



# **Small Superannuation Accounts Act 1995**

**No. 52, 1995**

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## About this compilation

This is a compilation of the *Small Superannuation Accounts Act 1995* that shows the text of the law as amended and in force on 14 October 1997 (the *compilation date*).

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

### Uncommenced amendments

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

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

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

### Editorial changes

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

### Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act relating to the small superannuation accounts scheme**

## **Part 1—Introduction**

### **1 Short title**

This Act may be cited as the *Small Superannuation Accounts Act 1995*.

### **2 Commencement**

This Act commences on 1 July 1995.

### **3 Simplified explanation**

The following is a simplified explanation of this Act:

- The Australian Taxation Office has **accounts** that allow **employers** to **deposit** money for their **employees** instead of making superannuation contributions.
- The account offers employees with small balances an opportunity to avoid the erosion of those balances by fees.
- Employees may request that account balances be **transferred** to a nominated **superannuation fund** or **RSA**.
- Except in special cases, employees will not have direct access to their account balances.
- **Interest** will be calculated on the daily balance of the account and credited to the account on a quarterly basis.
- Interest is **exempt from income tax**.

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- If an account balance exceeds \$1,200, interest will **only** be credited on the **first \$1,200** of the balance. This is an incentive for employees to request that balances of more than \$1,200 be transferred to a superannuation fund.
- Under the *Income Tax Assessment Act 1936*, employers may get **income tax deductions** for deposits. There is an annual deduction limit of \$1,200 per employee.
- Under the *Superannuation Guarantee (Administration) Act 1992*, deposits made by an employer will be **treated as superannuation contributions**.

#### 4 Definitions

In this Act, unless the contrary intention appears:

**account** means a notional account kept in accordance with section 12.

**dependant**, in relation to an individual, includes the spouse and any child of the person.

Note: This expression is only used in the definition of **superannuation contribution**.

**deposit** means a payment under section 25.

**deposit form** means a statement under section 26.

**depositor** means a person who makes a payment under section 25.

**employee** has the meaning given by the Schedule.

Note: The Schedule extends the ordinary meaning of **employee**.

**employer** has the meaning given by the Schedule.

Note: The Schedule extends the ordinary meaning of **employer**.

**employment** has a meaning corresponding to **employee** and **employer**.

**person** has a meaning affected by sections 87 and 90.

Note 1: Under section 87, partnerships are treated as persons.

Note 2: Under section 90, unincorporated associations are treated as persons.

**provider**, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**quarter** means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April in:

- (a) the financial year beginning on 1 July 1995; or
- (b) any later financial year.

**Reserve** means the Superannuation Holding Accounts Reserve established by section 8.

**RSA** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**RSA provider** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

**spouse**, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a genuine domestic basis as the husband or wife of the person.

Note: This expression is only used in the definition of *dependant*.

**superannuation accounts law** means:

- (a) this Act; and
- (b) the regulations; and
- (c) Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act or the regulations.

**superannuation contribution**, in relation to an individual, means a contribution made to a superannuation fund, an RSA or a superannuation scheme for the purpose of making provision for superannuation benefits for, or for dependants of, the individual.

**superannuation fund** means a provident, benefit, superannuation or retirement fund.

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***superannuation scheme*** means a scheme for the payment of superannuation, retirement or death benefits.

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

***Unallocated Interest Pool*** means the Unallocated Interest Pool kept in accordance with section 42.

**5 Crown to be bound**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

**6 Act to be administered by the Commissioner of Taxation**

The Commissioner of Taxation has the general administration of this Act.

## **Part 2—Superannuation Holding Accounts Reserve**

### **7 Simplified outline**

The following is a simplified outline of this Part:

- The Superannuation Holding Accounts Reserve (the **Reserve**) is established.
- The Reserve is not a superannuation fund.
- The Reserved Money Fund is appropriated for the purposes of this Act.

### **8 Establishment of Superannuation Holding Accounts Reserve**

#### *Establishment*

- (1) This subsection establishes a Reserve called the Superannuation Holding Accounts Reserve.

#### *Component of the Reserved Money Fund*

- (2) After the commencement of the *Financial Management and Accountability Act 1995*, the Reserve is a component of the Reserved Money Fund.

Note 1: Money in the Reserve may be invested under section 40 of the *Financial Management and Accountability Act 1995*.

Note 2: Under section 81 of the Constitution, income from investments must be paid into the Consolidated Revenue Fund.

#### *Transitional—Audit Act 1901*

- (3) Before the commencement of the *Financial Management and Accountability Act 1995*;

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- (a) the Reserve is a trust account for the purposes of section 62A of the *Audit Act 1901*; and
- (b) the *Audit Act 1901* has effect as if the purposes of the Reserve were to make payments and debits from the Reserve as required or permitted by this Act or by the *Superannuation Guarantee (Administration) Act 1992*.

Note 1: Under subsection 62A(6) of the *Audit Act 1901*, money in the Reserve may be expended for the purposes of the Reserve.

Note 2: Money in the Reserve may be invested under section 62B of the *Audit Act 1901*.

Note 3: Under section 81 of the Constitution, income from investments must be paid into the Consolidated Revenue Fund.

### 9 Reserve is not a superannuation fund

*Reserve is not a superannuation fund*

- (1) For the purposes of a law of the Commonwealth:
  - (a) the Reserve is taken not to be a superannuation fund; and
  - (b) the scheme embodied in this Act is taken not to be a superannuation scheme.

*Avoidance of doubt*

- (2) Subsection (1) is enacted to avoid doubt.

### 10 Appropriation of Reserved Money Fund

- (1) The Reserved Money Fund is appropriated as necessary for the purposes of this Act.
- (2) Subsection (1) does not have effect until the commencement of the *Financial Management and Accountability Act 1995*.

## **Part 3—Accounts**

### **Division 1—Simplified outline**

#### **11 Simplified outline**

The following is a simplified outline of this Part:

- Accounts are to be kept within the Reserve in the names of particular individuals.
- Section 13 outlines credits to accounts.
- Section 14 outlines debits to accounts.
- The Commissioner of Taxation may open or close an account.
- Accounts may have a nil balance.
- An individual may only have one account.
- Account balances are not held on trust.
- An individual's account balance will be notified to the individual in certain circumstances.

## **Division 2—Keeping of accounts**

### **12 Accounts**

*Accounts to be kept*

- (1) Separate notional accounts are to be kept within the Reserve in the names of particular individuals.

*Individual's account*

- (2) An account kept in the name of an individual is to be known as the individual's account.

Note: Section 4 provides that *account* means a notional account kept in accordance with this section.



## **Division 3—Outline of credits and debits to accounts**

### **13 Outline of credits to accounts**

The following is a simplified outline of the types of credits that may be made to an individual's account.

#### *Deposits by employers*

- Under section 25, the individual's employer or former employer may make a deposit in respect of the individual. The employer or former employer will make the deposit instead of making a superannuation contribution in respect of the individual. The deposit will result in a credit to the individual's account.

#### *Superannuation guarantee shortfalls*

- Under section 65 of the Superannuation Guarantee (Administration) Act 1992, if there is a shortfall component of a payment of superannuation guarantee charge in relation to the individual, the Commissioner of Taxation may credit the shortfall component to the individual's account.

#### *Interest*

- Under Part 6, interest may be credited to the individual's account.

### **14 Outline of debits to accounts**

The following is a simplified outline of the types of debits that may be made to an individual's account.

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*Transfer to superannuation fund or RSA*

- Under section 61, the balance of the account may be transferred to a superannuation fund or RSA.

*Balance of less than \$500—individual has ceased to be employed by all depositors*

- Under section 63, the balance of the account may be withdrawn and paid to the individual if:
  - (a) the balance is less than \$500; and
  - (b) the individual has ceased to be employed by all depositors.

*Financial hardship*

- Under section 64, the balance of the account may be withdrawn and paid to the individual if the individual is in severe financial hardship.

*Disability*

- Under section 65, the balance of the account may be withdrawn and paid to the individual if the individual has retired because of permanent disability.

*Individual turns 65*

- Under section 66, the balance of the account may be withdrawn and paid to the individual if the individual has turned 65.

*Individual not an Australian resident*

- Under section 67, the balance of the account may be withdrawn and paid to the individual if the individual is not an Australian resident for income tax purposes and:
  - (a) the individual is not in employment; or
  - (b) the individual is in employment, but the duties of the individual's employment are performed wholly or principally outside Australia.

*Death of individual*

- Under section 68, if the individual dies, the balance of the account may be withdrawn and paid to the individual's legal personal representative.

*Refunds of deposits*

- Under Part 8, the account may be debited for the purposes of refunding deposits that were:
  - (a) accompanied by false or defective deposit forms; or
  - (b) made by mistake.

## Division 4—Opening and closing of accounts

### 15 Opening of accounts

#### *Power*

- (1) The Commissioner of Taxation may open an account in the name of a particular individual.

#### *Duty*

- (2) The Commissioner of Taxation must open an account in the name of a particular individual if:
  - (a) the individual does not already have an account; and
  - (b) a person makes a deposit, or a purported deposit, in respect of the individual.

### 16 Closing of accounts

The Commissioner of Taxation may close an individual's account if the balance of the account is nil and:

- (a) the balance of the account was nil throughout the preceding period of 2 years; or
- (b) the balance of the account has been withdrawn under section 65, 66 or 67; or
- (c) the individual has died; or
- (d) the individual asks the Commissioner of Taxation to close the account; or
- (e) the balance of the account has been transferred to the Consolidated Revenue Fund under Part 9 (which deals with inactive accounts).

Note 1: Section 65 deals with individuals who retire because of disability.

Note 2: Section 66 deals with individuals who have turned 65.

Note 3: Section 67 deals with individuals who are not Australian residents for income tax purposes etc.

## **Division 5—Rules about accounts**

### **17 Accounts may have a nil balance**

*Nil balance*

- (1) An account may have a nil balance.

*Examples*

- (2) The following are examples of cases where an account might have a nil balance:
  - (a) no money has been credited to the account;
  - (b) the balance of the account has been withdrawn under Part 7;
  - (c) the balance of the account has been refunded to an employer or former employer under Part 8;
  - (d) the balance of the account has been transferred to the Consolidated Revenue Fund under Part 9 (which deals with inactive accounts).

### **18 One account per individual**

*Only one account*

- (1) Only one account may be kept in respect of a particular individual.

*Amalgamation etc.*

- (2) A contravention of subsection (1) does not affect the validity of an account. However, if the Commissioner of Taxation becomes aware that 2 or more accounts are being kept in respect of the same individual, the Commissioner of Taxation must amalgamate the accounts into a single account.

### **19 Account balances not held on trust etc.**

- (1) Money credited to an individual's account:
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- (a) is not held on trust; and
  - (b) is not special public money for the purposes of section 16 of the *Financial Management and Accountability Act 1995*.
- (2) The Commonwealth is not liable to pay, repay or refund money credited to an individual's account except as provided by this Act.
- Note: Under section 69A of the *Superannuation Guarantee (Administration) Act 1992*, if a shortfall component of superannuation guarantee charge has been incorrectly credited to an individual's account, the account may be debited for the purposes of reversing the credit.
- (3) Paragraph (1)(b) does not have effect until the commencement of the *Financial Management and Accountability Act 1995*.

## **Division 6—Notification of account balances**

### **20 Notification of opening balance**

As soon as practicable after the first occasion on which an amount is credited to an individual's account, the Commissioner must give the individual a written notice setting out the balance of the account.

### **21 Individual may request details of account balance**

*When section applies*

- (1) This section applies to an individual's account if the individual asks the Commissioner of Taxation to give the individual a written notice setting out the balance of the account.

*Form of request*

- (2) The request must be:
  - (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

*Compliance with request*

- (3) The Commissioner of Taxation must comply with the request.

### **22 Annual notification of account balance**

*When section applies*

- (1) This section applies to an individual's account if:
  - (a) the balance of the account exceeds nil as at the end of a financial year; and
  - (b) the individual's current address is known to the Commissioner of Taxation.

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*Notification*

- (2) As soon as practicable after the end of the financial year, the Commissioner of Taxation must give the individual a written notice setting out the balance of the account as at the end of the financial year.

**23 Notification when account balance reaches \$1,200**

*When section applies*

- (1) This section applies to an individual's account if:
  - (a) a particular credit to the account increases the balance of the account from a figure of less than \$1,200 to a figure of \$1,200 or more; and
  - (b) the individual's current address is known to the Commissioner of Taxation.

*Notification*

- (2) As soon as practicable after the credit is made, the Commissioner of Taxation must give the individual a written notice:
  - (a) setting out the balance of the account; and
  - (b) explaining the effect of sections 49 and 61; and
  - (c) suggesting that the individual make a request under section 61.

Note 1: Section 49 imposes a limit on the accrual of interest to accounts with balances of more than \$1, 200.

Note 2: Section 61 provides for the transfer of the balance of the account to a superannuation fund.



## Part 4—Deposits

### 24 Simplified outline

The following is a simplified outline of this Part:

- A person may make a payment to the Commissioner of Taxation under section 25 in respect of an individual. The payment is called a *deposit*.
- The deposit must be accompanied by a deposit form.
- The deposit form must include certain declarations.
- The 2 key declarations are:
  - (a) that the depositor is the employer, or former employer, of the individual; and
  - (b) that the depositor is making the deposit instead of making a superannuation contribution in respect of the individual.
- A defect in the deposit form will not result in the invalidity of the deposit.
- A deposit form may deal with multiple payments.
- Deposits are not held on trust.

### 25 Deposits

A person (the *depositor*) may make a payment (the *deposit*) to the Commissioner of Taxation under this section in respect of an individual.

## **26 Deposit to be accompanied by deposit form**

The deposit must be accompanied by a written statement (the *deposit form*) that:

- (a) is in a form approved in writing by the Commissioner of Taxation; and
- (b) contains the information required by the form to be given; and
- (c) contains the declarations required by sections 27, 28, 29 and 30; and
- (d) sets out the individual's tax file number (if known to the depositor); and
- (e) is signed by or on behalf of the depositor.

## **27 Deposit to be made by employer or former employer**

The deposit form must include a declaration that the depositor is the employer, or former employer, of the individual.

## **28 Deposit to be instead of superannuation contributions**

The deposit form must include a declaration that the depositor is making the deposit:

- (a) in respect of the employment, or former employment, of the individual by the depositor; and
- (b) instead of making a superannuation contribution:
  - (i) in respect of the individual; and
  - (ii) of an amount equal to the deposit.

## **29 Deposit to be consistent with other laws etc.**

The deposit form must include a declaration that, to the best of the knowledge of the depositor, the making of the deposit does not contravene:

- (a) a law of the Commonwealth (other than this Act) or a law of a State or Territory; or

- (b) an award, order, determination or industrial agreement in force under such a law; or
- (c) a legally enforceable agreement.

### **30 Age limit**

The deposit form must include a declaration that, to the best of the knowledge of the depositor, the individual was under 70 on at least one day during the period of employment to which the deposit relates.

### **31 Consequences of false declarations etc.**

If the deposit is accompanied by a deposit form, or a purported deposit form, that:

- (a) contains a declaration, or information, that is false or misleading; or
- (b) has some other defect or irregularity;

that circumstance does not result in the invalidity of the deposit.

However, it may result in the deposit being refunded under Part 8.

Note 1: A false or misleading statement may result in criminal liability under Part III of the *Taxation Administration Act 1953*.

Note 2: A false or misleading declaration may result in an employer being denied:

- (a) an income tax deduction under section 82AAF of the *Income Tax Assessment Act 1936*; and
- (b) concessional treatment under section 23 of the *Superannuation Guarantee (Administration) Act 1992*.

### **32 Deposit form may deal with multiple payments**

#### *Multiple payments*

- (1) A deposit form may deal with 2 or more payments made by the same person (whether the payments are made in respect of the same individual or in respect of different individuals).

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*Method of payment*

- (2) If a deposit form deals with 2 or more payments made by the same person, the person may give the Commissioner of Taxation, in respect of the sum of the payments:
- (a) one or more valid cheques; or
  - (b) one or more money orders; or
  - (c) cash; or
  - (d) any combination of the above.

If the person does so, this Act has effect as if the person had given the Commissioner of Taxation a separate cheque for each of the payments.

**33 Deposit not held on trust etc.**

- (1) A deposit, or purported deposit, made in respect of an individual:
- (a) is not held on trust; and
  - (b) is not special public money for the purposes of section 16 of the *Financial Management and Accountability Act 1995*.
- (2) A deposit, or purported deposit, made in respect of an individual is not repayable or refundable except as provided by this Act.
- (3) Paragraph (1)(b) does not have effect until the commencement of the *Financial Management and Accountability Act 1995*.

## Part 5—Crediting of deposits

### 34 Simplified outline

The following is a simplified outline of this Part:

- Deposits are to be credited to accounts by following these steps:
  - (a) credit the deposit to the Consolidated Revenue Fund;
  - (b) transfer the deposit to the Reserve;
  - (c) credit the deposit to the individual's account.

### 35 Crediting of deposits

#### *Steps to be applied*

- (1) The following steps must be applied if a deposit, or purported deposit, is made in respect of an individual.

#### *Step 1—Credit to Consolidated Revenue Fund*

- (2) The deposit or purported deposit is to be credited to the Consolidated Revenue Fund.

Note: Under section 81 of the Constitution, money received by the Commonwealth must be paid into the Consolidated Revenue Fund.

#### *Step 2—Transfer to Reserve*

- (3) An amount equal to the deposit or purported deposit is to be transferred from the Consolidated Revenue Fund to the Reserve.

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*Step 3—Credit to account*

- (4) As soon as practicable after the amount is transferred to the Reserve under subsection (3), the individual's account is to be credited with an amount equal to the deposit or purported deposit.

## **Part 6—Crediting of interest**

### **Division 1—Simplified outline**

#### **36 Simplified outline**

The following is a simplified outline of this Part:

- Interest is funded by transferring amounts from the Consolidated Revenue Fund to the Reserve.
- Interest accrues to an account on the daily balance of the account. Interest only accrues on the first \$1,200 of the balance of the account.
- Interest is credited each quarter on the allocation day.
- The allocation day is published in the *Gazette*.
- The rate at which interest accrues is called the allocation rate.
- The allocation rate is published in the *Gazette*.
- Interest will not accrue to an account in the following cases:
  - (a) a deposit is refunded;
  - (b) a shortfall component is incorrectly credited to the account;
  - (c) the \$1,200 limit has been avoided by the use of multiple accounts.

## Division 2—Gross interest amount and net interest amount

### 37 Simplified outline

The following is a simplified outline of this Division:

- The expressions *gross interest amount* and *net interest amount* are defined.
- Those expressions are used to work out:
  - (a) how interest is funded; and
  - (b) the rate at which interest accrues to an account.

### 38 Gross interest amount

For the purposes of this Part, the gross interest amount for a quarter is the sum of the following amounts:

- (a) the income derived by the Commonwealth during the quarter from the investment of money in the Reserve;
- (b) the amount (if any) determined by the Minister for Finance in relation to the quarter having regard to the amount of uninvested money in the Reserve from time to time during the quarter.

### 39 Net interest amount

*Net interest amount*

- (1) For the purposes of this Part, the net interest amount for a quarter is the gross interest amount for the quarter, reduced (but not below 0) by the sum of:
  - (a) the amount determined by the Commissioner of Taxation, where the amount represents a fair approximation of the costs



incurred by the Commonwealth during the quarter in connection with the administration of this Act; and

- (b) the amount, or the total of the amounts, allocated to the quarter under subsection (3).

Note: **Gross interest amount** is defined by section 38.

*Carry-forward amount*

- (2) For the purposes of this section, if:
- (a) the amount determined under paragraph (1)(a) in relation to a quarter;
- exceeds:
- (b) the gross interest amount for the quarter;
- the excess is taken to be the carry-forward amount for the quarter.

Note: **Gross interest amount** is defined by section 38.

*Allocation of carry-forward amounts*

- (3) For the purposes of this section, the Minister for Finance may determine that:
- (a) a carry-forward amount for a quarter is to be allocated to a later quarter; or
- (b) different parts of the carry-forward amount for a quarter are to be allocated to different later quarters.

*Amortisation*

- (4) For the purposes of this section, capital costs and development costs are to be amortised in accordance with generally accepted accounting principles.

*Investment costs*

- (5) For the purposes of this section, the costs incurred by the Commonwealth in connection with the investment of money in the Reserve are taken to have been incurred in connection with the administration of this Act.

## Division 3—Funding of interest

### 40 Simplified outline

The following is a simplified outline of this Division:

- Interest is funded by transferring the net interest amount from the Consolidated Revenue Fund to the Reserve.
- An Unallocated Interest Pool is to be kept within the Reserve.
- Unallocated interest is represented by the balance of the Unallocated Interest Pool.
- In special cases, the Unallocated Interest Pool may be supplemented by transferring money from the Consolidated Revenue Fund.
- Since interest only accrues on the first \$1,200 of an account balance, it is possible for a surplus to build up in the Unallocated Interest Pool. The surplus can be transferred to the Consolidated Revenue Fund.

### 41 Transfer of net interest amount from the Consolidated Revenue Fund to the Reserve

As soon as practicable after the end of a quarter, an amount equal to the net interest amount for the quarter is to be transferred from the Consolidated Revenue Fund to the Reserve.

Note: *Net interest amount* is defined by section 39.

## **42 Unallocated Interest Pool**

### *Pool*

- (1) For accounting purposes, a separate notional subcomponent, called the Unallocated Interest Pool, is to be kept within the Reserve.

### *Credits to Pool*

- (2) An amount transferred to the Reserve under section 41 is to be credited to the Unallocated Interest Pool.

### *Debits to Pool*

- (3) The Unallocated Interest Pool is to be debited for the purposes of crediting interest to an account.

## **43 Supplementation of Unallocated Interest Pool**

### *When section applies*

- (1) This section applies if the Minister for Finance is satisfied that:
  - (a) the balance of the Unallocated Interest Pool is nil; or
  - (b) the balance of the Unallocated Interest Pool is, or is likely to be, insufficient to meet the requirements of the Unallocated Interest Pool.

### *Supplementation*

- (2) The Minister for Finance may determine that the Unallocated Interest Pool is to be supplemented by a specified amount.

### *Transfer of supplementation amount*

- (3) The specified amount is to be transferred from the Consolidated Revenue Fund to the Reserve.

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*Credit to Unallocated Interest Pool*

- (4) The Unallocated Interest Pool is to be credited by the specified amount.

**44 Re-transfer of unallocated interest to the Consolidated Revenue Fund**

- (1) If the Commissioner of Taxation is satisfied that the balance of the Unallocated Interest Pool exceeds the requirements of the Unallocated Interest Pool, the Commissioner of Taxation must determine that the excess is surplus to the requirements of the Unallocated Interest Pool.
- (2) The Unallocated Interest Pool is to be debited by an amount equal to the excess.
- (3) An amount equal to the excess is to be:
- (a) debited to the Reserve; and
  - (b) credited to the Consolidated Revenue Fund.

## **Division 4—Allocation day and allocation rate**

### **45 Simplified outline**

The following is a simplified outline of this Division:

- The allocation day for a quarter is published in the *Gazette*. The allocation day is the day on which interest is credited to accounts.
- The allocation rate for a quarter is published in the *Gazette*. The allocation rate is the rate at which interest accrues to an account.
- The allocation rate is worked out under section 47.

### **46 Gazettal of allocation day and allocation rate**

- (1) As soon as practicable after an amount is transferred to the Reserve under section 41 in respect of a quarter (the **current quarter**), the Commissioner of Taxation must, by notice published in the *Gazette*, declare that, for the purposes of this Part:
  - (a) a specified day in the quarter next following the current quarter is the allocation day for the current quarter; and
  - (b) a specified percentage is the allocation rate for the current quarter.

Note: To work out the allocation rate see section 47.

- (2) The declaration has effect accordingly.

### **47 Calculation of the allocation rate**

#### *Application of steps*

- (1) To work out the allocation rate for a quarter, apply the following steps.

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*Adjusted total balances*

- (2) Calculate the adjusted total balances for the quarter by:
- (a) working out, for each day in the quarter, the total balances of all the accounts; and
  - (b) adding up those totals; and
  - (c) dividing the result by the number of days in the quarter.

For the purposes of this calculation, if an account balance actually exceeds \$1,200, the account balance is taken to be \$1,200.

*Provisional rate*

- (3) Calculate the provisional rate for the quarter as a percentage (to 4 decimal places) using the formula:

$$\frac{\text{Net interest amount}}{\text{Adjusted total balances}} \times 100$$

where:

*Net interest amount* means the net interest amount for the quarter;

*Adjusted total balances* means the adjusted total balances for the quarter.

Note: *Net interest amount* is defined by section 39.

*Total balances*

- (4) Calculate the total balances for the quarter by:
- (a) working out, for each day in the quarter, the total balances of all the accounts; and
  - (b) adding up those totals; and
  - (c) dividing the result by the number of days in the quarter.

*Capped rate*

- (5) Calculate the capped rate as a percentage (to 4 decimal places) using the formula:

$$\frac{\text{Gross interest amount}}{\text{Total balances}} \times 100$$

where:

**Gross interest amount** means the gross interest amount for the quarter;

**Total balances** means the total balances for the quarter.

Note: **Gross interest amount** is defined by section 38.

*Allocation rate—comparison between provisional rate and capped rate*

- (6) Compare the provisional rate with the capped rate:
- (a) if the provisional rate is less than or equal to the capped rate—the allocation rate equals the provisional rate; or
  - (b) if the provisional rate exceeds the capped rate—the allocation rate equals the capped rate.

## Division 5—Crediting of interest

### 48 Simplified outline

The following is a simplified outline of this Division:

- Interest accrues to an account on the daily balance of the account. Interest only accrues on the first \$1,200 of the balance of the account.
- Interest is credited each quarter on the allocation day.

### 49 Accrual of interest on first \$1,200 of daily balance

- (1) Interest accrues to an account each day on the balance of the account as at the end of that day.
- (2) For the purposes of this Division, if an account balance actually exceeds \$1,200, the account balance is taken to be \$1,200.

### 50 Rate of accrual, and crediting, of interest

*When section applies*

- (1) This section applies to interest that accrues under section 49.

*Allocation day event, withdrawal event and inactive account transfer event*

- (2) Both:
  - (a) the rate of accrual of interest to an account in respect of a particular day (the **accrual day**) in a particular quarter; and
  - (b) the time at which accrued interest in respect of the accrual day is to be credited to the account;depends on whichever of the following events first happens after the accrual day:



- (c) the occurrence of the allocation day for the quarter (this event is to be known as the *allocation day event*);
- (d) the withdrawal under Part 7 of the balance of the account (this event is to be known as the *withdrawal event*);
- (e) the transfer of the balance of the account to the Consolidated Revenue Fund under Part 9 (this event is to be known as the *inactive account transfer event*).

*Allocation day event*

- (3) If the allocation day event comes first:
  - (a) the rate of accrual is the percentage worked out (to 6 decimal places) using the formula:

**Allocation rate**

**Total number of days in the quarter**

where:

*Allocation rate* means the allocation rate for the quarter; and

- (b) the accrued interest is to be credited to the account on the allocation day.

*Withdrawal event*

- (4) If the withdrawal event comes first:
  - (a) the rate of accrual is the percentage worked out (to 6 decimal places) using the formula:

**Adjusted allocation rate**

**Total number of days in the quarter**

where:

*Adjusted allocation rate* means the last allocation rate that was published in the *Gazette* before the accrual day; and

- (b) the accrued interest is to be credited to the account on the day before the day of the withdrawal.

*Inactive account transfer event*

- (5) If the inactive account transfer event comes first:
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- (a) the rate of accrual is the percentage worked out (to 6 decimal places) using the formula:

$$\frac{\text{Adjusted allocation rate}}{\text{Total number of days in the quarter}}$$

where:

*Adjusted allocation rate* means the last allocation rate that was published in the *Gazette* before the accrual day; and

- (b) the accrued interest is to be credited to the account on the day of the transfer.

*Transitional—withdrawal event before first allocation day*

- (6) Despite paragraph (4)(a), if the withdrawal event occurs before the allocation day for the quarter beginning on 1 July 1995, that paragraph has effect, in relation to that event, as if the adjusted allocation rate were 0.4% or such higher rate as the Minister for Finance determines.

## **51 Rounding up**

If the total amount of interest to be credited to an account on a particular day (when expressed as a number of cents) is not a number of whole cents, that total must be rounded up to the nearest cent.

## **Division 6—Interest not to accrue in certain cases**

### **52 Simplified outline**

The following is a simplified outline of this Division:

- Interest will not accrue to an account in the following cases:
  - (a) a deposit is refunded;
  - (b) a shortfall component is incorrectly credited to the account;
  - (c) the \$1,200 limit has been avoided by the use of multiple accounts.

### **53 Interest does not accrue on refunded deposits**

#### *No interest*

- (1) Despite section 49, interest does not accrue, and is taken never to have accrued, under that section in respect of so much of the balance of an account as is refunded under Part 8.

#### *Debit reversing interest credit*

- (2) If interest has been credited to an individual's account in contravention of subsection (1), the Commissioner of Taxation must debit the account by the amount of the credit. The debit must be made before the account is debited by the amount of the refund payment.

#### *Unallocated Interest Pool to be credited*

- (3) The Unallocated Interest Pool is to be credited by the amount of a debit under subsection (2).

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**54 Interest does not accrue on shortfall components incorrectly credited to accounts**

*When section applies*

- (1) This section applies if:
  - (a) an amount credited to an account under section 65 of the *Superannuation Guarantee (Administration) Act 1992* exceeds the amount that should have been credited to the account; and
  - (b) the balance of the account is attributable, in whole or in part, to the credit.

*No interest*

- (2) Despite section 49, interest does not accrue, and is taken never to have accrued, under that section in respect of so much of the balance of the account as is attributable to the excess.

*Debit reversing interest credit*

- (3) If interest has been credited to the account in contravention of subsection (2), the Commissioner of Taxation must debit the account by the amount of the credit.

*Unallocated Interest Pool to be credited*

- (4) The Unallocated Interest Pool is to be credited by the amount of a debit under subsection (3).

**55 Amalgamated accounts—no interest if \$1,200 limit avoided**

*When section applies*

- (1) This section applies if:
  - (a) the Commissioner becomes aware that 2 or more accounts (the *separate accounts*) are being kept in respect of the same individual; and

- (b) the Commissioner of Taxation amalgamates the separate accounts into a single account; and
- (c) immediately after the amalgamation, the balance of the amalgamated account exceeds \$1,200.

Note: Section 18 empowers the Commissioner to amalgamate the separate accounts.

*No interest if \$1,200 limit avoided*

- (2) If, because of the \$1,200 limit referred to in subsection 49(2):
  - (a) the total amount of interest that accrued to the separate accounts before the day of the amalgamation;  
exceeds:
    - (b) the total amount of interest that would have accrued to the amalgamated account if it were assumed that the amalgamated account had been in existence at all times since the earliest time at which any of the separate accounts was opened;then, despite section 49, the excess interest is taken never to have accrued under that section.

*Debit to amalgamated account*

- (3) If excess interest has been credited in contravention of subsection (2), the Commissioner of Taxation must debit the amalgamated account by an amount equal to the amount of the credit.

*Credit to Unallocated Interest Pool*

- (4) The Unallocated Interest Pool is to be credited by the amount of a debit under subsection (3).

**Part 7** Withdrawal of account balances

**Division 1** Simplified outline

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**Part 7—Withdrawal of account balances**

**Division 1—Simplified outline**

**56 Simplified outline**

The following is a simplified outline of this Part:

- There are 3 types of withdrawals of account balances:
  - (a) transfers of account balances to superannuation funds or RSAs;
  - (b) direct withdrawals of account balances by individuals;
  - (c) withdrawals of account balances after death.
- Under Part 8, a depositor has 14 days to apply for a refund of a deposit on the grounds that the deposit was made by mistake. During the 14-day period, the individual's account will be frozen.

## **Division 2—No withdrawals for 14 days after deposit credited to account etc.**

### **57 Simplified outline**

The following is a simplified outline of this Division:

- An individual's account will be frozen for 14 days after a deposit is credited to the account.
- The delay gives the depositor a chance to apply for a refund of the deposit.
- If the depositor applies for a refund of the deposit, the 14-day period will be extended until the application is finalised.
- Accounts will be frozen for 14 days after a shortfall component is credited to the account.
- The delay gives the Commissioner of Taxation a chance to correct mistakes.

### **58 No withdrawals for 14 days after deposit credited to account etc.**

*When section applies*

- (1) This section applies to an individual's account if:
  - (a) a deposit, or purported deposit, was made in respect of the individual; and
  - (b) as a result of the deposit or purported deposit, an amount was credited to the account under Part 5 at a particular time (the **deposit time**); and
  - (c) a request under this Part (the **individual's request**) is made during the period of 14 days beginning at the deposit time.

**Part 7** Withdrawal of account balances

**Division 2** No withdrawals for 14 days after deposit credited to account etc.

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*Individual's request frozen for 14 days*

- (2) The individual's request has no effect at any time during that 14-day period.

Note: This gives the depositor a chance to apply for a refund of the deposit.

*Individual's request frozen for additional period*

- (3) If an application for a refund of the deposit or purported deposit was made under section 73 during that 14-day period, then:
- (a) if the refund application is granted—the individual's request has no effect at any time; or
  - (b) if the refund application is refused—the individual's request has no effect at a particular time if:
    - (i) the time is after the refund application is made but before the end of the period of 21 days after the giving of the notice of refusal; or
    - (ii) if, during that 21-day period, the refund applicant asks the Commissioner of Taxation to reconsider the refund application—the time is during the period when that reconsideration, or any later application to the Administrative Appeals Tribunal, has not been finalised.

*When reconsiderations finalised*

- (4) For the purposes of this section, a reconsideration of a decision is taken not to have been finalised during the period of 28 days after:
- (a) if, because of the operation of subsection 82(5), the decision is taken to be confirmed—the day on which the decision is taken to have been confirmed; or
  - (b) in any other case—the day on which the decision on the reconsideration is notified to the refund applicant.



**59 No withdrawals for 14 days after shortfall component credited to account**

*When section applies*

- (1) This section applies to an individual's account if:
  - (a) an amount was credited to the account under section 65 of the *Superannuation Guarantee (Administration) Act 1992* at a particular time (the *credit time*); and
  - (b) a request under this Part is made during the period of 14 days beginning at the credit time.

*Request frozen for 14 days*

- (2) The request has no effect at any time during that 14-day period.

Note: This gives the Commissioner a chance to correct mistakes.

## Division 3—Timing of withdrawals

### 60 Timing of withdrawals

#### *24-hour delay*

- (1) If a request is made under this Part, the Commissioner of Taxation must wait at least 24 hours before complying with the request.

Note: This delay enables interest to be credited to the account.

#### *When withdrawal occurs*

- (2) For the purposes of this Act, the balance of an account is taken to have been withdrawn at the time when a payment is made under this Part in respect of the account.

## **Division 4—Transfer of account balances to RSAs and superannuation funds**

### **61 Transfer to RSA or superannuation fund**

#### *Transfer request*

- (1) This section applies to an individual's account if:
- (a) the individual gives the Commissioner of Taxation a request (the ***transfer request***) to transfer the account balance to a specified RSA or to the trustee of a specified fund for the benefit of the individual; and
  - (b) the fund passes the compliance test set out in subsection (2).

Note: Subsection (7) provides for the transfer request to be given by the individual personally or by the trustee acting on behalf of the individual.

#### *Compliance test for funds*

- (2) For the purposes of this section, a fund passes the compliance test if:
- (a) the fund is an exempt public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
  - (b) at the time of the transfer request, the Commissioner of Taxation has obtained a written statement, provided by or on behalf of the trustee of the fund, that the fund:
    - (i) is a regulated superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993*; and
    - (ii) is not subject to a direction under section 63 of that Act.

Note: Section 63 of the *Superannuation Industry (Supervision) Act 1993* deals with funds that have been directed not to accept contributions from an employer-sponsor.

**Part 7** Withdrawal of account balances

**Division 4** Transfer of account balances to RSAs and superannuation funds

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*Form of transfer request*

- (3) The transfer request must be:
- (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

*Compliance with transfer request*

- (4) The Commissioner of Taxation must pay to the provider of the RSA, or to the trustee, for the benefit of the individual, an amount equal to the account balance immediately before the payment is made. However, this rule does not apply if the Commissioner of Taxation is satisfied that the RSA provider or the trustee is unwilling to accept the payment.

*Reserve to be debited*

- (5) The Reserve is debited for the purposes of making the payment.

*Account to be debited*

- (6) When the payment is made, the individual's account is debited by the amount of the payment.

*Authorisation of trustee by individual etc.*

- (7) The transfer request may be given by:
- (a) the individual personally; or
  - (b) the RSA provider or the trustee acting on the individual's behalf in accordance with an authority given by the individual.

If paragraph (b) applies, the transfer request must be accompanied by a copy of the authority.

*Form of authorisation*

- (8) An authority referred to in subsection (7) must be:
- (a) in writing; and

- (b) in a form approved in writing by the Commissioner of Taxation.

*Definitions*

- (9) In this section:

***fund*** includes a public sector superannuation scheme within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

***trustee*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

## **Division 5—Direct withdrawals of account balances by individuals**

### **62 Simplified outline**

The following is a simplified outline of this Division:

- The balance of an individual's account may be withdrawn if:
  - (a) the balance is less than \$500; and
  - (b) the individual has ceased to be employed by all depositors.
- The balance of an individual's account may be withdrawn if the individual is in severe financial hardship.
- The balance of an individual's account may be withdrawn if the individual has retired because of permanent disability.
- The balance of an individual's account may be withdrawn if the individual has turned 65.
- The balance of an individual's account may be withdrawn if the individual is not an Australian resident for income tax purposes and:
  - (a) the individual is not in employment; or
  - (b) the individual is in employment, but the duties of the individual's employment are performed wholly or principally outside Australia.

**63 Withdrawal of account balance of less than \$500, where individual has ceased to be employed by depositor etc.**

*Withdrawal request*

- (1) This section applies to an individual's account if:
  - (a) the balance of the account is attributable, in whole or in part, to:
    - (i) one or more deposits, or purported deposits, made by one or more employers or former employers of the individual; or
    - (ii) one or more shortfall components of payments of superannuation guarantee charge made by one or more employers or former employers of the individual; and
  - (b) the individual satisfies the Commissioner of Taxation that the individual has ceased to be employed by each of the employers or former employers; and
  - (c) the individual gives the Commissioner of Taxation a request (the *withdrawal request*) for the withdrawal of the account balance; and
  - (d) the balance of the account is less than \$500 immediately before the time when the account balance is withdrawn.

*Form of withdrawal request*

- (2) The withdrawal request must be:
  - (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

*Compliance with withdrawal request*

- (3) The Commissioner of Taxation must pay to the individual an amount equal to the account balance immediately before the payment is made.

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*Reserve to be debited*

- (4) The Reserve is debited for the purposes of making the payment.

*Account to be debited*

- (5) When the payment is made, the individual's account is debited by the amount of the payment.

**64 Withdrawal of account balance—severe financial hardship**

*Withdrawal request*

- (1) This section applies to an individual's account if:
- (a) the individual gives the Commissioner of Taxation a request (the ***withdrawal request***) for the withdrawal of the account balance; and
  - (b) the Insurance and Superannuation Commissioner determines in writing that the individual is in severe financial hardship.

*Form of withdrawal request*

- (2) The withdrawal request must be:
- (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

*Compliance with withdrawal request*

- (3) The Commissioner of Taxation must pay to the individual an amount equal to the account balance immediately before the payment is made.

*Reserve to be debited*

- (4) The Reserve is debited for the purposes of making the payment.



*Account to be debited*

- (5) When the payment is made, the individual's account is debited by the amount of the payment.

*Delegation*

- (6) The Insurance and Superannuation Commissioner may, by writing, delegate to a member of his or her staff any or all of his or her powers under paragraph (1)(b).

**65 Withdrawal of account balance—retirement on grounds of disability**

*Withdrawal request*

- (1) This section applies to an individual's account if:
- (a) the individual gives the Commissioner of Taxation a request (the *withdrawal request*) for the withdrawal of the account balance; and
  - (b) the individual satisfies the Commissioner of Taxation that the individual is not in employment; and
  - (c) the individual last ceased to be an employee because of the disability of the individual; and
  - (d) 2 legally qualified medical practitioners have certified that the disability is likely to result in the individual being unable ever to be employed in a capacity for which the individual is reasonably qualified because of education, training or experience.

*Form of withdrawal request*

- (2) The withdrawal request must be:
- (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

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*Compliance with withdrawal request*

- (3) The Commissioner of Taxation must pay to the individual an amount equal to the account balance immediately before the payment is made.

*Reserve to be debited*

- (4) The Reserve is debited for the purposes of making the payment.

*Account to be debited*

- (5) When the payment is made, the individual's account is debited by the amount of the payment.

**66 Withdrawal of account balance—individual turns 65**

*When section applies*

- (1) This section applies to an individual's account if the individual has turned 65.

*Withdrawal decision*

- (2) The Commissioner of Taxation may decide to pay to the individual an amount equal to the balance of the account immediately before the payment is made.

*Withdrawal request*

- (3) The individual may give the Commissioner of Taxation a request (the ***withdrawal request***) to make a payment under subsection (2).

*Form of withdrawal request*

- (4) The withdrawal request must be:
  - (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

*Compliance with withdrawal request*

- (5) The Commissioner of Taxation must comply with the withdrawal request.

*Reserve to be debited*

- (6) The Reserve is debited for the purposes of making the payment.

*Account to be debited*

- (7) When the payment is made, the individual's account is debited by the amount of the payment.

**67 Withdrawal of account balance—individual not an Australian resident**

*Withdrawal request*

- (1) This section applies to an individual's account if:
- (a) the individual gives the Commissioner of Taxation a request (the ***withdrawal request***) for the withdrawal of the account balance; and
  - (b) the individual satisfies the Commissioner of Taxation that the individual is not a resident (within the meaning of the *Income Tax Assessment Act 1936*); and
  - (c) the individual satisfies the Commissioner of Taxation that:
    - (i) the individual is not in employment; or
    - (ii) the individual is in employment, but the duties of the individual's employment are performed wholly or principally outside Australia.

Note: *Australia* is defined by subsection (6).

*Form of withdrawal request*

- (2) The withdrawal request must be:
- (a) in writing; and

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- (b) in a form approved in writing by the Commissioner of Taxation.

*Compliance with withdrawal request*

- (3) The Commissioner of Taxation must pay to the individual an amount equal to the account balance immediately before the payment is made.

*Reserve to be debited*

- (4) The Reserve is debited for the purposes of making the payment.

*Account to be debited*

- (5) When the payment is made, the individual's account is debited by the amount of the payment.

*Definition*

- (6) In this section:

*Australia* has the same meaning as in the *Income Tax Assessment Act 1936*.

## **Division 6—Withdrawals of account balances after death**

### **68 Withdrawal of account balance—death of individual**

#### *Withdrawal request*

- (1) This section applies to an individual's account if:
  - (a) the individual has died; and
  - (b) the individual's legal personal representative gives the Commissioner of Taxation a request (the ***withdrawal request***) for the withdrawal of the account balance.

#### *Form of withdrawal request*

- (2) The withdrawal request must be:
  - (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

#### *Compliance with withdrawal request*

- (3) The Commissioner of Taxation must pay to the legal personal representative an amount equal to the account balance immediately before the payment is made.

#### *Reserve to be debited*

- (4) The Reserve is debited for the purposes of making the payment.

#### *Account to be debited*

- (5) When the payment is made, the individual's account is debited by the amount of the payment.

## **Division 7—Notification of refusal of requests**

### **69 Notification of refusal of requests**

- (1) This section applies if:
  - (a) a person makes a request under this Part; and
  - (b) the Commissioner of Taxation refuses the request.
- (2) The Commissioner of Taxation must give the person written notice of the refusal.

## **Division 8—Recovery of account balances**

### **70 Recovery of account balances**

If a person is entitled to be paid an amount by the Commissioner of Taxation under this Part, the amount may be recovered, as a debt due to the person by the Commonwealth, by action in a court of competent jurisdiction.

## Part 8—Refunds of deposits

### 71 Simplified outline

The following is a simplified outline of this Part:

- The Commissioner of Taxation may refund a deposit if the deposit form was false or defective.
- A depositor may apply for the refund of a deposit if it was made by mistake. The refund application must be made within 14 days after the deposit was credited to the account.

### 72 Refunds—false or defective deposit forms etc.

*When section applies*

- (1) This section applies if:
  - (a) a deposit or purported deposit was made in respect of an individual; and
  - (b) the individual's account was credited with an amount equal to the deposit or purported deposit and
  - (c) the credit was made in consequence of the deposit or purported deposit; and
  - (d) the deposit or purported deposit was accompanied by a deposit form, or a purported deposit form, that, in so far as it related to the deposit or purported deposit:
    - (i) contained a declaration, or information, that was false or misleading in a material particular; or
    - (ii) had some other defect or irregularity; and
  - (e) the balance of the individual's account is attributable, in whole or in part, to the deposit or purported deposit.



*Refund payment*

- (2) The Commissioner of Taxation may decide to pay to the depositor or purported depositor an amount (the *refund payment*) equal to the deposit or purported deposit.

*Reserve to be debited*

- (3) The Reserve is debited for the purpose of making the refund payment.

*Account to be debited*

- (4) When the refund payment is made, the individual's account is debited by the amount of the refund payment.

*Part 7 obligations prevail*

- (5) The Commissioner of Taxation must not exercise a power conferred by this section in a manner that would be inconsistent with an obligation imposed on him or her by Part 7.

Note: Part 7 deals with withdrawals.

**73 Refunds—deposit made by mistake***When section applies*

- (1) This section applies if:
- (a) a deposit or purported deposit was made in respect of an individual; and
  - (b) the individual's account was credited with an amount equal to the deposit or purported deposit; and
  - (c) the credit was made in consequence of the deposit or purported deposit; and
  - (d) the deposit or purported deposit was paid due to a clerical error or due to some other mistake; and
  - (e) the balance of the individual's account is attributable, in whole or in part, to the deposit or purported deposit; and

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- (f) within 14 days after the credit was made, the depositor or purported depositor applies to the Commissioner of Taxation for a refund of the deposit or purported deposit.

*Form of application*

- (2) The application must be:
- (a) in writing; and
  - (b) in a form approved in writing by the Commissioner of Taxation.

*Refund payment*

- (3) The Commissioner of Taxation must pay to the depositor or purported depositor an amount (the **refund payment**) equal to the deposit or purported deposit.

*Reserve to be debited*

- (4) The Reserve is debited for the purpose of making the refund payment.

*Account to be debited*

- (5) When the refund payment is made, the individual's account is debited by the amount of the refund payment.

*Obligations under this section prevail over obligations under Part 7*

- (6) In the event of a conflict between:
- (a) an obligation imposed on the Commissioner of Taxation by this section; and
  - (b) an obligation imposed on the Commissioner of Taxation by Part 7;
- the first-mentioned obligation prevails.

Note: Part 7 deals with withdrawals.

*Notification of refusal of application*

- (7) If the Commissioner of Taxation refuses an application under this section, the Commissioner of Taxation must give the applicant written notice of the refusal.

**74 Recovery of refunds**

If a person is entitled to be paid an amount by the Commissioner of Taxation under this Part, the amount may be recovered, as a debt due to the person by the Commonwealth, by action in a court of competent jurisdiction.

## Part 9—Inactive accounts

### 75 Simplified outline

The following is a simplified outline of this Part:

- If an individual's account is inactive for 10 years, the account balance will be transferred to the Consolidated Revenue Fund.
- The individual may claim the account balance from the Insurance and Superannuation Commissioner.
- The Insurance and Superannuation Commissioner must keep a register of account balances transferred to the Consolidated Revenue Fund.

### 76 No activity for 10 years

*When section applies*

- (1) This section applies to an individual's account if no amount was credited to the account under:
- (a) Part 5 of this Act; or
  - (b) section 65 of the *Superannuation Guarantee (Administration) Act 1992*;
- at any time during a period of 10 consecutive financial years.

Note 1: Part 5 of this Act deals with deposits.

Note 2: Section 65 of the *Superannuation Guarantee (Administration) Act 1992* deals with the crediting of superannuation guarantee shortfalls.

*Statement to be given to the Insurance and Superannuation Commissioner*

- (2) As soon as practicable after the end of that period, the Commissioner of Taxation must give to the Insurance and Superannuation Commissioner a statement about the account.

*Tax file number*

- (3) If the individual's tax file number is known to the Commissioner of Taxation, the statement made for the purposes of subsection (2) must set out that tax file number.

*Transfer to Consolidated Revenue Fund*

- (4) As soon as practicable after the end of that period, an amount equal to the balance of the account as at the end of that period is to be:
- (a) debited from the Reserve; and
  - (b) credited to the Consolidated Revenue Fund.

*Debiting of account balance*

- (5) If an amount is credited to the Consolidated Revenue Fund under subsection (4), the account is debited by an amount equal to the credited amount.

*Claim by individual*

- (6) If an amount has been credited to the Consolidated Revenue Fund under subsection (4) in respect of the account, the individual may request the Insurance and Superannuation Commissioner to pay to the individual an amount equal to the credited amount.

*Claim by individual's legal personal representative*

- (7) If:
- (a) an amount has been credited to the Consolidated Revenue Fund under subsection (4) in respect of the account; and
  - (b) the individual has died;

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the individual's legal personal representative may request the Insurance and Superannuation Commissioner to pay to the legal personal representative an amount equal to the credited amount.

*Payments*

- (8) The Insurance and Superannuation Commissioner must comply with a request under subsection (6) or (7).

*Appropriation*

- (9) The Consolidated Revenue Fund is appropriated for the purposes of subsection (8).

**77 Register**

In addition to the particulars that are required by section 226 of the *Superannuation Industry (Supervision) Act 1993* to be set out in the register kept under that section, that register must set out:

- (a) particulars of amounts credited to the Consolidated Revenue Fund under section 76 in respect of particular individuals; and
- (b) particulars of the individuals, which may include the tax file numbers of the individuals.

## **Part 10—Tax file numbers**

### **78 Simplified outline**

The following is a simplified outline of this Part:

- An individual may quote his or her tax file number to the Commissioner of Taxation.

### **79 Individual may quote his or her tax file number**

- (1) An individual may quote his or her tax file number to the Commissioner of Taxation in connection with the operation, or the possibility of the future operation, of this Act in relation to the individual.

Note: This means that an individual's tax file number may be quoted before or after an account is opened in the name of the individual.

- (2) The tax file number may be quoted:
  - (a) in response to a request made by the Commissioner of Taxation; or
  - (b) on the individual's own initiative.

## Part 11—Review of decisions

### 80 Simplified outline

The following is a simplified outline of this Part:

- A person who is dissatisfied with a reviewable decision of the Commissioner of Taxation may seek a reconsideration of the decision.
- A person who is dissatisfied with a reconsidered decision may have the reconsidered decision reviewed by the Administrative Appeals Tribunal.
- The Commissioner of Taxation must tell people about their rights to have decisions reconsidered and reviewed.

### 81 Reviewable decisions

For the purposes of this Part, a reviewable decision is a decision made by the Commissioner of Taxation under this Act (other than a decision under Division 2, 3 or 4 of Part 6 or a decision relating to the approval of a form).

Note: Decisions under Division 2, 3 or 4 of Part 6 relate to the funding of interest and the calculation of the allocation rate etc.

### 82 Reconsideration of reviewable decisions

#### *Request for reconsideration*

- (1) A person who is affected by a reviewable decision may, if dissatisfied with the decision, request the Commissioner of Taxation to reconsider the decision.

Note: **Reviewable decision** is defined by section 81.



*How request must be made*

- (2) The request must be made by written notice given to the Commissioner of Taxation within the period of 21 days after the day on which the person first receives notice of the decision, or within such further period as the Commissioner of Taxation allows.

*Request must set out reasons*

- (3) The request must set out the reasons for making the request.

*Commissioner of Taxation to reconsider decision*

- (4) Upon receipt of the request, the Commissioner of Taxation must reconsider the decision and may, subject to subsection (5), confirm or revoke the decision or vary the decision in such manner as the Commissioner of Taxation thinks fit.

*Deemed confirmation of decision if delay*

- (5) If the Commissioner of Taxation does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which the Commissioner of Taxation received the request under subsection (1) to reconsider the decision, the Commissioner of Taxation is taken, at the end of that period, to have confirmed the decision under subsection (4).

*Notice of Commissioner of Taxation's action*

- (6) If the Commissioner of Taxation confirms, revokes or varies a decision before the end of the period referred to in subsection (5), the Commissioner of Taxation must give written notice to the person telling the person:
- (a) the result of the reconsideration of the decision; and
  - (b) the reasons for confirming, varying or revoking the decision, as the case may be.

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**83 AAT review of Commissioner of Taxation's decisions**

Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner of Taxation that have been confirmed or varied under subsection 82(4).

**84 Modification of the *Administrative Appeals Tribunal Act 1975***

*Period for making certain AAT applications*

- (1) If a decision is taken to be confirmed because of subsection 82(5) of this Act, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period of 28 days beginning on the day on which the decision is taken to be confirmed.

*Section 41 of AAT Act*

- (2) If a request is made under subsection 82(1) of this Act in respect of a reviewable decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for review of that decision.

**85 Statements to accompany notification of decisions**

*Original decision*

- (1) If a written notice is given to a person affected by a reviewable decision telling the person that the reviewable decision has been made, that notice is to include a statement to the effect that:
  - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Commissioner of Taxation in accordance with subsection 82(1); and
  - (b) the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Commissioner of Taxation upon that reconsideration confirming or varying the first-mentioned decision, make

application to the Administrative Appeals Tribunal for review of the decision so confirmed or varied.

Note: **Reviewable decision** is defined by section 81.

*Reconsidered decision*

- (2) If:
- (a) the Commissioner of Taxation confirms or varies a reviewable decision under subsection 82(4); and
  - (b) gives to a person written notice of the confirmation or variation of the decision;

that notice is to include a statement to the effect that the person may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

Note: **Reviewable decision** is defined by section 81.

*Validity of decision*

- (3) A failure to comply with this section does not affect the validity of a decision.

## Part 12—Partnerships and unincorporated associations

### Division 1—Partnerships

#### 86 Simplified outline

The following is a simplified outline of this Division:

- Partnerships are treated as if they were persons.
- A document given to a partner of a partnership is treated as if it had been given to the partnership.

#### 87 Treatment of partnerships

The superannuation accounts law applies to a partnership as if the partnership were a person, but it applies with the following changes:

- (a) obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners;
- (b) any offence against the superannuation accounts law that would otherwise be committed by the partnership is taken to have been committed by each partner who:
  - (i) aided, abetted, counselled or procured the relevant act or omission; or
  - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

Note: *Superannuation accounts law* is defined by section 4.

### **88 Giving of documents to partnerships**

For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

## Division 2—Unincorporated associations

### 89 Simplified outline

The following is a simplified outline of this Division:

- Unincorporated associations are treated as if they were persons.
- A document given to a member of the committee of management of an unincorporated association is treated as if it had been given to the unincorporated association.

### 90 Treatment of unincorporated associations

#### *Persons*

The superannuation accounts law applies to an unincorporated association as if the unincorporated association were a person, but it applies with the following changes:

- (a) obligations that would be imposed on the unincorporated association are imposed instead on each member of the committee of management of the association, but may be discharged by any of those members;
- (b) any offence against the superannuation accounts law that would otherwise be committed by the unincorporated association is taken to have been committed by each member of the committee of management of the association who:
  - (i) aided, abetted, counselled or procured the relevant act or omission; or
  - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

Note: *Superannuation accounts law* is defined by section 4.

## **91 Giving of documents to unincorporated associations**

For the purposes of this Act, if a document is given to a member of the committee of management of an unincorporated association in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the unincorporated association.

## Part 13—Miscellaneous

### 92 Delegation

The Minister for Finance may, by writing, delegate to an officer of the Department of Finance any or all of his or her powers under this Act.

### 93 Annual report

- (1) The Commissioner of Taxation must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the operation of this Act during that year.
- (2) The Minister must cause a copy of a report given under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

### 94 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### 95 Transitional—transfers from the Consolidated Revenue Fund

- (1) This section applies if a provision of this Act or the *Superannuation Guarantee (Administration) Act 1992* requires or permits an amount to be transferred from the Consolidated Revenue Fund to the Reserve.
- (2) The Consolidated Revenue Fund is appropriated for the transfer by force of this subsection.



- (3) Subsections (1) and (2) cease to have effect on the commencement of the *Financial Management and Accountability Act 1995*.

Note 1: After the commencement of the *Financial Management and Accountability Act 1995*, subsection 20(7) of that Act will appropriate the Consolidated Revenue Fund for the purposes of such a transfer.

## **Schedule—Employees and employers**

### Section 4

#### **1 Basic definition**

Subject to this Schedule, in this Act, *employee* and *employer* have their ordinary meanings. However, for the purposes of this Act, clauses 2 to 9:

- (a) expand the meanings of those terms; and
- (b) make particular provision to avoid doubt about the status of certain persons.

#### **2 Company directors**

A person who is entitled to payment for the performance of duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate is, in relation to those duties, an employee of the body corporate.

#### **3 Contract workers**

If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.

#### **4 Members of the Parliament of the Commonwealth**

A member of the Parliament of the Commonwealth is an employee of the Commonwealth.

#### **5 Members of the Parliament of a State**

A member of the Parliament of a State is an employee of the State.

#### **6 Members of the ACT Legislative Assembly**

A member of the Legislative Assembly for the Australian Capital Territory is an employee of the Australian Capital Territory.

**7 Members of the Northern Territory Legislative Assembly**

A member of the Legislative Assembly of the Northern Territory is an employee of the Northern Territory.

**8 Performers and sportspersons etc.**

For the purposes of this Act:

- (a) a person who is paid to perform or present, or to participate in the performance or presentation of:
  - (i) any music, play, dance, entertainment, sport, display or promotional activity; or
  - (ii) any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills;

is an employee of the person liable to make the payment; and

- (b) a person who is paid to provide services in connection with an activity referred to in paragraph (a) is an employee of the person liable to make the payment; and
- (c) a person who is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast is an employee of the person liable to make the payment.

**9 Office holders etc.**

A person who:

- (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or
- (b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);

is an employee of the Commonwealth, the State or the Territory, as the case requires. However, this rule does not apply to a person in the capacity of a member of a local government council.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

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

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

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

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

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

### Editorial changes

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

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

### Misdescribed amendments

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

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

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

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Small Superannuation Accounts Act 1995	52, 1995	23 June 1995	1 July 1995 (s 2)	
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 97): 1 July 1995 (s 2(2))	—
Retirement Savings Accounts (Consequential Amendments) Act 1997	62, 1997	28 May 1997	Sch 16: 2 June 1997 (s 2)	—
Taxation Laws Amendment Act (No. 3) 1997	147, 1997	14 Oct 1997	Sch 9 (items 3, 4): 14 Oct 1997 (s 2(1))	Sch 9 (item 4)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
<b>Part 2</b>	
s 3.....	am No 62, 1997
s 4.....	am No 62, 1997
<b>Part 3</b>	
<b>Division 3</b>	
s 14.....	am No 62, 1997
<b>Part 4</b>	
s 30.....	am No 147, 1997
<b>Part 7</b>	
<b>Division 1</b>	
s 56.....	am No 62, 1997
<b>Division 4</b>	
Division 4 heading.....	rs No 62, 1997
s 61.....	am No 62, 1997
<b>Part 11</b>	
s 85.....	am No 43, 1996

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