Superannuation Legislation Amendment Act 2010

No. 117, 2010

An Act to amend the law relating to superannuation, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Superannuation Legislation Amendment Act 2010

No. 117, 2010

An Act to amend the law relating to superannuation, and for related purposes

[*Assented to 16 November 2010*]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 November 2010
2. Schedule 1	The day after this Act receives the Royal Assent.	17 November 2010
3. Schedule 2, items 1 to 5	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 2, items 6 and 7	1 January 2017.	1 January 2017
5. Schedule 3	The day after this Act receives the Royal Assent.	17 November 2010
6. Schedule 4, Parts 1 and 2	The day after this Act receives the Royal Assent.	17 November 2010
7. Schedule 4, Part 3	The day this Act receives the Royal Assent.	16 November 2010
8. Schedule 4, Parts 4 to 7	The day after this Act receives the Royal Assent.	17 November 2010

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

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

(a) the assessment was made before the commencement of item 1 of Schedule 2 to this Act; and

(b) the amendment is made within 2 years after that commencement; and

(c) the amendment is made for the purpose of giving effect to that item.

Schedule 1—Unclaimed money

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

1 Section 7

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

2 At the end of section 7

Add:

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

3 Section 8

Insert:

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

(a) by or under a law of the Commonwealth; or

(b) under the authority of:

(i) the Commonwealth; or

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

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

Repeal the definition, substitute:

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

5 Section 8

Insert:

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

6 Section 8

Insert:

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

7 After section 18

Insert:

18AA Prescribed public sector superannuation schemes

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

(a) a public sector superannuation scheme that is:

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

(ii) not a fund;

were a fund; and

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

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

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

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

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

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

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

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

prohibit the trustee from giving the statement to the Commissioner; and

(b) section 17 (Payment of unclaimed money):

(i) does not apply in relation to an unclaimed money day if the trustee does not give a statement in relation to the unclaimed money day to the Commissioner under subsection 16(1); and

(ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and

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

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

8 Subsection 20C(3)

Repeal the subsection, substitute:

(3) Subsection (1) does not apply if:

(a) the superannuation provider is:

(i) the trustee of a State or Territory public sector superannuation scheme; or

(ii) the superannuation provider for an unfunded public sector scheme; and

(b) the scheme is not prescribed for the purposes of section 20JA.

9 After section 20J

Insert:

20JA Prescribed public sector superannuation schemes

(1) Section 6, subsections 16(7), 17(2A) and 19(1) and (3), this Part (other than subsections 20F(5) and (6)) and subsections 24C(6), 24E(5) and 25(2A) apply as if:

(a) a public sector superannuation scheme that:

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

(ii) in the case of a Commonwealth public sector superannuation scheme—is not a fund, or is an unfunded public sector scheme;

were a fund; and

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

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

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

(c) a person who has an interest in the scheme had a superannuation interest in the fund.

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

(a) section 20C (notices about certain former temporary residents) permits, rather than requires, the Commissioner to give a notice to the trustee; and

(b) section 20E (statement):

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

(ii) does not permit the trustee to give a statement to the Commissioner if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner; and

(c) section 20F (payment of unclaimed superannuation):

(i) does not apply in relation to a notice given to the trustee under section 20C if the trustee does not give a statement in relation to the notice to the Commissioner under section 20E; and

(ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and

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

10 Subsection 24C(1) (note 1)

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

11 Subsection 24E(1) (note 1)

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

12 Section 24H

Omit "Sections", substitute "Subject to section 24HA, sections".

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

13 After section 24H

Insert:

24HA Prescribed public sector superannuation schemes

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

(a) a public sector superannuation scheme that:

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

(ii) in the case of a Commonwealth public sector superannuation scheme—is not a fund;

were a fund; and

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

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

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

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

(a) section 24C (Statement of lost member accounts):

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

(ii) does not permit the trustee to give a statement to the Commissioner if the governing rules of the scheme prohibit the trustee from giving the statement to the Commissioner; and

(b) section 24E (Payment in respect of lost member accounts):

(i) does not apply in relation to an unclaimed money day if the trustee does not give a statement in relation to the unclaimed money day to the Commissioner under section 24C; and

(ii) permits, rather than requires, the trustee to pay an amount to the Commissioner; and

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

(3) Subparagraphs (2)(a)(i) and (b)(ii) do not apply in relation to an unclaimed money day if, disregarding this section:

(a) the public sector superannuation scheme is a fund; and

(b) the superannuation provider has to comply with subsections 16(1) and 17(1) in relation to the unclaimed money day.

14 After section 49

Insert:

49A Money transferred to State or Territory authorities

(1) This section applies if:

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

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

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

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

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

(ii) the law of the State or Territory;

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

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

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

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

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

Part 2—Amendment of the Income Tax Assessment Act 1997

15 Section 306-20

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

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

Repeal the item, substitute:

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

17 Subsection 307-142(1)

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

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

Repeal the cell, substitute:

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

(a) the Commissioner under

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

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

in respect of the person

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

Repeal the cell, substitute:

an amount paid, before 1 July 2007, to:

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

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

in respect of the person

20 After subsection 307-142(3)

Insert:

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

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

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

Part 3—Application provision

21 Application provision

(1) Subparagraph 49A(1)(b)(i) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, inserted by this Schedule, applies to transfers occurring before, on or after the commencement of this item.

(2) The amendments of section 307-142 of the *Income Tax Assessment Act 1997* made by this Schedule apply in relation to payments made on or after the commencement of this item.

Schedule 2—Disability insurance premiums paid by superannuation funds

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

1 Complying funds—deductions for insurance premiums for disability benefits

Scope

(1) This item applies if:

(a) the trustee of a complying superannuation fund pays a premium for an insurance policy during:

(i) the 2004-05 income year; or

(ii) the 2005-06 income year; or

(iii) the 2006-07 income year; and

(b) the policy is (wholly or partly) for current or contingent liabilities of the fund to provide benefits for members of the fund (whether the policy covers the whole or parts of the liabilities).

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

Entitlement to deduction

(2) Treat the benefits mentioned in paragraph (1)(b) as being ***death or disability benefits***, in relation to the members mentioned in that paragraph, to the extent that:

(a) the benefits are conditional on the disability of the members; and

(b) the disability is described as a permanent disability in regulations made for the purposes of section 295-466 of the *Income Tax (Transitional Provisions) Act 1997*.

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

(3) Subitem (2) applies:

(a) for the purposes of applying former subsection 279(1) of the *Income Tax Assessment Act 1936* to the payment mentioned in paragraph (1)(a) of this item; and

(b) without limiting that former subsection.

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

Division 1—Main amendments

Income Tax Assessment Act 1997

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

Add:

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

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

After "provide", insert "certain benefits, if those benefits are".

Income Tax (Transitional Provisions) Act 1997

4 Section 295-465 (heading)

Repeal the heading, substitute:

295-465 Complying funds—deductions for insurance premiums

5 After section 295-465

Insert:

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

Scope

(1) This section applies if:
  (a) a complying superannuation fund pays a premium for an insurance policy during:
    (i) the 2007-08 income year; or
    (ii) the 2008-09 income year; or
    (iii) the 2009-10 income year; or

(iv) the 2010-11 income year; and

(b) the policy is (wholly or partly) for current or contingent liabilities of the fund to provide superannuation benefits for members of the fund (whether the policy covers the whole or parts of the liabilities).

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

Entitlement to deduction

(2) Treat the superannuation benefits mentioned in paragraph (1)(b) as being ***disability superannuation benefits***, to the extent that:

(a) the superannuation benefits are conditional on the disability of the members mentioned in that paragraph; and

(b) the disability is described as a permanent disability in regulations made for the purposes of this section.

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

(3) Subsection (2) applies:

(a) for the purposes of applying:

(i) subsection 295-465(1) of the *Income Tax Assessment Act 1997*; and

(ii) paragraph 295-460(b) of that Act, to the extent that it relates to subsection 295-465(1) of that Act;

to the payment mentioned in paragraph (1)(a) of this section; and

(b) without limiting subsection 295-465(1) and paragraph 295-460(b) of that Act.

Amendment of assessments

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

(a) the assessment was made before the commencement of this section; and

(b) the amendment is made within 2 years after that commencement; and

(c) the amendment is made for the purpose of giving effect to this section.

Division 2—Sunsetting on 1 January 2017

Income Tax Assessment Act 1997

6 Paragraph 295-460(b) (note)

Repeal the note.

Income Tax (Transitional Provisions) Act 1997

7 Section 295-466

Repeal the section.

Schedule 3—Superanuation and relationship breakdowns

Superannuation Industry (Supervision) Act 1993

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

Omit "Subsection (6)", substitute "Subsection (5)".

Note: This item fixes an incorrect cross-reference.

2 After subsection 66(2A)

Insert:

Exception—breakdown of relationships

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

(a) the asset is acquired:

(i) for the benefit of a particular member of the acquiring fund; and

(ii) from a trustee or investment manager of another regulated superannuation fund (the ***transferring fund***); and

(b) at the time of the acquisition:

(i) the member and his or her spouse or former spouse are separated; and

(ii) there is no reasonable likelihood of cohabitation being resumed; and

(c) the acquisition occurs because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses; and

(d) the asset represents the whole, or a part, of either:

(i) the member's own interests in the transferring fund; or

(ii) the member's entitlements as determined under Part VIIIB of the *Family Law Act 1975* in relation to the

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

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

3 After section 71E

Insert:

71EA Relationship breakdowns

Scope

(1) This section applies if:

(a) a trustee or an investment manager of a regulated superannuation fund (the ***acquiring fund***) acquires an asset:

(i) for the benefit of a particular member of the acquiring fund; and

(ii) from a trustee or investment manager of another regulated superannuation fund (the ***transferring fund***); and

(b) at the time of the acquisition:

(i) the member and his or her spouse or former spouse are separated; and

(ii) there is no reasonable likelihood of cohabitation being resumed; and

(c) the acquisition occurs because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses; and

(d) the asset represents the whole, or a part, of either:

(i) the member's own interests in the transferring fund; or

(ii) the member's entitlements as determined under Part VIIIB of the *Family Law Act 1975* in relation to the interests of the member's spouse, or former spouse, in the transferring fund.

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

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

Acquiring fund taken to have always held asset

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

(a) the acquisition as having occurred at the time the trustee or investment manager of the transferring fund acquired the asset; and

(b) anything done by, for or in relation to the transferring fund in relation to the asset before the acquisition time as having been done by, for or in relation to the acquiring fund; and

(c) anything done by, for or in relation to the trustee or investment manager of the transferring fund in relation to the asset before the acquisition time as having been done by, for or in relation to the trustee or investment manager of the acquiring fund.

Section 71E elections

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

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

(5) A person commits an offence if:

(a) the person is a trustee of the transferring fund; and

(b) just before the acquisition time, the trustee had a duty under subsection 103(2A) to retain an election, or a copy of an election, under section 71E in relation to the transferring fund; and

(c) the trustee does not, within 14 days after the acquisition time, give the election or copy to a trustee or investment manager of the acquiring fund.

Penalty: 50 penalty units.

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

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

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

4 Application

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

Schedule 4—Other amendments

Part 1—Notices of intent to deduct

Income Tax Assessment Act 1997

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

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

2 Subsection 290-170(4)

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

3 Subsection 290-170(5)

Repeal the subsection, substitute:

Application to successor funds

(5) Subsections (1) to (4) and section 290-180 apply as if:

(a) references in those provisions to the fund or *RSA were references to a *successor fund; and

(b) references in those provisions to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;

if:

(c) after making your contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund; and

(d) you have not previously given a valid notice under this section to any *superannuation provider in relation to the contribution.

4 Subsection 290-180(5)

Repeal the subsection, substitute:

Application to successor funds

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

(a) the reference in subsection (3A) to the fund or *RSA were a reference to a *successor fund; and

(b) references in those subsections to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;

if, after a valid notice is given under section 290-170 in relation to the contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund.

5 Paragraph 292-25(2)(b)

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

6 Paragraph 292-90(2)(b)

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

7 Subsection 295-190(1) (cell at table item 1, column headed "Includes:")

Repeal the cell, substitute:

A contribution:

(a) made to the CSF or *RSA; and

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

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

Insert:

2A	CSF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution

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

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

9 Subsection 295-190(1A)

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

10 Before subsection 295-190(2)

Insert:

Income years in which amounts are included in assessable income

11 At the end of section 295-190

Add:

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

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

12 Section 295-195 (heading)

Repeal the heading, substitute:

295-195 Exclusion of personal contributions—contributions

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

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

14 After section 295-195

Insert:

295-197 Exclusion of personal contributions—successor funds

Scope

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

Variation notice received before return lodged

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

Variation notice received after return lodged

(3) The benefit is not so included in the assessable income for the income year in which the benefit was transferred, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if:

(a) the notice is received by the successor provider after the successor provider has lodged its *income tax return for the income year; and

(b) the successor provider exercises the option mentioned in subsection (4).

(4) An amount referred to in subsection (3) may, at the option of the successor provider, be excluded from the assessable income of the fund or *RSA provider for the income year referred to in subsection (3) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2B of the table in subsection 295-490(1).

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

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

Repeal the cell, substitute:

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

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

Insert:

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

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

17 Subsection 995-1(1)

Insert:

successor fund, in relation to a transfer of a *superannuation interest of a member of a *superannuation fund, or a holder of an *RSA, (the ***original fund***) means a superannuation fund or RSA that satisfies the following conditions:

(a) the fund or RSA confers on the member or holder equivalent rights to the rights that the member or holder had under the original fund in respect of the interest;

(b) before the transfer, the *superannuation provider of the fund or RSA has agreed with the superannuation provider of the original fund that the fund or RSA will confer on the member or holder equivalent rights to the rights that the member or holder had under the original fund in respect of the interest.

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

18 Items 19 and 20 of Schedule 2

Repeal the items.

Part 2—Employer contributions

Income Tax Assessment Act 1997

19 Paragraph 290-85(1)(b)

Omit "or" (last occurring).

20 Paragraph 290-85(1)(c)

Repeal the paragraph.

21 After subsection 290-85(1)

Insert:

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

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

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

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

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

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

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

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

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

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

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

(i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and

(ii) is to the effect that the contribution does not exceed the amount required by the relevant *superannuation fund to meet the fund's liabilities in connection with defined benefit interests; and

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

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

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

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

Repeal the subparagraph, substitute:

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

23 After subsection 290-85(1A)

Insert:

(1B) This subsection applies if:

(a) you make the contribution within 4 months after the person stops being the company's or entity's employee; and

(b) you would have been entitled to a deduction in relation to the contribution if you had made it while the other person was the company's or entity's employee.

(1C) This subsection applies if:

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

(b) you and the company are at *arm's length with the other person in relation to the contribution; and

(c) you obtain an *actuary's certificate that:

(i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and

(ii) is to the effect that the contribution does not exceed the amount required by the relevant *superannuation fund or

*RSA to meet the fund's or RSA's liabilities in connection with defined benefit interests; and

(d) you would have been entitled to a deduction in respect of the contribution if you had made it while the other person was the company's or entity's employee.

24 Paragraph 290-85(3)(a)

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

Part 3—Shortfall interest charge

Taxation Administration Act 1953

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

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

Part 4—Excess contributions tax

Income Tax Assessment Act 1997

26 Subsection 292-465(2)

Omit "within".

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

Repeal the paragraphs, substitute:

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

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

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

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

28 At the end of section 292-465

Add:

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

Review of determinations

(9) To avoid doubt:

(a) you may object under section 292-245 against an *excess contributions tax assessment made in relation to you on the ground that you are dissatisfied with a determination that you applied for under this section; and

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

Part 5—Public sector defined benefit schemes

Income Tax Assessment Act 1997

29 After section 307-295

Insert:

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

(1) This section applies to a *superannuation benefit that is paid from a *public sector superannuation scheme that is not a *constitutionally protected fund.

(2) Despite any other provision of this Subdivision, the *taxable component of the *superannuation benefit consists of an ***element untaxed in the fund*** equal to the amount (if any) specified by the regulations in relation to the benefit for the purposes of this section.

(3) The amount specified must not be less than the amount that would be the *element untaxed in the fund under the other provisions of this Subdivision.

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

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

Repeal the paragraphs, substitute:

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

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

Part 7—Application and transitional provisions

31 Application provision

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

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

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

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

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

32 Transitional provision—allowance of extra time to make applications

From the commencement of this item, treat an allowance:

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

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

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

[*Minister's second reading speech made in—*
House of Representatives on 29 September 2010
Senate on 25 October 2010]

(197/10)