approved form*** if:
- (a) it is in the form approved in writing by the Commissioner in relation to that kind of notice, application, statement or other document; and
 - (b) it contains the information that the form requires, and such further information as the Commissioner requires; and

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- (c) it is lodged at the place and in the manner that the Commissioner requires.
- (2) An approval by the Commissioner of a form of notice, application, statement or other document for the purposes of subsection (1) may require or permit the document to be given on a specified kind of data processing device in accordance with specified software requirements.
- (3) The Commissioner may combine in the same approved form more than one notice, application, statement or other document.

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

*[Minister's second reading speech made in—
House of Representatives on 30 June 1999
Senate on 23 August 1999]*

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