

First print



New South Wales

Unclaimed Money Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Unclaimed Money Act 1995* to enable unclaimed superannuation benefits to be paid into the Consolidated Fund in the same way as unpaid money and to adjust administrative provisions relating to unclaimed money and unclaimed superannuation benefits so that they are in line with provisions applying to State taxation laws that are administered by the Chief Commissioner of State Revenue (who will now administer the *Unclaimed Money Act 1995*).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 30 June 1997.

Clause 3 is a formal provision giving effect to the amendments to the *Unclaimed Money Act 1995* set out in Schedule 1.

Unclaimed superannuation benefits

Schedule 1 [6] inserts proposed Part 3A (Unclaimed superannuation benefits) into the Principal Act. The proposed Part applies to private and public superannuation funds, and approved deposit funds, in New South Wales and is enacted for the purposes of section 225 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. That provision enables State legislation to be enacted to provide for the payment of unclaimed superannuation benefits. Proposed Division 1 (proposed section 13A) defines expressions used in the proposed Part. Proposed Division 2 relates to the unclaimed superannuation benefits. A trustee of a superannuation fund is required to lodge a return with the Chief Commissioner of State Revenue for each half-year setting out unclaimed superannuation benefits, not later than 30 April and 31 October, respectively (proposed section 13B). The amount of the benefits (less the amount of any benefits paid after the end of the half-year and before the return is lodged) must be paid when the return is lodged. Trustees are required to keep copies of returns (proposed section 13C). The Chief Commissioner must publish in the Government Gazette the details of each sum of unclaimed superannuation benefits that is over \$50 (proposed section 13D). The Chief Commissioner is required to pay unclaimed superannuation benefits to a person if the Chief Commissioner determines that the person would have been entitled to be paid the benefits by the trustee of the relevant fund (proposed section 13E). The Chief Commissioner must also repay to trustees any excess superannuation benefits paid by the trustees to the Chief Commissioner and any other amounts that should not have been paid (proposed section 13F). The Consolidated Fund is appropriated for the purpose of the proposed repayments (proposed section 13G). The Chief Commissioner is also to keep a register of unclaimed superannuation benefits containing particulars of unclaimed superannuation benefits paid by a trustee of a superannuation fund and of members in respect of whom the benefits were payable (proposed section 13H).

A trustee who pays an amount to the Chief Commissioner is discharged from further liability (proposed section 13I) and nothing done by a trustee under the proposed Part is to constitute a breach of trust (proposed section 13J).

Proposed Division 3 (sections 13K and 13L) applies the proposed Part to public sector superannuation funds and, in the case of private funds, to a private fund if the fund's trustee is a company incorporated or having its registered office in New South Wales or, if the trustee or one of the trustees is not a company, the principal place where the trustee carries on business as a trustee is in New South Wales. Proposed section 13L is inserted for the purpose only of making it clear that the scheme envisaged by the proposed Part does operate in relation to trustees, assets and other matters outside New South Wales (as well as within New South Wales), once a relevant connection with New South Wales has been established for the purposes of the scheme. The proposed section therefore supports the intended operation of proposed section 13K.

Schedule 1 [2] and [4] make consequential amendments.

Returns for unclaimed money

Schedule 1 [5] extends from 2 months to 4 months the period within which returns as to unclaimed money must be lodged. This makes the time allowed the same as that for the lodging of returns for unclaimed superannuation benefits.

Administrative changes

Schedule 1 [8] inserts proposed section 27 that enables administrative provisions of the *Taxation Administration Act 1996* to be read with the Principal Act and repeals provisions in the Principal Act which cover the same matters. The following provisions of the *Taxation Administration Act 1996* will apply to unclaimed money and unclaimed superannuation benefits:

- (a) Part 5 (relating to interest and penalties in respect of outstanding money),
- (b) Part 7 (relating to the collection and payment of money),
- (c) Part 8 (relating to record keeping),
- (d) Part 9 (relating to administration, officers and investigation powers),
- (e) Part 10 (relating to objections and appeals),
- (f) various miscellaneous provisions, including provisions relating to means of payment, service of documents, evidentiary provisions and proceedings for offences.

Currently, the Principal Act establishes the office of Chief Commissioner of Unclaimed Money and the Chief Commissioner has the general administration of the Act. This position is to be abolished and the person who will have the general administration of the Act will be the Chief Commissioner of State Revenue, by operation of proposed section 27. **Schedule 1 [1]** makes a consequential amendment.

The Chief Commissioner is to be given a new power to assess the amount of unclaimed money or unclaimed superannuation benefits payable where a return is not lodged or the Chief Commissioner is of the opinion that an incorrect return has been lodged (**Schedule 1 [8]**, proposed section 28). There is to be a right to object and a subsequent right of appeal to the Supreme Court against an assessment, by operation of proposed section 27.

The amendment also re-enacts provisions currently in the Principal Act (proposed sections 29 and 30).

Schedule 1 [3] and **[7]** make consequential amendments.

Savings and transitional provisions

Savings and transitional regulations may be made as a consequence of the proposed Act (**Schedule 1 [9]**). The provisions allowing an assessment of a return or liability to pay money under the Act are not to apply to a return lodged or required to be lodged before the applicable provisions of the proposed Act commence (**Schedule 1 [10]**).

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Unclaimed Money Amendment Bill 1997

No , 1997

A Bill for

An Act to amend the *Unclaimed Money Act 1995* to provide for the payment of unclaimed superannuation benefits into the Consolidated Fund and the keeping of a register of such benefits, to provide for administration procedures relating to unclaimed money and unclaimed superannuation benefits, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Unclaimed Money Amendment Act 1997*.

2 Commencement

This Act commences on 30 June 1997.

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3 Amendment of Unclaimed Money Act 1995 No 75

The *Unclaimed Money Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Chief Commissioner*. Insert instead:

Chief Commissioner means the Chief Commissioner of
State Revenue appointed under the *Taxation*
Administration Act 1996. 5

[2] Section 3, definition of "officer of an enterprise"

Insert "or trustee" after "enterprise" wherever occurring.

[3] Section 3, definition of "return" 10

Insert "or 13B" after "10".

[4] Section 3

Insert in alphabetical order:

Commonwealth Act means the *Superannuation Industry*
(Supervision) Act 1993 of the Commonwealth. 15

superannuation fund means a superannuation fund
within the meaning of Part 3A.

trustee of a superannuation fund means a trustee of the
fund within the meaning of Part 3A.

unclaimed superannuation benefit means an amount 20
that, under Part 22 of the Commonwealth Act, as
modified for the time being under section 332 of that Act
in relation to funds and their trustees, is taken to be
unclaimed money.

[5] **Section 10 Return and payment of unclaimed money to Chief Commissioner**

Omit "2" from section 10 (1). Insert instead "4".

[6] **Part 3A**

Insert after Part 3:

5

Part 3A Unclaimed superannuation benefits

Division 1 Definitions

13A Definitions

In this Part:

approved deposit fund has the same meaning as it has in section 10 (1) of the Commonwealth Act. 10

beneficiary, in relation to a superannuation fund, has the same meaning as it has in section 10 (1) of the Commonwealth Act.

exempt public sector superannuation scheme means a superannuation scheme established under an Act of this State that is specified in regulations made under the Commonwealth Act for the purposes of the definition of *exempt public sector superannuation scheme* in that Act. 15
20

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

regulated superannuation fund has the same meaning as it has in section 19 of the Commonwealth Act.

superannuation fund means: 25

(a) a regulated superannuation fund, or

- (b) an exempt public sector superannuation scheme,
or
- (c) an approved deposit fund.

trustee means:

- (a) in relation to a regulated superannuation fund, an exempt public sector superannuation scheme (other than a scheme referred to in paragraph (b) or (c)) or an approved deposit fund, the trustee of the fund within the meaning of section 10 (1) of the Commonwealth Act, or 5
10
- (b) in relation to an exempt public sector superannuation scheme that is an FTC scheme within the meaning of the *Superannuation Administration Act 1996*, the FSS Trustee Corporation, or 15
- (c) in relation to an exempt public sector superannuation scheme that is an STC scheme within the meaning of the *Superannuation Administration Act 1996*, the SAS Trustee Corporation. 20

Division 2 Unclaimed superannuation benefits

13B Return and payment of unclaimed superannuation benefits to Chief Commissioner

- (1) The trustee of a superannuation fund must lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of all unclaimed superannuation benefits in the fund as at the end of each half-year. 25
- (2) The trustee must lodge the return:
 - (a) in relation to a half-year ending on 30 June, on or before the following 31 October, and 30
 - (b) in relation to a half-year ending on 31 December, on or before the following 30 April,

or on or before such later date as the Chief Commissioner may in a particular case allow by notice in writing to the trustee whether before or after 31 October or 30 April, as the case requires. 35

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- (3) If, after the end of a half-year and before the trustee lodges the return with the Chief Commissioner, the trustee pays any unclaimed superannuation benefit to a person who is entitled to it, the return must contain such particulars relating to the amounts so paid as are required by the form. 5
- (4) The trustee of a superannuation fund, when lodging the return, must pay to the Chief Commissioner an amount equal to the sum of the unclaimed superannuation benefits specified in the statement less the sum of amounts paid by the trustee and specified in accordance with subsection (3). 10
- (5) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (6) An approval by the Chief Commissioner of a form of return for the purposes of this section may require or permit the return to be given on a specified kind of data processing device in accordance with specified software requirements. 15
- (7) In this section: 20
- data processing device* means any article or material (for example a disc) from which information is capable of being reproduced with or without the aid of any other article or device.

13C Copies and inspection of returns 25

- (1) A trustee of a superannuation fund that lodges a return must retain a copy of the return at the trustee's registered office or principal place of operation in the State (or, if the trustee is a natural person, at a place nominated by the person and specified in the return). 30

Maximum penalty: 2 penalty units.

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- (2) The copy is to be retained for at least 5 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.

- (3) A trustee must make the retained copies of returns reasonably available for inspection by any person. 5

Maximum penalty: 2 penalty units.

- (4) The trustee may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount). 10

13D Publication of information relating to unclaimed money

The Chief Commissioner is to cause to be published in the Gazette such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of: 15

- (a) the existence of each sum of unclaimed superannuation benefits paid to the Chief Commissioner under this Part that exceeds \$50 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and 20

- (b) the identity of the beneficiary (if known).

13E Payment of unclaimed superannuation benefits where money later claimed

If: 25

- (a) any unclaimed superannuation benefits have been paid to the Chief Commissioner under this Part, and

- (b) the Chief Commissioner is satisfied on application made by a person in a form approved by the Chief Commissioner that, if this Part and Part 22 of the Commonwealth Act had not been enacted, the person would have been paid that unclaimed superannuation benefit by the trustee by whom it was paid to the Chief Commissioner, 5

the Chief Commissioner must pay that unclaimed superannuation benefit to that person.

13F Chief Commissioner must repay excess payments by trustees 10

If the trustee of a superannuation fund, after paying an amount to the Chief Commissioner under this Part, satisfies the Chief Commissioner that the amount so paid exceeds the amount that would have been paid to the person concerned, or is not unclaimed superannuation benefits that are required to be paid to the Chief Commissioner under this Act, the Chief Commissioner must refund to the trustee the amount of the excess. 15

13G Appropriation 20

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments or refunds by the Chief Commissioner under this Part.

13H Register of unclaimed superannuation benefits 25

- (1) The Chief Commissioner must keep a register of unclaimed superannuation benefits paid to the Chief Commissioner under this Part.
- (2) The register may be in such form, and kept in such manner, as the Chief Commissioner determines but must include particulars of: 30
- (a) the unclaimed superannuation benefits paid to the Chief Commissioner by a trustee of a superannuation fund, and

- (b) the member in respect of whom the unclaimed superannuation benefit was payable.

13I Discharge of trustee's liability

The trustee of a superannuation fund is, on payment to the Chief Commissioner of an amount as required by this Part, discharged from further liability in his or her capacity as trustee in respect of that amount. 5

13J Trustee not in breach of trust

Nothing done by a trustee of a superannuation fund in accordance with this Act is to be regarded for any purpose as constituting a breach of trust by the trustee. 10

Division 3 Application of Part

13K Application of Part

- (1) This Part applies to a superannuation fund and to the trustee of a superannuation fund (not being an exempt public sector superannuation scheme) if: 15
- (a) the trustee is a company within the meaning of the *Corporations Law* of New South Wales, or
 - (b) the trustee is a corporation within the meaning of the *Corporations Law* and its registered office within the meaning of that law is in New South Wales, or 20
 - (c) in the case of a trustee who is a natural person, the principal place where the trustee carries on business as a trustee is in New South Wales, or 25
 - (d) in a case where there are 2 or more trustees of the fund and paragraph (a), (b) or (c) applies to one or more but not to all the trustees, the principal place where the fund is administered is in New South Wales. 30
- (2) This Part applies to an exempt public sector superannuation scheme and the provisions of this Part apply to the scheme and to the trustee of any such scheme despite any provision of any other Act or any other law. 35

13L Extra-territorial operation

It is the intention of Parliament that this Part should extend (subject to section 13K), as far as possible, to the following:

- (a) land or things situated outside New South Wales, whether in or outside Australia, 5
- (b) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (c) trustees and beneficiaries situated or residing outside New South Wales, whether in or outside Australia. 10

[7] Sections 22 and 23

Omit the sections.

[8] Parts 5 and 6, heading to Part 7 and section 45 15

Omit the Parts, heading and section. Insert instead:

Part 5 Miscellaneous

27 Application of certain provisions of Taxation Administration Act 1996

- (1) Parts 5, 7, 8, 9, 10 and 11 of the *Taxation Administration Act 1996* (other than sections 60, 63, 81–85, 111 and 126–128) are to be read as if they form part of this Act, subject to the following modifications: 20
 - (a) a reference to a tax default is to be read as a reference to a failure to pay the whole or part of money payable under this Act, 25
 - (b) a reference to a taxpayer is to be read as a reference to an enterprise or the trustee of a superannuation fund,

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- (c) a reference to a taxation law is to be read as a reference to this Act,
 - (d) a reference to a tax is to be read as a reference to money payable to the Chief Commissioner under this Act, 5
 - (e) a reference to a person's tax liability is to be read as a reference to the liability of an enterprise or a trustee to pay unclaimed money or unclaimed superannuation benefits under this Act.
 - (2) Nothing in this section entitles the trustee of a superannuation fund to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of a superannuation benefit payable to any person or as part of the administrative, management or other costs of the fund. 10 15
 - (3) Nothing in this section entitles an enterprise to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of any unclaimed money payable to any person.
- 28 General power to make assessment 20**
- (1) The Chief Commissioner may make an assessment of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits, to the Chief Commissioner.
 - (2) The Chief Commissioner may make one or more assessments of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits. 25
 - (3) An assessment may be made only if:
 - (a) the enterprise or trustee fails to lodge a return by the due date, or 30
 - (b) the Chief Commissioner is of the opinion that an incorrect return has been lodged by the enterprise or trustee.
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- (4) An assessment of a liability may consist of a determination that there is not a liability to pay unclaimed money or unclaimed superannuation benefits to the Chief Commissioner.
- (5) The Chief Commissioner may withdraw an assessment under this section at any time after the date of written notice of the assessment is given to the relevant enterprise or trustee, whether or not the amount specified in the assessment has been paid. 5
- (6) A notice of assessment issued following a failure to pay the whole or part of money under section 10 (1) or 13B (1) must specify any interest and penalty tax payable. 10
- (7) The validity of an assessment is not affected because a provision of this Act has not been complied with.

29 Enterprises and trustees that are not natural persons 15

Any act or thing that an enterprise or the trustee of a superannuation fund is required or permitted to do by or under this Act may, in the case of an enterprise or trustee that is not a natural person, be done on behalf of the enterprise or trustee by an officer of the enterprise or trustee. 20

30 Annotation of records

- (1) If the Chief Commissioner or an authorised officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter. 25
- (2) The enterprise must comply with any such direction. 30
Maximum penalty (subsection (2)): 5 penalty units.

[9] Schedule 2 Savings, transitional and other provisions

Omit "this Act" from clause 1 (1). Insert instead:

this Act and the following Acts:

Unclaimed Money Amendment Act 1997

[10] Schedule 2, Part 3

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Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Unclaimed Money Amendment Act 1997**

9 Existing returns

Sections 27 and 28, as inserted by the *Unclaimed Money
Amendment Act 1997*, do not apply to a return lodged or
required to be lodged before the commencement of those
sections.

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New South Wales

Unclaimed Money Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Unclaimed Money Act 1995* to enable unclaimed superannuation benefits to be paid into the Consolidated Fund in the same way as unpaid money and to adjust administrative provisions relating to unclaimed money and unclaimed superannuation benefits so that they are in line with provisions applying to State taxation laws that are administered by the Chief Commissioner of State Revenue (who will now administer the *Unclaimed Money Act 1995*).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 30 June 1997.

Clause 3 is a formal provision giving effect to the amendments to the *Unclaimed Money Act 1995* set out in Schedule 1.

Unclaimed superannuation benefits

Schedule 1 [6] inserts proposed Part 3A (Unclaimed superannuation benefits) into the Principal Act. The proposed Part applies to private and public superannuation funds, and approved deposit funds, in New South Wales and is enacted for the purposes of section 225 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. That provision enables State legislation to be enacted to provide for the payment of unclaimed superannuation benefits. Proposed Division 1 (proposed section 13A) defines expressions used in the proposed Part. Proposed Division 2 relates to the unclaimed superannuation benefits. A trustee of a superannuation fund is required to lodge a return with the Chief Commissioner of State Revenue for each half-year setting out unclaimed superannuation benefits, not later than 30 April and 31 October, respectively (proposed section 13B). The amount of the benefits (less the amount of any benefits paid after the end of the half-year and before the return is lodged) must be paid when the return is lodged. Trustees are required to keep copies of returns (proposed section 13C). The Chief Commissioner must publish in the Government Gazette the details of each sum of unclaimed superannuation benefits that is over \$50 (proposed section 13D). The Chief Commissioner is required to pay unclaimed superannuation benefits to a person if the Chief Commissioner determines that the person would have been entitled to be paid the benefits by the trustee of the relevant fund (proposed section 13E). The Chief Commissioner must also repay to trustees any excess superannuation benefits paid by the trustees to the Chief Commissioner and any other amounts that should not have been paid (proposed section 13F). The Consolidated Fund is appropriated for the purpose of the proposed repayments (proposed section 13G). The Chief Commissioner is also to keep a register of unclaimed superannuation benefits containing particulars of unclaimed superannuation benefits paid by a trustee of a superannuation fund and of members in respect of whom the benefits were payable (proposed section 13H).

A trustee who pays an amount to the Chief Commissioner is discharged from further liability (proposed section 13I) and nothing done by a trustee under the proposed Part is to constitute a breach of trust (proposed section 13J).

Proposed Division 3 (sections 13K and 13L) applies the proposed Part to public sector superannuation funds and, in the case of private funds, to a private fund if the fund's trustee is a company incorporated or having its registered office in New South Wales or, if the trustee or one of the trustees is not a company, the principal place where the trustee carries on business as a trustee is in New South Wales. Proposed section 13L is inserted for the purpose only of making it clear that the scheme envisaged by the proposed Part does operate in relation to trustees, assets and other matters outside New South Wales (as well as within New South Wales), once a relevant connection with New South Wales has been established for the purposes of the scheme. The proposed section therefore supports the intended operation of proposed section 13K.

Schedule 1 [2] and [4] make consequential amendments.

Returns for unclaimed money

Schedule 1 [5] extends from 2 months to 4 months the period within which returns as to unclaimed money must be lodged. This makes the time allowed the same as that for the lodging of returns for unclaimed superannuation benefits.

Administrative changes

Schedule 1 [8] inserts proposed section 27 that enables administrative provisions of the *Taxation Administration Act 1996* to be read with the Principal Act and repeals provisions in the Principal Act which cover the same matters. The following provisions of the *Taxation Administration Act 1996* will apply to unclaimed money and unclaimed superannuation benefits:

- (a) Part 5 (relating to interest and penalties in respect of outstanding money),
- (b) Part 7 (relating to the collection and payment of money),
- (c) Part 8 (relating to record keeping),
- (d) Part 9 (relating to administration, officers and investigation powers),
- (e) Part 10 (relating to objections and appeals),
- (f) various miscellaneous provisions, including provisions relating to means of payment, service of documents, evidentiary provisions and proceedings for offences.

Currently, the Principal Act establishes the office of Chief Commissioner of Unclaimed Money and the Chief Commissioner has the general administration of the Act. This position is to be abolished and the person who will have the general administration of the Act will be the Chief Commissioner of State Revenue, by operation of proposed section 27. **Schedule 1 [1]** makes a consequential amendment.

The Chief Commissioner is to be given a new power to assess the amount of unclaimed money or unclaimed superannuation benefits payable where a return is not lodged or the Chief Commissioner is of the opinion that an incorrect return has been lodged (**Schedule 1 [8]**, proposed section 28). There is to be a right to object and a subsequent right of appeal to the Supreme Court against an assessment, by operation of proposed section 27.

The amendment also re-enacts provisions currently in the Principal Act (proposed sections 29 and 30).

Schedule 1 [3] and **[7]** make consequential amendments.

Savings and transitional provisions

Savings and transitional regulations may be made as a consequence of the proposed Act (**Schedule 1 [9]**). The provisions allowing an assessment of a return or liability to pay money under the Act are not to apply to a return lodged or required to be lodged before the applicable provisions of the proposed Act commence (**Schedule 1 [10]**).

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A Bill for

An Act to amend the *Unclaimed Money Act 1995* to provide for the payment of unclaimed superannuation benefits into the Consolidated Fund and the keeping of a register of such benefits, to provide for administration procedures relating to unclaimed money and unclaimed superannuation benefits, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Unclaimed Money Amendment Act 1997*.

2 Commencement

This Act commences on 30 June 1997.

5

3 Amendment of Unclaimed Money Act 1995 No 75

The *Unclaimed Money Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Chief Commissioner*. Insert instead:

Chief Commissioner means the Chief Commissioner of
State Revenue appointed under the *Taxation*
Administration Act 1996. 5

[2] Section 3, definition of "officer of an enterprise"

Insert "or trustee" after "enterprise" wherever occurring.

[3] Section 3, definition of "return"

10

Insert "or 13B" after "10".

[4] Section 3

Insert in alphabetical order:

Commonwealth Act means the *Superannuation Industry*
(Supervision) Act 1993 of the Commonwealth. 15

superannuation fund means a superannuation fund
within the meaning of Part 3A.

trustee of a superannuation fund means a trustee of the
fund within the meaning of Part 3A.

unclaimed superannuation benefit means an amount 20
that, under Part 22 of the Commonwealth Act, as
modified for the time being under section 332 of that Act
in relation to funds and their trustees, is taken to be
unclaimed money.

[5] **Section 10 Return and payment of unclaimed money to Chief Commissioner**

Omit "2" from section 10 (1). Insert instead "4".

[6] **Part 3A**

Insert after Part 3:

5

Part 3A Unclaimed superannuation benefits

Division 1 Definitions

13A Definitions

In this Part:

approved deposit fund has the same meaning as it has in section 10 (1) of the Commonwealth Act. 10

beneficiary, in relation to a superannuation fund, has the same meaning as it has in section 10 (1) of the Commonwealth Act.

exempt public sector superannuation scheme means a superannuation scheme established under an Act of this State that is specified in regulations made under the Commonwealth Act for the purposes of the definition of *exempt public sector superannuation scheme* in that Act. 15
20

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

regulated superannuation fund has the same meaning as it has in section 19 of the Commonwealth Act.

superannuation fund means: 25

(a) a regulated superannuation fund, or

- (b) an exempt public sector superannuation scheme, or
- (c) an approved deposit fund.

trustee means:

- (a) in relation to a regulated superannuation fund, an exempt public sector superannuation scheme (other than a scheme referred to in paragraph (b) or (c)) or an approved deposit fund, the trustee of the fund within the meaning of section 10 (1) of the Commonwealth Act, or 5
10
- (b) in relation to an exempt public sector superannuation scheme that is an FTC scheme within the meaning of the *Superannuation Administration Act 1996*, the FSS Trustee Corporation, or 15
- (c) in relation to an exempt public sector superannuation scheme that is an STC scheme within the meaning of the *Superannuation Administration Act 1996*, the SAS Trustee Corporation. 20

Division 2 Unclaimed superannuation benefits

13B Return and payment of unclaimed superannuation benefits to Chief Commissioner

- (1) The trustee of a superannuation fund must lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of all unclaimed superannuation benefits in the fund as at the end of each half-year. 25
- (2) The trustee must lodge the return:
 - (a) in relation to a half-year ending on 30 June, on or before the following 31 October, and 30
 - (b) in relation to a half-year ending on 31 December, on or before the following 30 April,

or on or before such later date as the Chief Commissioner may in a particular case allow by notice in writing to the trustee whether before or after 31 October or 30 April, as the case requires. 35

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- (3) If, after the end of a half-year and before the trustee lodges the return with the Chief Commissioner, the trustee pays any unclaimed superannuation benefit to a person who is entitled to it, the return must contain such particulars relating to the amounts so paid as are required by the form. 5
- (4) The trustee of a superannuation fund, when lodging the return, must pay to the Chief Commissioner an amount equal to the sum of the unclaimed superannuation benefits specified in the statement less the sum of amounts paid by the trustee and specified in accordance with subsection (3). 10
- (5) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (6) An approval by the Chief Commissioner of a form of return for the purposes of this section may require or permit the return to be given on a specified kind of data processing device in accordance with specified software requirements. 15
- (7) In this section: 20
- data processing device* means any article or material (for example a disc) from which information is capable of being reproduced with or without the aid of any other article or device.

13C Copies and inspection of returns 25

- (1) A trustee of a superannuation fund that lodges a return must retain a copy of the return at the trustee's registered office or principal place of operation in the State (or, if the trustee is a natural person, at a place nominated by the person and specified in the return). 30

Maximum penalty: 2 penalty units.

-
- (2) The copy is to be retained for at least 5 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.

- (3) A trustee must make the retained copies of returns reasonably available for inspection by any person. 5

Maximum penalty: 2 penalty units.

- (4) The trustee may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount). 10

13D Publication of information relating to unclaimed money

The Chief Commissioner is to cause to be published in the Gazette such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of: 15

- (a) the existence of each sum of unclaimed superannuation benefits paid to the Chief Commissioner under this Part that exceeds \$50 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and 20
- (b) the identity of the beneficiary (if known).

13E Payment of unclaimed superannuation benefits where money later claimed

If: 25

- (a) any unclaimed superannuation benefits have been paid to the Chief Commissioner under this Part, and

- (b) the Chief Commissioner is satisfied on application made by a person in a form approved by the Chief Commissioner that, if this Part and Part 22 of the Commonwealth Act had not been enacted, the person would have been paid that unclaimed superannuation benefit by the trustee by whom it was paid to the Chief Commissioner, 5

the Chief Commissioner must pay that unclaimed superannuation benefit to that person.

13F Chief Commissioner must repay excess payments by trustees 10

If the trustee of a superannuation fund, after paying an amount to the Chief Commissioner under this Part, satisfies the Chief Commissioner that the amount so paid exceeds the amount that would have been paid to the person concerned, or is not unclaimed superannuation benefits that are required to be paid to the Chief Commissioner under this Act, the Chief Commissioner must refund to the trustee the amount of the excess. 15

13G Appropriation 20

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments or refunds by the Chief Commissioner under this Part.

13H Register of unclaimed superannuation benefits 25

- (1) The Chief Commissioner must keep a register of unclaimed superannuation benefits paid to the Chief Commissioner under this Part.
- (2) The register may be in such form, and kept in such manner, as the Chief Commissioner determines but must include particulars of: 30
- (a) the unclaimed superannuation benefits paid to the Chief Commissioner by a trustee of a superannuation fund, and

- (b) the member in respect of whom the unclaimed superannuation benefit was payable.

13I Discharge of trustee's liability

The trustee of a superannuation fund is, on payment to the Chief Commissioner of an amount as required by this Part, discharged from further liability in his or her capacity as trustee in respect of that amount. 5

13J Trustee not in breach of trust

Nothing done by a trustee of a superannuation fund in accordance with this Act is to be regarded for any purpose as constituting a breach of trust by the trustee. 10

Division 3 Application of Part

13K Application of Part

- (1) This Part applies to a superannuation fund and to the trustee of a superannuation fund (not being an exempt public sector superannuation scheme) if: 15
- (a) the trustee is a company within the meaning of the *Corporations Law* of New South Wales, or
 - (b) the trustee is a corporation within the meaning of the *Corporations Law* and its registered office within the meaning of that law is in New South Wales, or 20
 - (c) in the case of a trustee who is a natural person, the principal place where the trustee carries on business as a trustee is in New South Wales, or 25
 - (d) in a case where there are 2 or more trustees of the fund and paragraph (a), (b) or (c) applies to one or more but not to all the trustees, the principal place where the fund is administered is in New South Wales. 30
- (2) This Part applies to an exempt public sector superannuation scheme and the provisions of this Part apply to the scheme and to the trustee of any such scheme despite any provision of any other Act or any other law. 35

13L Extra-territorial operation

It is the intention of Parliament that this Part should extend (subject to section 13K), as far as possible, to the following:

- (a) land or things situated outside New South Wales, whether in or outside Australia, 5
- (b) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (c) trustees and beneficiaries situated or residing outside New South Wales, whether in or outside Australia. 10

[7] Sections 22 and 23

Omit the sections.

[8] Parts 5 and 6, heading to Part 7 and section 45 15

Omit the Parts, heading and section. Insert instead:

Part 5 Miscellaneous

27 Application of certain provisions of Taxation Administration Act 1996

- (1) Parts 5, 7, 8, 9, 10 and 11 of the *Taxation Administration Act 1996* (other than sections 60, 63, 81–85, 111 and 126–128) are to be read as if they form part of this Act, subject to the following modifications: 20
 - (a) a reference to a tax default is to be read as a reference to a failure to pay the whole or part of money payable under this Act, 25
 - (b) a reference to a taxpayer is to be read as a reference to an enterprise or the trustee of a superannuation fund,

-
- (c) a reference to a taxation law is to be read as a reference to this Act,
 - (d) a reference to a tax is to be read as a reference to money payable to the Chief Commissioner under this Act, 5
 - (e) a reference to a person's tax liability is to be read as a reference to the liability of an enterprise or a trustee to pay unclaimed money or unclaimed superannuation benefits under this Act.
 - (2) Nothing in this section entitles the trustee of a superannuation fund to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of a superannuation benefit payable to any person or as part of the administrative, management or other costs of the fund. 10 15
 - (3) Nothing in this section entitles an enterprise to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of any unclaimed money payable to any person.
- 28 General power to make assessment 20**
- (1) The Chief Commissioner may make an assessment of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits, to the Chief Commissioner.
 - (2) The Chief Commissioner may make one or more assessments of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits. 25
 - (3) An assessment may be made only if:
 - (a) the enterprise or trustee fails to lodge a return by the due date, or 30
 - (b) the Chief Commissioner is of the opinion that an incorrect return has been lodged by the enterprise or trustee.
-

Unclaimed Money Amendment Bill 1997

Schedule 1 Amendments

- (4) An assessment of a liability may consist of a determination that there is not a liability to pay unclaimed money or unclaimed superannuation benefits to the Chief Commissioner.
- (5) The Chief Commissioner may withdraw an assessment under this section at any time after the date of written notice of the assessment is given to the relevant enterprise or trustee, whether or not the amount specified in the assessment has been paid. 5
- (6) A notice of assessment issued following a failure to pay the whole or part of money under section 10 (1) or 13B (1) must specify any interest and penalty tax payable. 10
- (7) The validity of an assessment is not affected because a provision of this Act has not been complied with.

29 Enterprises and trustees that are not natural persons 15

Any act or thing that an enterprise or the trustee of a superannuation fund is required or permitted to do by or under this Act may, in the case of an enterprise or trustee that is not a natural person, be done on behalf of the enterprise or trustee by an officer of the enterprise or trustee. 20

30 Annotation of records

- (1) If the Chief Commissioner or an authorised officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter. 25
- (2) The enterprise must comply with any such direction. 30
Maximum penalty (subsection (2)): 5 penalty units.

[9] Schedule 2 Savings, transitional and other provisions

Omit "this Act" from clause 1 (1). Insert instead:

this Act and the following Acts:

Unclaimed Money Amendment Act 1997

[10] Schedule 2, Part 3

5

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Unclaimed Money Amendment Act 1997**

9 Existing returns

Sections 27 and 28, as inserted by the *Unclaimed Money
Amendment Act 1997*, do not apply to a return lodged or
required to be lodged before the commencement of those
sections.

10



New South Wales

Unclaimed Money Amendment Act 1997 No 30

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New South Wales

Unclaimed Money Amendment Act 1997 No 30

Act No 30, 1997

An Act to amend the *Unclaimed Money Act 1995* to provide for the payment of unclaimed superannuation benefits into the Consolidated Fund and the keeping of a register of such benefits, to provide for administration procedures relating to unclaimed money and unclaimed superannuation benefits, and for other purposes. [Assented to 25 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Unclaimed Money Amendment Act 1997*.

2 Commencement

This Act commences on 30 June 1997.

3 Amendment of Unclaimed Money Act 1995 No 75

The *Unclaimed Money Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Chief Commissioner*. Insert instead:

Chief Commissioner means the Chief Commissioner of State Revenue appointed under the *Taxation Administration Act 1996*.

[2] Section 3, definition of “officer of an enterprise”

Insert “or trustee” after “enterprise” wherever occurring.

[3] Section 3, definition of “return”

Insert “or 13B” after “10”.

[4] Section 3

Insert in alphabetical order:

Commonwealth Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

superannuation fund means a superannuation fund within the meaning of Part 3A.

trustee of a superannuation fund means a trustee of the fund within the meaning of Part 3A.

unclaimed superannuation benefit means an amount that, under Part 22 of the Commonwealth Act, as modified for the time being under section 332 of that Act in relation to funds and their trustees, is taken to be unclaimed money.

[5] Section 10 Return and payment of unclaimed money to Chief Commissioner

Omit "2" from section 10 (1). Insert instead "4".

[6] Part 3A

Insert after Part 3:

Part 3A Unclaimed superannuation benefits

Division 1 Definitions

13A Definitions

In this Part:

approved deposit fund has the same meaning as it has in section 10 (1) of the Commonwealth Act.

beneficiary, in relation to a superannuation fund, has the same meaning as it has in section 10 (1) of the Commonwealth Act.

exempt public sector superannuation scheme means a superannuation scheme established under an Act of this State that is specified in regulations made under the Commonwealth Act for the purposes of the definition of *exempt public sector superannuation scheme* in that Act.

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

regulated superannuation fund has the same meaning as it has in section 19 of the Commonwealth Act.

superannuation fund means:

- (a) a regulated superannuation fund, or

- (b) an exempt public sector superannuation scheme, or
- (c) an approved deposit fund.

trustee means:

- (a) in relation to a regulated superannuation fund, an exempt public sector superannuation scheme (other than a scheme referred to in paragraph (b) or (c)) or an approved deposit fund, the trustee of the fund within the meaning of section 10 (1) of the Commonwealth Act, or
- (b) in relation to an exempt public sector superannuation scheme that is an FTC scheme within the meaning of the *Superannuation Administration Act 1996*, the FSS Trustee Corporation, or
- (c) in relation to an exempt public sector superannuation scheme that is an STC scheme within the meaning of the *Superannuation Administration Act 1996*, the SAS Trustee Corporation.

Division 2 Unclaimed superannuation benefits

13B Return and payment of unclaimed superannuation benefits to Chief Commissioner

- (1) The trustee of a superannuation fund must lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of all unclaimed superannuation benefits in the fund as at the end of each half-year.
- (2) The trustee must lodge the return:
 - (a) in relation to a half-year ending on 30 June, on or before the following 31 October, and
 - (b) in relation to a half-year ending on 31 December, on or before the following 30 April,or on or before such later date as the Chief Commissioner may in a particular case allow by notice in writing to the trustee whether before or after 31 October or 30 April, as the case requires.

- (3) If, after the end of a half-year and before the trustee lodges the return with the Chief Commissioner, the trustee pays any unclaimed superannuation benefit to a person who is entitled to it, the return must contain such particulars relating to the amounts so paid as are required by the form.
- (4) The trustee of a superannuation fund, when lodging the return, must pay to the Chief Commissioner an amount equal to the sum of the unclaimed superannuation benefits specified in the statement less the sum of amounts paid by the trustee and specified in accordance with subsection (3).
- (5) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (6) An approval by the Chief Commissioner of a form of return for the purposes of this section may require or permit the return to be given on a specified kind of data processing device in accordance with specified software requirements.
- (7) In this section:

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

13C Copies and inspection of returns

- (1) A trustee of a superannuation fund that lodges a return must retain a copy of the return at the trustee's registered office or principal place of operation in the State (or, if the trustee is a natural person, at a place nominated by the person and specified in the return).

Maximum penalty: 2 penalty units.

- (2) The copy is to be retained for at least 5 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.

- (3) A trustee must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty: 2 penalty units.

- (4) The trustee may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount).

13D Publication of information relating to unclaimed money

The Chief Commissioner is to cause to be published in the Gazette such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of:

- (a) the existence of each sum of unclaimed superannuation benefits paid to the Chief Commissioner under this Part that exceeds \$50 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and
- (b) the identity of the beneficiary (if known).

13E Payment of unclaimed superannuation benefits where money later claimed

If:

- (a) any unclaimed superannuation benefits have been paid to the Chief Commissioner under this Part, and

- (b) the Chief Commissioner is satisfied on application made by a person in a form approved by the Chief Commissioner that, if this Part and Part 22 of the Commonwealth Act had not been enacted, the person would have been paid that unclaimed superannuation benefit by the trustee by whom it was paid to the Chief Commissioner,

the Chief Commissioner must pay that unclaimed superannuation benefit to that person.

13F Chief Commissioner must repay excess payments by trustees

If the trustee of a superannuation fund, after paying an amount to the Chief Commissioner under this Part, satisfies the Chief Commissioner that the amount so paid exceeds the amount that would have been paid to the person concerned, or is not unclaimed superannuation benefits that are required to be paid to the Chief Commissioner under this Act, the Chief Commissioner must refund to the trustee the amount of the excess.

13G Appropriation

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments or refunds by the Chief Commissioner under this Part.

13H Register of unclaimed superannuation benefits

- (1) The Chief Commissioner must keep a register of unclaimed superannuation benefits paid to the Chief Commissioner under this Part.
- (2) The register may be in such form, and kept in such manner, as the Chief Commissioner determines but must include particulars of:
 - (a) the unclaimed superannuation benefits paid to the Chief Commissioner by a trustee of a superannuation fund, and

- (b) the member in respect of whom the unclaimed superannuation benefit was payable.

13I Discharge of trustee's liability

The trustee of a superannuation fund is, on payment to the Chief Commissioner of an amount as required by this Part, discharged from further liability in his or her capacity as trustee in respect of that amount.

13J Trustee not in breach of trust

Nothing done by a trustee of a superannuation fund in accordance with this Act is to be regarded for any purpose as constituting a breach of trust by the trustee.

Division 3 Application of Part

13K Application of Part

- (1) This Part applies to a superannuation fund and to the trustee of a superannuation fund (not being an exempt public sector superannuation scheme) if:
 - (a) the trustee is a company within the meaning of the *Corporations Law* of New South Wales, or
 - (b) the trustee is a corporation within the meaning of the *Corporations Law* and its registered office within the meaning of that law is in New South Wales, or
 - (c) in the case of a trustee who is a natural person, the principal place where the trustee carries on business as a trustee is in New South Wales, or
 - (d) in a case where there are 2 or more trustees of the fund and paragraph (a), (b) or (c) applies to one or more but not to all the trustees, the principal place where the fund is administered is in New South Wales.
- (2) This Part applies to an exempt public sector superannuation scheme and the provisions of this Part apply to the scheme and to the trustee of any such scheme despite any provision of any other Act or any other law.

13L Extra-territorial operation

It is the intention of Parliament that this Part should extend (subject to section 13K), as far as possible, to the following:

- (a) land or things situated outside New South Wales, whether in or outside Australia,
- (b) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (c) trustees and beneficiaries situated or residing outside New South Wales, whether in or outside Australia.

[7] Sections 22 and 23

Omit the sections.

[8] Parts 5 and 6, heading to Part 7 and section 45

Omit the Parts, heading and section. Insert instead:

Part 5 Miscellaneous

27 Application of certain provisions of Taxation Administration Act 1996

- (1) Parts 5, 7, 8, 9, 10 and 11 of the *Taxation Administration Act 1996* (other than sections 60, 63, 81–85, 111 and 126–128) are to be read as if they form part of this Act, subject to the following modifications:
 - (a) a reference to a tax default is to be read as a reference to a failure to pay the whole or part of money payable under this Act,
 - (b) a reference to a taxpayer is to be read as a reference to an enterprise or the trustee of a superannuation fund,

- (c) a reference to a taxation law is to be read as a reference to this Act,
 - (d) a reference to a tax is to be read as a reference to money payable to the Chief Commissioner under this Act,
 - (e) a reference to a person's tax liability is to be read as a reference to the liability of an enterprise or a trustee to pay unclaimed money or unclaimed superannuation benefits under this Act.
- (2) Nothing in this section entitles the trustee of a superannuation fund to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of a superannuation benefit payable to any person or as part of the administrative, management or other costs of the fund.
- (3) Nothing in this section entitles an enterprise to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of any unclaimed money payable to any person.

28 General power to make assessment

- (1) The Chief Commissioner may make an assessment of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits, to the Chief Commissioner.
- (2) The Chief Commissioner may make one or more assessments of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits.
- (3) An assessment may be made only if:
 - (a) the enterprise or trustee fails to lodge a return by the due date, or
 - (b) the Chief Commissioner is of the opinion that an incorrect return has been lodged by the enterprise or trustee.

- (4) An assessment of a liability may consist of a determination that there is not a liability to pay unclaimed money or unclaimed superannuation benefits to the Chief Commissioner.
- (5) The Chief Commissioner may withdraw an assessment under this section at any time after the date of written notice of the assessment is given to the relevant enterprise or trustee, whether or not the amount specified in the assessment has been paid.
- (6) A notice of assessment issued following a failure to pay the whole or part of money under section 10 (1) or 13B (1) must specify any interest and penalty tax payable.
- (7) The validity of an assessment is not affected because a provision of this Act has not been complied with.

29 Enterprises and trustees that are not natural persons

Any act or thing that an enterprise or the trustee of a superannuation fund is required or permitted to do by or under this Act may, in the case of an enterprise or trustee that is not a natural person, be done on behalf of the enterprise or trustee by an officer of the enterprise or trustee.

30 Annotation of records

- (1) If the Chief Commissioner or an authorised officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter.
- (2) The enterprise must comply with any such direction.

Maximum penalty (subsection (2)): 5 penalty units.

[9] Schedule 2 Savings, transitional and other provisions

Omit “this Act” from clause 1 (1). Insert instead:

this Act and the following Acts:

Unclaimed Money Amendment Act 1997

[10] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Unclaimed Money Amendment Act 1997**

9 Existing returns

Sections 27 and 28, as inserted by the *Unclaimed Money Amendment Act 1997*, do not apply to a return lodged or required to be lodged before the commencement of those sections.

[Minister's second reading speech made in—
Legislative Assembly on 14 May 1997
Legislative Council on 16 June 1997]



New South Wales

Unclaimed Money Amendment Act 1997 No 30

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New South Wales

Unclaimed Money Amendment Act 1997 No 30

Act No 30, 1997

An Act to amend the *Unclaimed Money Act 1995* to provide for the payment of unclaimed superannuation benefits into the Consolidated Fund and the keeping of a register of such benefits, to provide for administration procedures relating to unclaimed money and unclaimed superannuation benefits, and for other purposes. [Assented to 25 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Unclaimed Money Amendment Act 1997*.

2 Commencement

This Act commences on 30 June 1997.

3 Amendment of Unclaimed Money Act 1995 No 75

The *Unclaimed Money Act 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Chief Commissioner*. Insert instead:

Chief Commissioner means the Chief Commissioner of State Revenue appointed under the *Taxation Administration Act 1996*.

[2] Section 3, definition of “officer of an enterprise”

Insert “or trustee” after “enterprise” wherever occurring.

[3] Section 3, definition of “return”

Insert “or 13B” after “10”.

[4] Section 3

Insert in alphabetical order:

Commonwealth Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

superannuation fund means a superannuation fund within the meaning of Part 3A.

trustee of a superannuation fund means a trustee of the fund within the meaning of Part 3A.

unclaimed superannuation benefit means an amount that, under Part 22 of the Commonwealth Act, as modified for the time being under section 332 of that Act in relation to funds and their trustees, is taken to be unclaimed money.

[5] Section 10 Return and payment of unclaimed money to Chief Commissioner

Omit "2" from section 10 (1). Insert instead "4".

[6] Part 3A

Insert after Part 3:

Part 3A Unclaimed superannuation benefits

Division 1 Definitions

13A Definitions

In this Part:

approved deposit fund has the same meaning as it has in section 10 (1) of the Commonwealth Act.

beneficiary, in relation to a superannuation fund, has the same meaning as it has in section 10 (1) of the Commonwealth Act.

exempt public sector superannuation scheme means a superannuation scheme established under an Act of this State that is specified in regulations made under the Commonwealth Act for the purposes of the definition of *exempt public sector superannuation scheme* in that Act.

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

regulated superannuation fund has the same meaning as it has in section 19 of the Commonwealth Act.

superannuation fund means:

- (a) a regulated superannuation fund, or

- (b) an exempt public sector superannuation scheme, or
- (c) an approved deposit fund.

trustee means:

- (a) in relation to a regulated superannuation fund, an exempt public sector superannuation scheme (other than a scheme referred to in paragraph (b) or (c)) or an approved deposit fund, the trustee of the fund within the meaning of section 10 (1) of the Commonwealth Act, or
- (b) in relation to an exempt public sector superannuation scheme that is an FTC scheme within the meaning of the *Superannuation Administration Act 1996*, the FSS Trustee Corporation, or
- (c) in relation to an exempt public sector superannuation scheme that is an STC scheme within the meaning of the *Superannuation Administration Act 1996*, the SAS Trustee Corporation.

Division 2 Unclaimed superannuation benefits

13B Return and payment of unclaimed superannuation benefits to Chief Commissioner

- (1) The trustee of a superannuation fund must lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of all unclaimed superannuation benefits in the fund as at the end of each half-year.
- (2) The trustee must lodge the return:
 - (a) in relation to a half-year ending on 30 June, on or before the following 31 October, and
 - (b) in relation to a half-year ending on 31 December, on or before the following 30 April,or on or before such later date as the Chief Commissioner may in a particular case allow by notice in writing to the trustee whether before or after 31 October or 30 April, as the case requires.

- (3) If, after the end of a half-year and before the trustee lodges the return with the Chief Commissioner, the trustee pays any unclaimed superannuation benefit to a person who is entitled to it, the return must contain such particulars relating to the amounts so paid as are required by the form.
- (4) The trustee of a superannuation fund, when lodging the return, must pay to the Chief Commissioner an amount equal to the sum of the unclaimed superannuation benefits specified in the statement less the sum of amounts paid by the trustee and specified in accordance with subsection (3).
- (5) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (6) An approval by the Chief Commissioner of a form of return for the purposes of this section may require or permit the return to be given on a specified kind of data processing device in accordance with specified software requirements.
- (7) In this section:

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

13C Copies and inspection of returns

- (1) A trustee of a superannuation fund that lodges a return must retain a copy of the return at the trustee's registered office or principal place of operation in the State (or, if the trustee is a natural person, at a place nominated by the person and specified in the return).

Maximum penalty: 2 penalty units.

- (2) The copy is to be retained for at least 5 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.

- (3) A trustee must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty: 2 penalty units.

- (4) The trustee may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount).

13D Publication of information relating to unclaimed money

The Chief Commissioner is to cause to be published in the Gazette such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of:

- (a) the existence of each sum of unclaimed superannuation benefits paid to the Chief Commissioner under this Part that exceeds \$50 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and
- (b) the identity of the beneficiary (if known).

13E Payment of unclaimed superannuation benefits where money later claimed

If:

- (a) any unclaimed superannuation benefits have been paid to the Chief Commissioner under this Part, and

- (b) the Chief Commissioner is satisfied on application made by a person in a form approved by the Chief Commissioner that, if this Part and Part 22 of the Commonwealth Act had not been enacted, the person would have been paid that unclaimed superannuation benefit by the trustee by whom it was paid to the Chief Commissioner,

the Chief Commissioner must pay that unclaimed superannuation benefit to that person.

13F Chief Commissioner must repay excess payments by trustees

If the trustee of a superannuation fund, after paying an amount to the Chief Commissioner under this Part, satisfies the Chief Commissioner that the amount so paid exceeds the amount that would have been paid to the person concerned, or is not unclaimed superannuation benefits that are required to be paid to the Chief Commissioner under this Act, the Chief Commissioner must refund to the trustee the amount of the excess.

13G Appropriation

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments or refunds by the Chief Commissioner under this Part.

13H Register of unclaimed superannuation benefits

- (1) The Chief Commissioner must keep a register of unclaimed superannuation benefits paid to the Chief Commissioner under this Part.
- (2) The register may be in such form, and kept in such manner, as the Chief Commissioner determines but must include particulars of:
 - (a) the unclaimed superannuation benefits paid to the Chief Commissioner by a trustee of a superannuation fund, and

- (b) the member in respect of whom the unclaimed superannuation benefit was payable.

13I Discharge of trustee's liability

The trustee of a superannuation fund is, on payment to the Chief Commissioner of an amount as required by this Part, discharged from further liability in his or her capacity as trustee in respect of that amount.

13J Trustee not in breach of trust

Nothing done by a trustee of a superannuation fund in accordance with this Act is to be regarded for any purpose as constituting a breach of trust by the trustee.

Division 3 Application of Part

13K Application of Part

- (1) This Part applies to a superannuation fund and to the trustee of a superannuation fund (not being an exempt public sector superannuation scheme) if:
 - (a) the trustee is a company within the meaning of the *Corporations Law* of New South Wales, or
 - (b) the trustee is a corporation within the meaning of the *Corporations Law* and its registered office within the meaning of that law is in New South Wales, or
 - (c) in the case of a trustee who is a natural person, the principal place where the trustee carries on business as a trustee is in New South Wales, or
 - (d) in a case where there are 2 or more trustees of the fund and paragraph (a), (b) or (c) applies to one or more but not to all the trustees, the principal place where the fund is administered is in New South Wales.
- (2) This Part applies to an exempt public sector superannuation scheme and the provisions of this Part apply to the scheme and to the trustee of any such scheme despite any provision of any other Act or any other law.

13L Extra-territorial operation

It is the intention of Parliament that this Part should extend (subject to section 13K), as far as possible, to the following:

- (a) land or things situated outside New South Wales, whether in or outside Australia,
- (b) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (c) trustees and beneficiaries situated or residing outside New South Wales, whether in or outside Australia.

[7] Sections 22 and 23

Omit the sections.

[8] Parts 5 and 6, heading to Part 7 and section 45

Omit the Parts, heading and section. Insert instead:

Part 5 Miscellaneous

27 Application of certain provisions of Taxation Administration Act 1996

- (1) Parts 5, 7, 8, 9, 10 and 11 of the *Taxation Administration Act 1996* (other than sections 60, 63, 81–85, 111 and 126–128) are to be read as if they form part of this Act, subject to the following modifications:
 - (a) a reference to a tax default is to be read as a reference to a failure to pay the whole or part of money payable under this Act,
 - (b) a reference to a taxpayer is to be read as a reference to an enterprise or the trustee of a superannuation fund,

- (c) a reference to a taxation law is to be read as a reference to this Act,
 - (d) a reference to a tax is to be read as a reference to money payable to the Chief Commissioner under this Act,
 - (e) a reference to a person's tax liability is to be read as a reference to the liability of an enterprise or a trustee to pay unclaimed money or unclaimed superannuation benefits under this Act.
- (2) Nothing in this section entitles the trustee of a superannuation fund to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of a superannuation benefit payable to any person or as part of the administrative, management or other costs of the fund.
- (3) Nothing in this section entitles an enterprise to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of any unclaimed money payable to any person.

28 General power to make assessment

- (1) The Chief Commissioner may make an assessment of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits, to the Chief Commissioner.
- (2) The Chief Commissioner may make one or more assessments of the liability of an enterprise to pay unclaimed money, or a trustee of a superannuation fund to pay unclaimed superannuation benefits.
- (3) An assessment may be made only if:
 - (a) the enterprise or trustee fails to lodge a return by the due date, or
 - (b) the Chief Commissioner is of the opinion that an incorrect return has been lodged by the enterprise or trustee.

- (4) An assessment of a liability may consist of a determination that there is not a liability to pay unclaimed money or unclaimed superannuation benefits to the Chief Commissioner.
- (5) The Chief Commissioner may withdraw an assessment under this section at any time after the date of written notice of the assessment is given to the relevant enterprise or trustee, whether or not the amount specified in the assessment has been paid.
- (6) A notice of assessment issued following a failure to pay the whole or part of money under section 10 (1) or 13B (1) must specify any interest and penalty tax payable.
- (7) The validity of an assessment is not affected because a provision of this Act has not been complied with.

29 Enterprises and trustees that are not natural persons

Any act or thing that an enterprise or the trustee of a superannuation fund is required or permitted to do by or under this Act may, in the case of an enterprise or trustee that is not a natural person, be done on behalf of the enterprise or trustee by an officer of the enterprise or trustee.

30 Annotation of records

- (1) If the Chief Commissioner or an authorised officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter.
- (2) The enterprise must comply with any such direction.

Maximum penalty (subsection (2)): 5 penalty units.

[9] Schedule 2 Savings, transitional and other provisions

Omit “this Act” from clause 1 (1). Insert instead:

this Act and the following Acts:

Unclaimed Money Amendment Act 1997

[10] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Unclaimed Money Amendment Act 1997**

9 Existing returns

Sections 27 and 28, as inserted by the *Unclaimed Money Amendment Act 1997*, do not apply to a return lodged or required to be lodged before the commencement of those sections.

[Minister's second reading speech made in—
Legislative Assembly on 14 May 1997
Legislative Council on 16 June 1997]

