

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Superannuation Legislation Amendment
Bill 2010**

No. , 2010

(Treasury)

**A Bill for an Act to amend the law relating to
superannuation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **superannuation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Superannuation Legislation*
6 *Amendment Act 2010*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2, items 1 to 5	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 2, items 6 and 7	1 January 2017.	1 January 2017
5. Schedule 3	The day after this Act receives the Royal Assent.	
6. Schedule 4, Parts 1 and 2	The day after this Act receives the Royal Assent.	
7. Schedule 4, Part 3	The day this Act receives the Royal Assent.	
8. Schedule 4, Parts 4 to 7	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in Column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of item 1 of Schedule 2 to this Act; and
- (b) the amendment is made within 2 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to that item.

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Schedule 1—Unclaimed money

3

Part 1—Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999

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1 Section 7

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Omit “consistent with this Act, superannuation providers must”,
substitute “consistent with this Act, superannuation providers that are
trustees of public sector superannuation schemes may”.

10

2 At the end of section 7

11

Add:

12

Prescribed public sector superannuation schemes

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14

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

15

3 Section 8

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Insert:

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

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(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.

26

4 Section 8 (definition of ***public sector superannuation scheme***)

27

28

Repeal the definition, substitute:

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

1 **5 Section 8**

2 Insert:

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

5 **6 Section 8**

6 Insert:

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

9 **7 After section 18**

10 Insert:

11 **18AA Prescribed public sector superannuation schemes**

12 (1) Sections 6, 10 to 12, 14, 16 to 17 and 18A to 18C and subsections
13 19(1) to (3), 24C(6), 24E(5) and 25(2) apply as if:

14 (a) a public sector superannuation scheme that is:

15 (i) prescribed for the purposes of this section; and

16 (ii) not a fund;

17 were a fund; and

18 Note 1: The regulations may prescribe a scheme by reference to a class of
19 schemes: see subsection 13(3) of the *Legislative Instruments Act*
20 *2003*.

21 Note 2: The trustee of a State or Territory public sector superannuation
22 scheme that is a fund must comply with this Part, subject to
23 section 18.

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

26 (c) a member of the scheme were a member of the fund.

27 (2) Despite subsection (1), in the case of a State or Territory public
28 sector superannuation scheme:

29 (a) section 16 (Statement of unclaimed money):

30 (i) permits, rather than requires, the trustee to give a
31 statement to the Commissioner; and

32 (ii) does not permit the trustee to give a statement to the
33 Commissioner if the governing rules of the scheme

Schedule 1 Unclaimed money

Part 1 Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999

- 1 prohibit the trustee from giving the statement to the
2 Commissioner; and
- 3 (b) section 17 (Payment of unclaimed money):
- 4 (i) does not apply in relation to an unclaimed money day if
5 the trustee does not give a statement in relation to the
6 unclaimed money day to the Commissioner under
7 subsection 16(1); and
- 8 (ii) permits, rather than requires, the trustee to pay an
9 amount to the Commissioner; and
- 10 (iii) does not apply to an amount to the extent that the
11 governing rules of the scheme prohibit the trustee from
12 paying the amount to the Commissioner.

13 Note: The heading to section 18 is replaced by the heading “**State or Territory public sector**
14 **superannuation schemes**”.

15 **8 Subsection 20C(3)**

16 Repeal the subsection, substitute:

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

25 **9 After section 20J**

26 Insert:

27 **20JA Prescribed public sector superannuation schemes**

- 28 (1) Section 6, subsections 16(7), 17(2A) and 19(1) and (3), this Part
29 (other than subsections 20F(5) and (6)) and subsections 24C(6),
30 24E(5) and 25(2A) apply as if:
- 31 (a) a public sector superannuation scheme that:
- 32 (i) is prescribed for the purposes of this section; and
- 33 (ii) in the case of a Commonwealth public sector
34 superannuation scheme—is not a fund, or is an
35 unfunded public sector scheme;
-

- 1 were a fund; and
- 2 Note 1: The regulations may prescribe a scheme by reference to a class of
3 schemes: see subsection 13(3) of the *Legislative Instruments Act*
4 *2003*.
- 5 Note 2: This Part applies to a Commonwealth public sector
6 superannuation scheme that is not an unfunded public sector
7 scheme whether or not the scheme is prescribed: see section 20C.
- 8 (b) the trustee of the scheme were the superannuation provider;
9 and
- 10 (c) a person who has an interest in the scheme had a
11 superannuation interest in the fund.
- 12 (2) Despite subsection (1), in the case of a State or Territory public
13 sector superannuation scheme:
- 14 (a) section 20C (notices about certain former temporary
15 residents) permits, rather than requires, the Commissioner to
16 give a notice to the trustee; and
- 17 (b) section 20E (statement):
- 18 (i) permits, rather than requires, the trustee to give a
19 statement to the Commissioner; and
- 20 (ii) does not permit the trustee to give a statement to the
21 Commissioner if the governing rules of the scheme
22 prohibit the trustee from giving the statement to the
23 Commissioner; and
- 24 (c) section 20F (payment of unclaimed superannuation):
- 25 (i) does not apply in relation to a notice given to the trustee
26 under section 20C if the trustee does not give a
27 statement in relation to the notice to the Commissioner
28 under section 20E; and
- 29 (ii) permits, rather than requires, the trustee to pay an
30 amount to the Commissioner; and
- 31 (iii) does not apply to an amount to the extent that the
32 governing rules of the scheme prohibit the trustee from
33 paying the amount to the Commissioner.

34 **10 Subsection 24C(1) (note 1)**

35 Omit “section 24H”, substitute “sections 24H and 24HA”.

36 **11 Subsection 24E(1) (note 1)**

37 Omit “section 24H”, substitute “sections 24H and 24HA”.

Schedule 1 Unclaimed money

Part 1 Amendment of the Superannuation (Unclaimed Money and Lost Members) Act 1999

1 **12 Section 24H**

2 Omit “Sections”, substitute “Subject to section 24HA, sections”.

3 Note: The heading to section 24H is replaced by the heading “**State or Territory public**
4 **sector superannuation schemes**”.

5 **13 After section 24H**

6 Insert:

7 **24HA Prescribed public sector superannuation schemes**

8 (1) Section 6, subsections 19(1) to (3), this Part (other than
9 sections 24F and 24H) and subsections 25(3) and (4) apply as if:

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

15 Note: The regulations may prescribe a scheme by reference to a class of
16 schemes: see subsection 13(3) of the *Legislative Instruments Act*
17 *2003*.

- 18 (b) the trustee of the scheme were the superannuation provider;
19 and
20 (c) a member of the scheme were a member of the fund.

21 (2) Despite subsection (1), in the case of a State or Territory public
22 sector superannuation scheme:

- 23 (a) section 24C (Statement of lost member accounts):
24 (i) permits, rather than requires, the trustee to give a
25 statement to the Commissioner; and
26 (ii) does not permit the trustee to give a statement to the
27 Commissioner if the governing rules of the scheme
28 prohibit the trustee from giving the statement to the
29 Commissioner; and
30 (b) section 24E (Payment in respect of lost member accounts):
31 (i) does not apply in relation to an unclaimed money day if
32 the trustee does not give a statement in relation to the
33 unclaimed money day to the Commissioner under
34 section 24C; and
35 (ii) permits, rather than requires, the trustee to pay an
36 amount to the Commissioner; and
-

1 (iii) does not apply to an amount to the extent that the
2 governing rules of the scheme prohibit the trustee from
3 paying the amount to the Commissioner.

4 (3) Subparagraphs (2)(a)(i) and (b)(ii) do not apply in relation to an
5 unclaimed money day if, disregarding this section:
6 (a) the public sector superannuation scheme is a fund; and
7 (b) the superannuation provider has to comply with subsections
8 16(1) and 17(1) in relation to the unclaimed money day.

9 **14 After section 49**

10 Insert:

11 **49A Money transferred to State or Territory authorities**

12 (1) This section applies if:

13 (a) a person was a member of a fund, or a superannuation fund,
14 (the *original fund*); and

15 (b) the superannuation provider of the fund, or the trustee of the
16 superannuation fund, (the *original provider*) transferred an
17 interest of the member in the original fund to a State or
18 Territory authority; and

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

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

25 (i) the governing rules of the original fund; or

26 (ii) the law of the State or Territory;

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

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

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

35 (a) the currently responsible authority were the trustee of a State
36 or Territory public sector superannuation scheme; and

Schedule 1 Unclaimed money

Part 1 Amendment of the Superannuation (Unclaimed Money and Lost Members) Act
1999

- 1 (b) the scheme were:
2 (i) prescribed for the purposes of those sections; and
3 (ii) not a fund; and
4 (c) the member of the original fund were a member of the
5 scheme; and
6 (d) anything done by, to or in relation to the original provider in
7 relation to the original fund had been done by, to or in
8 relation to the currently responsible authority in relation to
9 the scheme; and
10 (e) a reference in those sections to the governing rules of the
11 original fund were a reference to the laws of the State or
12 Territory.

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Part 2—Amendment of the Income Tax Assessment Act 1997

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15 Section 306-20

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After “*Superannuation (Unclaimed Money and Lost Members) Act 1999*”, insert “, or because it is paid as mentioned in subsection 18(4) of that Act,”.

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16 Subsection 307-5(1) (table item 5)

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Repeal the item, substitute:

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unclaimed money payment

A payment to you:
(a) under subsection 17(1) or (2) or 20F(1) or section 20H, 24E or 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
(b) as mentioned in subsection 18(4) or (5) of that Act;
otherwise than because of another person’s death.

A payment to you:

(a) under subsection 17(1) or (2) or section 20H or 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
(b) as mentioned in subsection 18(4) or (5) of that Act; because of another person’s death.

10

17 Subsection 307-142(1)

11

After “*Superannuation (Unclaimed Money and Lost Members) Act 1999*”, insert “, or by a State or Territory authority as mentioned in subsection 18(5) of that Act,”.

12

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18 Subsection 307-142(3) (cell at table item 1, column 1)

15

Repeal the cell, substitute:

an amount paid, on or after 1 July 2007, to:

(a) the Commissioner under

Schedule 1 Unclaimed money

Part 2 Amendment of the Income Tax Assessment Act 1997

subsection 17(1) of the
*Superannuation (Unclaimed
Money and Lost Members)
Act 1999*; or

- (b) a State or Territory
authority, as mentioned in
subsection 18(4) of that Act;
in respect of the person

1 **19 Subsection 307-142(3) (cell at table item 2, column 1)**

2 Repeal the cell, substitute:

an amount paid, before 1 July
2007, to:

(a) the Commissioner under
subsection 17(1) of the
*Superannuation (Unclaimed
Money and Lost Members)
Act 1999*; or

(b) a State or Territory
authority, as mentioned in
subsection 18(4) of that Act;
in respect of the person

3 **20 After subsection 307-142(3)**

4 Insert:

5 (3A) Treat the amount set out in column 3 of an item of the table in
6 subsection (3) as being nil, if:

7 (a) the unclaimed amount set out in column 1 of the item is an
8 amount paid to the Commissioner by a State or Territory
9 authority (within the meaning of the *Superannuation*
10 *(Unclaimed Money and Lost Members) Act 1999*) in the
11 circumstances mentioned in section 18AA, 20JA or 24HA of
12 that Act; and

13 (b) the Commissioner does not have sufficient information to
14 work out the amount set out in column 3 of the item.

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2 **Part 3—Application provision**

3 **21 Application provision**

- 4 (1) Subparagraph 49A(1)(b)(i) of the *Superannuation (Unclaimed Money*
5 *and Lost Members) Act 1999*, inserted by this Schedule, applies to
6 transfers occurring before, on or after the commencement of this item.
- 7 (2) The amendments of section 307-142 of the *Income Tax Assessment Act*
8 *1997* made by this Schedule apply in relation to payments made on or
9 after the commencement of this item.

1
2 **Schedule 2—Disability insurance premiums**
3 **paid by superannuation funds**

4 **Part 1—2004-05 to 2006-07 income years**

5 **1 Complying funds—deductions for insurance premiums for**
6 **disability benefits**

7 *Scope*

- 8 (1) This item applies if:
- 9 (a) the trustee of a complying superannuation fund pays a
10 premium for an insurance policy during:
 - 11 (i) the 2004-05 income year; or
 - 12 (ii) the 2005-06 income year; or
 - 13 (iii) the 2006-07 income year; and
 - 14 (b) the policy is (wholly or partly) for current or contingent
15 liabilities of the fund to provide benefits for members of the
16 fund (whether the policy covers the whole or parts of the
17 liabilities).

18 Note: For premiums paid during the 2007-08 to 2010-11 income years, see section 295-466 of
19 the *Income Tax (Transitional Provisions) Act 1997*.

20 *Entitlement to deduction*

- 21 (2) Treat the benefits mentioned in paragraph (1)(b) as being ***death or***
22 ***disability benefits***, in relation to the members mentioned in that
23 paragraph, to the extent that:
- 24 (a) the benefits are conditional on the disability of the members;
25 and
 - 26 (b) the disability is described as a permanent disability in
27 regulations made for the purposes of section 295-466 of the
28 *Income Tax (Transitional Provisions) Act 1997*.

29 Note: Other events might have to occur after the event of the disability of the members before
30 the fund pays the benefits to the members. For example, the members might have to
31 satisfy a condition of release of benefits specified in a standard made under paragraph
32 31(2)(h) of the *Superannuation Industry (Supervision) Act 1993*, such as by reaching a
33 certain age.

- 34 (3) Subitem (2) applies:
-

- 1 (a) for the purposes of applying former subsection 279(1) of the
2 *Income Tax Assessment Act 1936* to the payment mentioned
3 in paragraph (1)(a) of this item; and
4 (b) without limiting that former subsection.

1

2 **Part 2—2007-08 to 2010-11 income years**

3 **Division 1—Main amendments**

4 ***Income Tax Assessment Act 1997***

5 **2 At the end of paragraph 295-460(b)**

6 Add:

7 Note: *Disability superannuation benefit* has an extended meaning for
8 the 2007-08 to 2010-11 income years for the purposes of
9 subsection 295-465(1); see section 295-466 of the *Income Tax*
10 *(Transitional Provisions) Act 1997*.

11 **3 Subsection 295-465(1) (table item 5)**

12 After “provide”, insert “certain benefits, if those benefits are”.

13 ***Income Tax (Transitional Provisions) Act 1997***

14 **4 Section 295-465 (heading)**

15 Repeal the heading, substitute:

16 **295-465 Complying funds—deductions for insurance premiums**

17 **5 After section 295-465**

18 Insert:

19 **295-466 Complying funds—deductions for insurance premiums for**
20 **disability superannuation benefits**

21 *Scope*

22 (1) This section applies if:

23 (a) a complying superannuation fund pays a premium for an
24 insurance policy during:

25 (i) the 2007-08 income year; or

26 (ii) the 2008-09 income year; or

27 (iii) the 2009-10 income year; or

- 1 (iv) the 2010-11 income year; and
2 (b) the policy is (wholly or partly) for current or contingent
3 liabilities of the fund to provide superannuation benefits for
4 members of the fund (whether the policy covers the whole or
5 parts of the liabilities).

6 Note: For premiums paid during the 2004-05 to 2006-07 income years, see
7 Part 1 of Schedule 2 to the *Superannuation Legislation Amendment*
8 *Act 2010*.

9 *Entitlement to deduction*

- 10 (2) Treat the superannuation benefits mentioned in paragraph (1)(b) as
11 being ***disability superannuation benefits***, to the extent that:
12 (a) the superannuation benefits are conditional on the disability
13 of the members mentioned in that paragraph; and
14 (b) the disability is described as a permanent disability in
15 regulations made for the purposes of this section.

16 Note: Other events might have to occur after the event of the disability of the
17 members before the fund pays the benefits to the members. For
18 example, the members might have to satisfy a condition of release of
19 benefits specified in a standard made under paragraph 31(2)(h) of the
20 *Superannuation Industry (Supervision) Act 1993*, such as by reaching
21 a certain age.

- 22 (3) Subsection (2) applies:
23 (a) for the purposes of applying:
24 (i) subsection 295-465(1) of the *Income Tax Assessment*
25 *Act 1997*; and
26 (ii) paragraph 295-460(b) of that Act, to the extent that it
27 relates to subsection 295-465(1) of that Act;
28 to the payment mentioned in paragraph (1)(a) of this section;
29 and
30 (b) without limiting subsection 295-465(1) and paragraph
31 295-460(b) of that Act.

32 *Amendment of assessments*

- 33 (4) Section 170 of the *Income Tax Assessment Act 1936* does not
34 prevent the amendment of an assessment if:
35 (a) the assessment was made before the commencement of this
36 section; and

- 1 (b) the amendment is made within 2 years after that
2 commencement; and
3 (c) the amendment is made for the purpose of giving effect to
4 this section.

5 **Division 2—Sunsetting on 1 January 2017**

6 ***Income Tax Assessment Act 1997***

7 **6 Paragraph 295-460(b) (note)**

8 Repeal the note.

9 ***Income Tax (Transitional Provisions) Act 1997***

10 **7 Section 295-466**

11 Repeal the section.

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Schedule 3—Superannuation and relationship breakdowns

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1) (note at the end of the definition of *relative*)

Omit “Subsection (6)”, substitute “Subsection (5)”.

Note: This item fixes an incorrect cross-reference.

2 After subsection 66(2A)

Insert:

Exception—breakdown of relationships

(2B) Subsection (1) does not prohibit a trustee or investment manager acquiring an asset from a related party of the fund (the *acquiring fund*) if:

- (a) the asset is acquired:
 - (i) for the benefit of a particular member of the acquiring fund; and
 - (ii) from a trustee or investment manager of another regulated superannuation fund (the *transferring fund*); and
- (b) at the time of the acquisition:
 - (i) the member and his or her spouse or former spouse are separated; and
 - (ii) there is no reasonable likelihood of cohabitation being resumed; and
- (c) the acquisition occurs because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses; and
- (d) the asset represents the whole, or a part, of either:
 - (i) the member’s own interests in the transferring fund; or
 - (ii) the member’s entitlements as determined under Part VIIIIB of the *Family Law Act 1975* in relation to the

1 interests of the member's spouse, or former spouse, in
2 the transferring fund.

3 (2C) For the purposes of subsection (2B), the question whether the
4 spouses, or former spouses, have separated is to be determined in
5 the same way as it is for the purposes of section 48 of the *Family*
6 *Law Act 1975* (as affected by sections 49 and 50 of that Act).

7 **3 After section 71E**

8 Insert:

9 **71EA Relationship breakdowns**

10 *Scope*

11 (1) This section applies if:

- 12 (a) a trustee or an investment manager of a regulated
13 superannuation fund (the *acquiring fund*) acquires an asset:
- 14 (i) for the benefit of a particular member of the acquiring
15 fund; and
- 16 (ii) from a trustee or investment manager of another
17 regulated superannuation fund (the *transferring fund*);
18 and
- 19 (b) at the time of the acquisition:
- 20 (i) the member and his or her spouse or former spouse are
21 separated; and
- 22 (ii) there is no reasonable likelihood of cohabitation being
23 resumed; and
- 24 (c) the acquisition occurs because of reasons directly connected
25 with the breakdown of the relationship between the spouses
26 or former spouses; and
- 27 (d) the asset represents the whole, or a part, of either:
- 28 (i) the member's own interests in the transferring fund; or
29 (ii) the member's entitlements as determined under
30 Part VIIIIB of the *Family Law Act 1975* in relation to the
31 interests of the member's spouse, or former spouse, in
32 the transferring fund.

33 (2) For the purposes of subsection (1), the question whether the
34 spouses, or former spouses, have separated is to be determined in

1 the same way as it is for the purposes of section 48 of the *Family*
2 *Law Act 1975* (as affected by sections 49 and 50 of that Act).

3 *Acquiring fund taken to have always held asset*

4 (3) For the purposes of applying this Subdivision to the asset at or after
5 the time (the ***acquisition time***) the trustee or investment manager
6 of the acquiring fund acquires the asset, treat:

- 7 (a) the acquisition as having occurred at the time the trustee or
8 investment manager of the transferring fund acquired the
9 asset; and
10 (b) anything done by, for or in relation to the transferring fund in
11 relation to the asset before the acquisition time as having
12 been done by, for or in relation to the acquiring fund; and
13 (c) anything done by, for or in relation to the trustee or
14 investment manager of the transferring fund in relation to the
15 asset before the acquisition time as having been done by, for
16 or in relation to the trustee or investment manager of the
17 acquiring fund.

18 *Section 71E elections*

19 (4) In addition to their effect apart from this subsection, subsection
20 103(2A) (duty to keep record of election) and subsection 103(3), to
21 the extent that it relates to subsection 103(2A), also have the effect
22 they would have if subsection (3) of this section applied to them.

23 Note: This means that the trustees of both the transferring fund and the
24 acquiring fund must retain, in accordance with subsection 103(2A),
25 any election made under section 71E in relation to the transferring
26 fund before the transfer of the asset.

27 (5) A person commits an offence if:
28 (a) the person is a trustee of the transferring fund; and
29 (b) just before the acquisition time, the trustee had a duty under
30 subsection 103(2A) to retain an election, or a copy of an
31 election, under section 71E in relation to the transferring
32 fund; and
33 (c) the trustee does not, within 14 days after the acquisition time,
34 give the election or copy to a trustee or investment manager
35 of the acquiring fund.

36 Penalty: 50 penalty units.

Schedule 3 Superannuation and relationship breakdowns

1 Note: If the trustee gives the election to the acquiring fund, he or she must
2 retain a copy of the election: see subsection (4).

3 (6) An offence against subsection (5) is an offence of strict liability.

4 Note: For strict liability, see section 6.1 of the *Criminal Code*.

5 **4 Application**

6 The amendments made by items 2 and 3 of this Schedule apply to
7 acquisitions occurring on or after the commencement of this item.

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Schedule 4—Other amendments

Part 1—Notices of intent to deduct

Income Tax Assessment Act 1997

1 Subparagraph 290-170(2)(d)(ii)

After “RSA provider”, insert “to which you made the application”.

2 Subsection 290-170(4)

Omit “into which the contribution is made”, substitute “to which the notice relates”.

3 Subsection 290-170(5)

Repeal the subsection, substitute:

Application to successor funds

- (5) Subsections (1) to (4) and section 290-180 apply as if:
- (a) references in those provisions to the fund or *RSA were references to a *successor fund; and
 - (b) references in those provisions to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;
- if:
- (c) after making your contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund; and
 - (d) you have not previously given a valid notice under this section to any *superannuation provider in relation to the contribution.

4 Subsection 290-180(5)

Repeal the subsection, substitute:

Application to successor funds

- (5) Subsections (2) and (3A) apply as if:

Schedule 4 Other amendments
Part 1 Notices of intent to deduct

- 1 (a) the reference in subsection (3A) to the fund or *RSA were a
2 reference to a *successor fund; and
3 (b) references in those subsections to the trustee or *RSA
4 provider were references to the trustee or RSA provider of
5 the successor fund;
6 if, after a valid notice is given under section 290-170 in relation to
7 the contribution, all of the *superannuation interest to which the
8 notice relates is transferred to the successor fund.

9 **5 Paragraph 292-25(2)(b)**

10 After “plan”, insert “, or, by way of a *roll-over superannuation benefit,
11 in the assessable income of a *complying superannuation fund or *RSA
12 provider in the circumstances mentioned in subsection 290-170(5)
13 (about successor funds)”.

14 **6 Paragraph 292-90(2)(b)**

15 After “plan”, insert “, or, by way of a *roll-over superannuation benefit,
16 in the assessable income of any *complying superannuation fund or
17 *RSA provider in the circumstances mentioned in subsection
18 290-170(5) (about successor funds)”.

19 **7 Subsection 295-190(1) (cell at table item 1, column headed**
20 **“Includes:”)**

21 Repeal the cell, substitute:

A contribution:

- (a) made to the CSF or *RSA; and
(b) covered by a valid and
acknowledged notice given to the
*superannuation provider of the
CSF or RSA under section 290-170

22 **8 Subsection 295-190(1) (after table item 2)**

23 Insert:

2A CSF
*RSA provider

A *roll-over superannuation benefit
that an individual is taken to receive
under section 307-15 to the extent that:

- (a) the CSF or *RSA is a *successor
fund; and
(b) the benefit relates to a contribution

that, before it was transferred to the successor fund, was not covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and

(c) while the benefit is held in the successor fund, the contribution becomes covered by a valid and acknowledged notice given to the superannuation provider of the successor fund under that section

1 **9 Subsection 295-190(1A)**

2 Omit “Item 2 of the table in subsection (1) does”, substitute “Items 2
3 and 2A of the table in subsection (1) do”.

4 **10 Before subsection 295-190(2)**

5 Insert:

6 *Income years in which amounts are included in assessable income*

7 **11 At the end of section 295-190**

8 Add:

9 (5) A benefit referred to in item 2A is included in the income year in
10 which it is received if the notice is received by the *superannuation
11 provider by the day the provider lodges its *income tax return for
12 that income year.

13 (6) Otherwise it is included in the income year in which the notice is
14 received.

15 **12 Section 295-195 (heading)**

16 Repeal the heading, substitute:

17 **295-195 Exclusion of personal contributions—contributions**

18 **13 Subsections 295-195(1) and (2)**

19 After “or *RSA provider”, insert “under item 1 of the table in subsection
20 295-190(1)”.

1 **14 After section 295-195**

2 Insert:

3 **295-197 Exclusion of personal contributions—successor funds**

4 *Scope*

- 5 (1) This section applies to the *superannuation provider (the *successor*
6 *provider*) of a *complying superannuation fund or *RSA if, apart
7 from this section, a *roll-over superannuation benefit would be
8 included in the assessable income of the fund or *RSA provider
9 under item 2A of the table in subsection 295-190(1).

10 *Variation notice received before return lodged*

- 11 (2) The benefit is not so included, to the extent that the relevant
12 contribution has been reduced by a notice under section 290-180, if
13 the notice is received by the successor provider before the
14 successor provider has lodged its *income tax return for the income
15 year in which the benefit was transferred.

16 *Variation notice received after return lodged*

- 17 (3) The benefit is not so included in the assessable income for the
18 income year in which the benefit was transferred, to the extent that
19 the relevant contribution has been reduced by a notice under
20 section 290-180, if:
21 (a) the notice is received by the successor provider after the
22 successor provider has lodged its *income tax return for the
23 income year; and
24 (b) the successor provider exercises the option mentioned in
25 subsection (4).
26 (4) An amount referred to in subsection (3) may, at the option of the
27 successor provider, be excluded from the assessable income of the
28 fund or *RSA provider for the income year referred to in
29 subsection (3) if excluding it would result in a greater reduction in
30 tax for that year than the reduction that would occur for the income
31 year in which the notice is received if a deduction were allowed
32 under item 2B of the table in subsection 295-490(1).

33 Note: The exclusion is an alternative to the fund deducting the amount under
34 item 2B of the table in subsection 295-490(1).

1 **15 Subsection 295-490(1) (cell at table item 2, column headed**
 2 **“Can deduct:”)**

3 Repeal the cell, substitute:
 Contributions made to the CSF or
 *RSA to the extent they have been
 reduced by a notice under
 section 290-180 received by the
 *superannuation provider of the CSF
 or RSA after it lodged its *income tax
 return for the income year in which
 the contributions were made, but only
 if the provider has *not* exercised the
 option mentioned in subsection
 295-195(3)

4 **16 Subsection 295-490(1) (after table item 2)**

5 Insert:

2A	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) the contribution is reduced by a notice under section 290-180 received by the superannuation provider of the successor fund (whether or not the contribution has previously been reduced by a notice given to any superannuation provider under that section)	The notice mentioned in paragraph (c) is received
2B	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the benefit is included in the assessable income of the CSF or RSA provider under item 2A of	The notice mentioned in paragraph (b) is received

Schedule 4 Other amendments
Part 1 Notices of intent to deduct

- the table in subsection 295-490(1); and
- (b) the relevant contribution has been reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or *RSA after it lodged its *income tax return for the income year in which the transfer occurred; and
- (c) the provider has *not* exercised the option mentioned in subsection 295-197(4)

1 **17 Subsection 995-1(1)**

2 Insert:

- 3 *successor fund*, in relation to a transfer of a *superannuation
4 interest of a member of a *superannuation fund, or a holder of an
5 *RSA, (the *original fund*) means a superannuation fund or RSA
6 that satisfies the following conditions:
- 7 (a) the fund or RSA confers on the member or holder equivalent
8 rights to the rights that the member or holder had under the
9 original fund in respect of the interest;
- 10 (b) before the transfer, the *superannuation provider of the fund
11 or RSA has agreed with the superannuation provider of the
12 original fund that the fund or RSA will confer on the member
13 or holder equivalent rights to the rights that the member or
14 holder had under the original fund in respect of the interest.

15 ***Tax Laws Amendment (2009 Measures No. 6) Act 2010***

16 **18 Items 19 and 20 of Schedule 2**

17 Repeal the items.

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2

Part 2—Employer contributions

3

Income Tax Assessment Act 1997

4

19 Paragraph 290-85(1)(b)

5

Omit “or” (last occurring).

6

20 Paragraph 290-85(1)(c)

7

Repeal the paragraph.

8

21 After subsection 290-85(1)

9

Insert:

10

(1AA) Section 290-60 also applies as modified by this section if:

11

(a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and

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(b) you make the contribution within 4 months after the person stops being your employee; and

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(c) you would have been entitled to a deduction in relation to the contribution if:

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(i) you had made it at a time when the other person was your employee; and

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(ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.

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(1AB) Section 290-60 also applies as modified by this section if:

24

(a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and

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27

(b) the contribution relates to a *defined benefit interest of the other person; and

28

29

(c) you are at *arm’s length with the other person in relation to the contribution; and

30

31

(d) you obtain an *actuary’s certificate that:

- 1 (i) complies with the requirements (if any) specified by the
2 regulations for the purposes of this paragraph; and
3 (ii) is to the effect that the contribution does not exceed the
4 amount required by the relevant *superannuation fund to
5 meet the fund's liabilities in connection with defined
6 benefit interests; and
7 (e) you would have been entitled to a deduction in relation to the
8 contribution if:
9 (i) you had made it at a time when the other person was
10 your employee; and
11 (ii) the law that applied to your entitlement to the deduction
12 at that time had been the same as it was at the time you
13 actually made the contribution.

14 **22 Subparagraph 290-85(1A)(d)(iii)**

15 Repeal the subparagraph, substitute:

- 16 (iii) if subsection (1B) or (1C) applies—relates to a period of
17 service during which the other person was the
18 company's or entity's employee.

19 **23 After subsection 290-85(1A)**

20 Insert:

- 21 (1B) This subsection applies if:
22 (a) you make the contribution within 4 months after the person
23 stops being the company's or entity's employee; and
24 (b) you would have been entitled to a deduction in relation to the
25 contribution if you had made it while the other person was
26 the company's or entity's employee.
- 27 (1C) This subsection applies if:
28 (a) the contribution relates to a *defined benefit interest of the
29 other person; and
30 (b) you and the company are at *arm's length with the other
31 person in relation to the contribution; and
32 (c) you obtain an *actuary's certificate that:
33 (i) complies with the requirements (if any) specified by the
34 regulations for the purposes of this paragraph; and
35 (ii) is to the effect that the contribution does not exceed the
36 amount required by the relevant *superannuation fund or

1 *RSA to meet the fund's or RSA's liabilities in
2 connection with defined benefit interests; and
3 (d) you would have been entitled to a deduction in respect of the
4 contribution if you had made it while the other person was
5 the company's or entity's employee.

6 **24 Paragraph 290-85(3)(a)**

7 After "subsection (1)", insert "or (1AA)".

1

2 **Part 3—Shortfall interest charge**

3 *Taxation Administration Act 1953*

4 **25 Section 280-102A in Schedule 1 (note)**

5 Omit “and” (first occurring), substitute “becomes due and payable. See
6 section 5-10 of that Act for when the amount of”.

1

2 **Part 4—Excess contributions tax**

3 *Income Tax Assessment Act 1997*

4 **26 Subsection 292-465(2)**

5 Omit “within”.

6 **27 Paragraphs 292-465(2)(a) and (b)**

7 Repeal the paragraphs, substitute:

8 (a) after all of the contributions sought to be disregarded or
9 reallocated have been made; and

10 (b) if you receive an *excess contributions tax assessment for the
11 *financial year—before the end of:

12 (i) the period of 60 days starting on the day you receive the
13 assessment; or

14 (ii) if the Commissioner allows a longer period—that longer
15 period.

16 **28 At the end of section 292-465**

17 Add:

18 (8) A determination under this section may be included in a notice of
19 assessment.

20 *Review of determinations*

21 (9) To avoid doubt:

22 (a) you may object under section 295-245 against an *excess
23 contributions tax assessment made in relation to you on the
24 ground that you are dissatisfied with a determination that you
25 applied for under this section; and

26 (b) for the purposes of paragraph (e) of Schedule 1 to the
27 *Administrative Decisions (Judicial Review) Act 1977*, the
28 making of a determination under this section is a decision
29 forming part of the process of making an assessment of tax
30 under this Act.

1

2 **Part 5—Public sector defined benefit schemes**

3 *Income Tax Assessment Act 1997*

4 **29 After section 307-295**

5 Insert:

6 **307-297 Public sector superannuation schemes—elements set by**
7 **regulations**

- 8 (1) This section applies to a *superannuation benefit that is paid from a
9 *public sector superannuation scheme that is not a *constitutionally
10 protected fund.
- 11 (2) Despite any other provision of this Subdivision, the *taxable
12 component of the *superannuation benefit consists of an *element*
13 *untaxed in the fund* equal to the amount (if any) specified by the
14 regulations in relation to the benefit for the purposes of this
15 section.
- 16 (3) The amount specified must not be less than the amount that would
17 be the *element untaxed in the fund under the other provisions of
18 this Subdivision.

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**Part 6—Amendment of the Superannuation
(Unclaimed Money and Lost Members) Act
1999**

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30 Paragraphs 20N(2)(a) and (b)

6

Repeal the paragraphs, substitute:

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(a) the Immigration Secretary (within the meaning of the *Income
Tax Assessment Act 1936*); or

8

9

(b) an APS employee in the Immigration Department (within the
meaning of that Act).

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Part 7—Application and transitional provisions

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31 Application provision

4

(1) The amendments made by Part 1 of this Schedule apply in relation to:

5

(a) notices given under section 290-170 of the *Income Tax Assessment Act 1997* on or after the commencement of this item; and

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7

8

(b) notices of variation given under section 290-180 of that Act on or after the commencement of this item (whether the notices being varied were given before, on or after the commencement of this item).

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(2) The amendments made by Part 2 of this Schedule apply in relation to contributions made on or after the commencement of this item.

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14

(3) The amendments made by Part 4 of this Schedule apply in relation to applications made on or after the commencement of this item.

15

16

32 Transitional provision—allowance of extra time to make applications

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From the commencement of this item, treat an allowance:

19

(a) made under paragraph 292-465(2)(b) of the *Income Tax Assessment Act 1997*; and

20

21

(b) in force just before the commencement of this item;

22

as having been made under subparagraph 292-465(2)(b)(ii) of that Act as substituted by Part 4 of this Schedule.

23