Treasury Laws Amendment (Reuniting More Superannuation) Act 2021

No. 24, 2021

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Contents

1 Short title 1
2 Commencement 2
3 Schedules 2

Schedule 1—Eligible rollover funds 3

Income Tax Assessment Act 1997 3

Retirement Savings Accounts Act 1997 5

Superannuation Industry (Supervision) Act 1993 5

Superannuation (Unclaimed Money and Lost Members) Act 1999 5

Taxation Administration Act 1953 21

Schedule 2—Payment of other amounts to the Commissioner 23

Income Tax Assessment Act 1997 23

Superannuation (Unclaimed Money and Lost Members) Act 1999 25

Taxation Administration Act 1953 36

Authorised Version C2021A00024

Treasury Laws Amendment (Reuniting More Superannuation) Act 2021

No. 24, 2021

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

[*Assented to 22 March 2021*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021*.

Authorised Version C2021A00024

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**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	22 March 2021
2. Schedule 1	The day after this Act receives the Royal Assent.	23 March 2021
3. Schedule 2	The seventh day after this Act receives the Royal Assent.	29 March 2021

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Authorised Version C2021A00024

Schedule 1—Eligible rollover funds

Income Tax Assessment Act 1997

1 Section 301-125

After “20QF(2)”, insert “, 21E(2)”.

2 After subparagraph 301-225(2)(b)(i)

Insert:

(ia) under subsection 21E(2) of that Act in a case covered by paragraph (d) of that subsection; or

3 Subsection 307-5(1) (table item 5, column 2)

After “subsection 20QF(2) or (5),”, insert “section 21C or subsection 21E(2) or (5),”.

4 Subsection 307-5(1) (table item 5, column 3)

After “20QF(2), (5) or (6)”, insert “, 21E(2), (5) or (6)”.

5 Paragraph 307-120(2)(e)

After “20QF(2), (5) or (6)”, insert “, 21E(2), (5) or (6)”.

6 Subsection 307-142(1)

After “20QF(2), (5) or (6)”, insert “, 21E(2), (5) or (6)”.

7 Subsection 307-142(2) (method statement, step 1, note)

After:

A payment under subsection 20QF(2) of that Act is attributable to a single unclaimed amount set out in item 3A of the table.

insert:

A payment under subsection 21E(2) of that Act is attributable to a single unclaimed amount set out in item 3B of the table.

Authorised Version C2021A00024

8 Subsection 307-142(3) (after table item 3A)

Insert:

3B	an amount paid to the Commissioner under section 21C of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

9 Subsection 307-142(3B)

After "20QF(5) or (6)", insert ", 21E(5) or (6)".

10 Subsection 307-300(1)

After "20QF(2)", insert ", 21E(2)".

11 Subsection 307-300(2) (method statement, step 1, note)

After:

> A payment under subsection 20QF(2) of that Act is attributable to a single unclaimed amount set out in item 3A of the table.

insert:

> A payment under subsection 21E(2) of that Act is attributable to a single unclaimed amount set out in item 3B of the table.

12 Subsection 307-300(3) (after table item 3A)

Insert:

3B	an amount paid to the Commissioner under section 21C of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

13 Subsection 307-300(3A) (note)

After "20QF(5) or (6)", insert ", 21E(5) or (6)".

Authorised Version C2021A00024

14 Subsection 307-350(2B)

After “20QF(2)”, insert “, 21E(2)”.

Retirement Savings Accounts Act 1997

15 After subsection 89(2)

Insert:

(2A) The application must not be made on or after the later of:

(a) 1 May 2021; and

(b) the seventh day after the day Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* commences.

Superannuation Industry (Supervision) Act 1993

16 After subsection 242A(4)

Insert:

(4A) An application for authority to operate a regulated superannuation fund as an eligible rollover fund must not be made on or after the day Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* commences.

17 After subsection 243(2)

Insert:

(2A) The application must not be made on or after the later of:

(a) 1 May 2021; and

(b) the seventh day after the day Schedule 1 to the *Treasury Laws Amendment (Reuniting More Superannuation) Act 2021* commences.

Superannuation (Unclaimed Money and Lost Members) Act 1999

18 After subparagraph 6(a)(ii)

Insert:

Authorised Version C2021A00024

(iia) certain amounts relating to inactive low-balance accounts; and

(iib) amounts relating to ERF low balance accounts; and

19 After paragraph 6(da)

Insert:

(db) the matching of benefits of eligible rollover fund members and persons entitled to them; and

20 At the end of paragraph 6(e)

Add:

(v) amounts relating to superannuation of eligible rollover fund members; and

21 After subparagraph 6(eb)(iii)

Insert:

and (iv) amounts relating to superannuation of eligible rollover fund members;

22 Section 7

Before:

> *Reunification of amounts held by the Commissioner*

insert:

> *Superannuation of eligible rollover fund members*
>
> Superannuation providers who are trustees of eligible rollover funds must, by 30 June 2021 and 31 January 2022, give the Commissioner of Taxation details relating to accounts of those funds.
>
> Superannuation providers must pay to the Commissioner of Taxation the value of any such accounts. Payments must be made by 30 June 2021 (for accounts that had balances of less than $6,000 on 1 June 2021) and 31 January 2022 (for all other accounts).

Authorised Version C2021A00024

Later, the Commissioner must, if satisfied that it is possible to do so, pay an amount the Commissioner has received in respect of a person:

(a) to a fund identified by the person; or

(b) if the person has reached eligibility age or the amount is less than $200—to the person; or

(c) if the person has died—to the person's death beneficiaries or legal personal representative.

23 Section 7

Omit "or inactive low-balance members", substitute ", inactive low-balance members or eligible rollover fund members".

24 Section 8

Insert:

eligible rollover fund has the same meaning as in the SIS Act.

eligible rollover fund member has the meaning given by section 21A.

ERF low balance account has the meaning given by subsection 21A(1).

25 Subsection 16(7)

Repeal the subsection (including the note), substitute:

Exceptions

(7) This section does not apply to:

(a) unclaimed money described in subsection 12(1) payable to a person identified in a notice the Commissioner has given the superannuation provider under section 20C; or

(b) an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C.

Note 1: Section 20E requires the superannuation provider to give the Commissioner a statement about the superannuation interest of a person identified in a notice given to the provider under section 20C (which is about notices identifying former temporary residents).

Authorised Version C2021A00024

Note 2: Section 21A requires the superannuation provider to give the Commissioner statements about eligible rollover fund accounts.

26 Subsection 17(1B)

Repeal the subsection, substitute:

(1B) Subsection (1) does not require the superannuation provider to pay the Commissioner:

(a) an amount on account of unclaimed money described in subsection 12(1) payable to a person identified in a notice the Commissioner has given the provider under section 20C; or

(b) an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C.

Note: An amount mentioned in paragraph (1B)(a) is payable to the Commissioner under section 20F.

27 After paragraph 19(1)(db)

Insert:

(dc) amounts paid to the Commissioner under section 21C (amounts from eligible rollover funds); and

(dd) each person in respect of whom there is an amount referred to in paragraph (dc) of this subsection; and

28 At the end of section 20E

Add:

Relationship to eligible rollover fund provisions

(4) This section does not apply to an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C.

Note: Section 21A requires the superannuation provider to give the Commissioner statements about eligible rollover fund accounts.

29 After subsection 20F(4A)

Insert:

Authorised Version C2021A00024

Exception for eligible rollover fund amounts

(4B) This section does not require the superannuation provider to pay to the Commissioner an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C.

30 After subparagraph 20H(1)(b)(iiaa)

Insert:

(iiab) the amounts (if any) paid to the Commissioner under section 21C in respect of the person; and

31 After subparagraph 20H(1)(b)(va)

Insert:

(vb) the amounts (if any) paid by the Commissioner under subsection 21E(2) in respect of the person; and

32 Paragraph 20H(2B)(a)

After "subsection 20QF(2),", insert "section 21C or subsection 21E(2),".

33 Subsection 20H(3)

After "(iiaa)", insert ", (iiab)".

34 After paragraph 20QB(6)(b)

Insert:

(ba) an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C; or

35 Subsection 20QB(6) (after note 2)

Insert:

Note 2A: Section 21A requires the superannuation provider to give the Commissioner statements about eligible rollover fund accounts.

36 After paragraph 20QD(5)(b)

Insert:

(ba) an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C; or

Authorised Version C2021A00024

37 Subsection 20QF(8) (note)

After "20QD(1)", insert ", 21C(1)".

38 After Part 3B

Insert:

Part 3C—Payment of balances in accounts of eligible rollover funds to the Commissioner

Division 1—Preliminary

21 Object of Part

The object of this Part is to set up a procedure for all account balances in eligible rollover funds to be paid to the Commissioner.

Note: Part 4B provides for the Commissioner, where possible, to unify any such account balance in respect of a person into a single active account held by a superannuation provider in respect of the person.

Division 2—Statements on accounts of eligible rollover funds

21A Statements on accounts of eligible rollover funds

Statements for ERF low balance accounts held on 1 June 2021

(1) A superannuation provider who is a trustee of an eligible rollover fund must, by the end of 30 June 2021, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:

(a) each account (an ***ERF low balance account***) that, as at the end of 1 June 2021:

(i) was held by the fund on behalf of a person (an ***eligible rollover fund member***); and

(ii) had a balance of less than $6,000;

(b) the administration of any of the following in connection with each ERF low balance account held by the fund:

(i) this Part;

Authorised Version C2021A00024

(ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;

(iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

Note 1: If an account is an ERF low balance account as at the end of 1 June 2021, it will remain an ERF low balance account even if the balance of the account subsequently equals or exceeds $6,000.

Note 2: If the balance of an account as at the end of 1 June 2021 equals or exceeds $6,000, it will not become an ERF low balance account even if the balance subsequently falls below $6,000.

(2) The statement under subsection (1) is not required to contain information relevant to an account that, as at the calculation time under subsection 21C(1) in relation to the account, is no longer held by the fund.

(3) If, at the end of 1 June 2021, there are no ERF low balance accounts held by the fund, the statement under subsection (1) must say so.

Statements for other accounts

(4) A superannuation provider who is a trustee of an eligible rollover fund must, by the end of 31 January 2022, give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:

(a) each account (other than an ERF low balance account) that, as at the end of 1 June 2021, was held by the fund on behalf of a person (an ***eligible rollover fund member***);

(b) the administration of any of the following in connection with each account held by the fund that is an account of a kind mentioned in paragraph (a):

(i) this Part;

(ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;

(iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this

Authorised Version C2021A00024

Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

(5) The statement under subsection (4) is not required to contain information relevant to an account that, as at the calculation time under subsection 21C(1) in relation to the account, is no longer held by the fund.

Note 1: The Commissioner may defer the time for giving a statement required under this section: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if a statement required under this section is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

Note 3: The *Taxation Administration Act 1953* provides for offences and administrative penalties if a statement required under this section includes false or misleading information: see sections 8K, 8M, 8N and 8R of that Act and Division 284 in Schedule 1 to that Act.

Note 4: The approved form may also require a statement required under this section to include certain tax file numbers: see subsection 25(3) of this Act.

21B Errors or omissions in statements

(1) A superannuation provider who becomes aware of a material error, or material omission, in any information in a statement of the superannuation provider under section 21A must give the corrected or omitted information to the Commissioner.

(2) The corrected or omitted information must be given:
  (a) in the approved form; and
  (b) no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

Authorised Version C2021A00024

Division 3—Payments in respect of accounts of eligible rollover funds

21C Payments in respect of accounts of eligible rollover funds

Provider must pay Commissioner

(1) A superannuation provider must pay the Commissioner (for the Commonwealth) the amount worked out under subsection (3) in respect of an eligible rollover fund member if the provider:
  (a) is a trustee of an eligible rollover fund; and
  (b) holds an account on behalf of the eligible rollover fund member at the time (the ***calculation time***) immediately before the earlier of:
    (i) the time (if any) the payment is made; and
    (ii) the time the payment is due and payable (assuming that the payment must be made).

Note 1: Subsection 21D(2) makes it an offence not to comply with a requirement under this subsection.

Note 2: The amount the superannuation provider must pay the Commissioner is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities. Division 284 in that Schedule provides for administrative penalties connected with such liabilities.

Note 3: Section 21F provides for refunds of overpayments by the superannuation provider to the Commissioner.

(2) The amount is due and payable at the end of:
  (a) 30 June 2021, if the account is an ERF low balance account; or
  (b) 31 January 2022, if the account is not an ERF low balance account.

Note: The Commissioner may defer the time at which the amount is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) The amount payable in respect of the eligible rollover fund member is the amount that would have been payable by the superannuation provider if the member had requested that the

Authorised Version C2021A00024

balance held in the account be rolled over or transferred to a complying superannuation fund (within the meaning of the SIS Act).

(4) For the purposes of subsection (3):
  (a) work out the amount that would have been payable at the calculation time; and
  (b) assume that the request were made before the calculation time; and
  (c) assume that the eligible rollover fund member had not died before the calculation time.

Family Law payment splits

(5) If, as a result of a payment split that applies in relation to the account, the non-member spouse (or the non-member spouse's personal representative if the non-member spouse has died) is, or could in the future be, entitled to be paid an amount, then:
  (a) for the purposes of subsection (3), take account only of the eligible roll-over fund member's entitlement to payment remaining after any reduction by the payment split (disregarding subsection 90XB(3) of the *Family Law Act 1975*); and
  (b) the superannuation provider must also pay an amount (the ***non-member spouse amount***) to the Commissioner in respect of the non-member spouse; and
  (c) the non-member spouse amount is due and payable at the same time as the amount payable under subsection (1); and
  (d) the amount of the non-member spouse amount is the amount of the reduction mentioned in paragraph (a).

Note 1: Part VIIIB of the *Family Law Act 1975* is about splitting amounts payable in respect of a superannuation interest between the parties to a marriage. Subsection 90XB(3) of that Act provides that the Part has effect subject to this Act.

Note 2: Subsection 21D(2) of this Act makes it an offence not to comply with a requirement under this subsection.

Authorised Version C2021A00024

Miscellaneous

(6) Upon payment to the Commissioner of an amount as required under this section, the superannuation provider is discharged from further liability in respect of that amount.

(7) For the purposes of this section, ignore accounts with nil balances, or balances below nil, as at the calculation time mentioned in subsection (1).

21D Late payments

General interest charge on late payment

(1) If any of the amount a superannuation provider must pay under section 21C remains unpaid after it is due and payable, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:
   (a) starts at the time it is due and payable; and
   (b) ends at the end of the last day on which either of the following remains unpaid:
      (i) the amount unpaid when it is due and payable;
      (ii) general interest charge on any of the amount.

Offence of failing to make payment to Commissioner

(2) A person commits an offence if:
   (a) the person is subject to a requirement under subsection 21C(1) or (5); and
   (b) the person engages in conduct; and
   (c) the person's conduct breaches the requirement.

Penalty for an offence against this subsection: 100 penalty units.

21E Payments by Commissioner in respect of persons for whom amounts have been paid to Commissioner

(1) This section applies in relation to a person if:

Authorised Version C2021A00024

(a) a superannuation provider paid an amount to the Commissioner under section 21C in respect of the person; and

(b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the amount in accordance with subsection (2).

(2) The Commissioner must pay the amount:

(a) to a single fund if:

(i) the person has not died; and

(ii) the person directs the Commissioner to pay to the fund; and

(iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or

(b) in accordance with subsection (4) if:

(i) the person has died; and

(ii) the Commissioner is satisfied that, if the superannuation provider had not paid the amount to the Commissioner, the provider would have been required to pay an amount or amounts (***death benefits***) to one or more other persons (***death beneficiaries***) because of the deceased person's death; or

(c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or

(d) to the person if this paragraph applies (see subsection (3)).

Note: Money for payments under this subsection is appropriated by section 16 of the *Taxation Administration Act 1953*.

(3) Paragraph (2)(d) applies if:

(a) subparagraph (2)(a)(ii) does not apply; and

(b) any of the following subparagraphs apply:

(i) the person has reached the eligibility age;

(ii) the amount is less than $200;

(iii) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the person; and

(c) the person has not died.

Authorised Version C2021A00024

(4) In a case covered by paragraph (2)(b), the Commissioner must pay the amount under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

$$\text{Amount payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

Note: If there is only one death beneficiary, the whole of the amount is payable to that beneficiary.

(5) If:

(a) the Commissioner makes a payment under subsection (2) to a fund, a legal personal representative or a person; and

(b) the payment is in accordance with paragraph (2)(a), (c) or (d);

the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under this subsection is appropriated by section 16 of the *Taxation Administration Act 1953*.

(6) If:

(a) the Commissioner makes a payment under subsection (2) to a death beneficiary; and

(b) the payment is in accordance with paragraph (2)(b);

the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under this subsection is appropriated by section 16 of the *Taxation Administration Act 1953*.

(7) Regulations made for the purposes of subsection (5) or (6) may prescribe different rates for different periods over which the interest accrues. For this purpose, ***rate*** includes a nil rate.

(8) This section does not apply to an amount that is to be, is or has been, taken into account in determining whether the Commissioner must make a payment under subsection 20H(2) or (3).

Note: Subsections 20H(2) and (3) provide for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under subsections 17(1), 20F(1), 20QD(1), 21C(1) and 24E(1) in respect of a person who:

Authorised Version C2021A00024

(a) is identified in a notice under section 20C; or
(b) used to be the holder of a temporary visa.

Division 4—Various rules for special cases

21F Refund of overpayment made by superannuation provider

If the Commissioner is satisfied that an amount a superannuation provider for a fund (the ***first fund***) has paid to the Commissioner under section 21C in respect of a person exceeded the amount (if any) that was payable under that section in respect of the person, the Commissioner must pay the excess:

(a) to the superannuation provider; or
(b) to a superannuation provider for another fund if the Commissioner is satisfied that:
  (i) the first fund no longer exists; and
  (ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Note: Money for payments under this section is appropriated by section 16 of the *Taxation Administration Act 1953*.

21G Commissioner may recover overpayment

(1) If:
  (a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and
  (b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person;

  the Commissioner may recover all or part of the excess from a person (the ***debtor***) described in subsection (2) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (3) are met.

(2) The persons from whom the Commissioner may recover are as follows:
  (a) the person to whom the payment was made (whether the payment was made to the person in his or her own right or as the legal personal representative of someone else who had died);

Authorised Version C2021A00024

(b) the superannuation provider for the fund to which the payment was made;

(c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.

(3) The conditions for recovery are that:

(a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and

(b) at least 28 days have passed since the notice was given; and

(c) the amount recovered is not more than the amount specified in the notice.

(4) Despite subsections (1) and (2), if the Commissioner gives a notice described in paragraph (3)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.

(5) The Commissioner may revoke a notice described in paragraph (3)(a).

(6) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.

(7) A notice described in paragraph (3)(a) is not a legislative instrument.

21H Superannuation provider to return payment from Commissioner that cannot be credited

(1) If:

(a) a payment (the ***Commissioner's payment***) is made to a fund under subsection 21E(2) or (5) in accordance with a person's direction; and

(b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the ***repayment time***) that is the end of the 28th day after the day on which the Commissioner's payment was made;

Authorised Version C2021A00024

the superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

(2) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

(3) If any of the amount the superannuation provider is liable to repay under subsection (1) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:

(a) starts at the repayment time; and

(b) ends at the end of the last day on which either of the following remains unpaid:

(i) the amount unpaid at the repayment time;

(ii) general interest charge on any of the amount.

39 After paragraph 24C(6)(b)

Insert:

; or (c) an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C.

40 Subsection 24C(6) (after note 2)

Insert:

Note 3: Section 21A requires the superannuation provider to give the Commissioner statements about eligible rollover fund accounts.

41 After paragraph 24E(5)(b)

Insert:

Authorised Version C2021A00024

; or (c) an amount payable to the Commissioner in respect of an eligible rollover fund member under section 21C.

42 Section 24N

After “3B”, insert “, 3C”.

43 After subparagraph 24NA(1)(a)(ii)

Insert:

(iia) a superannuation provider has paid an amount to the Commissioner under section 21C (an amount from an account of an eligible rollover fund) and, after applying Part 3C and section 20H, the Commissioner holds an amount under that Part in respect of the person (a ***superannuation amount***); or

44 After subsection 25(2B)

Insert:

Statement about eligible rollover fund accounts

(3) The approved form of statement by a superannuation provider for the purposes of section 21A may require the statement to contain the tax file number of:

(a) the superannuation provider; and

(b) the fund; and

(c) a member of the fund if:

(i) the statement relates to an account, in the fund, held on behalf of the member; and

(ii) the member has quoted the member’s tax file number to the superannuation provider.

45 Paragraph 29(1)(aa)

After “subsection 20H(1)”, insert “, 20QF(1), 21E(1)”.

Taxation Administration Act 1953

46 Subsection 8AAB(4) (after table item 33B)

Insert:

Authorised Version C2021A00024

33C	21D	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	payment in respect of eligible rollover fund accounts
33D	21H	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment in respect of eligible rollover fund accounts that cannot be credited to an account

47 Subsection 250-10(2) in Schedule 1 (after table item 69AB)

Insert:

69AC	payment of value of eligible rollover fund accounts to the Commissioner	21C	*Superannuation (Unclaimed Money and Lost Members) Act 1999*
69AD	payment from Commissioner that cannot be credited	21H	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

Authorised Version C2021A00024

Schedule 2—Payment of other amounts to the Commissioner

Income Tax Assessment Act 1997

1 Section 301-125

After “21E(2)”, insert “, 22B(2)”.

2 After subparagraph 301-225(2)(b)(ia)

Insert:

(ib) under subsection 22B(2) of that Act in a case covered by paragraph (d) of that subsection; or

3 Subsection 307-5(1) (table item 5, column 2)

After “subsection 21E(2) or (5),”, insert “section 22 or subsection 22B(2) or (5),”.

4 Subsection 307-5(1) (table item 5, column 3)

After “21E(2), (5) or (6)”, insert “, 22B(2), (5) or (6)”.

5 Paragraph 307-120(2)(e)

After “21E(2), (5) or (6)”, insert “, 22B(2), (5) or (6)”.

6 Subsection 307-142(1)

After “21E(2), (5) or (6)”, insert “, 22B(2), (5) or (6)”.

7 Subsection 307-142(2) (method statement, step 1, note)

After:

> A payment under subsection 21E(2) of that Act is attributable to a single unclaimed amount set out in item 3B of the table.

insert:

> A payment under subsection 22B(2) of that Act is attributable to a single unclaimed amount set out in item 3C of the table.

Authorised Version C2021A00024

8 Subsection 307-142(3) (after table item 3B)

Insert:

3C	an amount paid to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

9 Subsection 307-142(3B)

After "21E(5) or (6)", insert ", 22B(5) or (6)".

10 Subsection 307-300(1)

After "21E(2)", insert ", 22B(2)".

11 Subsection 307-300(2) (method statement, step 1, note)

After:

> A payment under subsection 21E(2) of that Act is attributable to a single unclaimed amount set out in item 3B of the table.

insert:

> A payment under subsection 22B(2) of that Act is attributable to a single unclaimed amount set out in item 3C of the table.

12 Subsection 307-300(3) (after table item 3B)

Insert:

Authorised Version C2021A00024

3C	an amount paid to the Commissioner under section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

13 Subsection 307-300(3A) (note)

After "21E(5) or (6)", insert ", 22B(5) or (6)".

14 Subsection 307-350(2B)

After "21E(2)", insert ", 22B(2)".

Superannuation (Unclaimed Money and Lost Members) Act 1999

15 After subparagraph 6(a)(iib)

Insert:

(iic) certain amounts voluntarily paid to the Commissioner by superannuation providers; and

16 After paragraph 6(db)

Insert:

(dc) the matching of amounts voluntarily paid to the Commissioner by superannuation providers and persons entitled to them; and

17 At the end of paragraph 6(e)

Add:

(vi) other amounts paid by superannuation providers on a voluntary basis; and

18 After subparagraph 6(eb)(iv)

Insert:

and (v) other amounts paid by superannuation providers on a voluntary basis;

Authorised Version C2021A00024

19 Section 7

Omit:

> *Reunification of amounts held by the Commissioner*
>
> If, having taken the steps required in relation to unclaimed amounts, or amounts held by the Commissioner for lost members, inactive low-balance members or eligible rollover fund members, the Commissioner still holds an amount, the Commissioner must pay that amount to a fund in which the member for whom the Commissioner holds the amount is active, or in accordance with the regulations.

substitute:

> *Voluntary payments by superannuation providers*
>
> A superannuation provider may pay to the Commissioner of Taxation any amount it holds on behalf of a member, former member or non-member spouse if it reasonably believes paying the amount to the Commissioner is in the best interests of the member, former member or non-member spouse.
>
> Later, the Commissioner must, if satisfied that it is possible to do so, pay an amount the Commissioner has received in respect of a person:
>
> (a) to a fund identified by the person; or
>
> (b) if the person has reached eligibility age or the amount is less than $200—to the person; or
>
> (c) if the person has died—to the person's death beneficiaries or legal personal representative.
>
> *Reunification of amounts held by the Commissioner*
>
> If, having taken the steps required in relation to unclaimed amounts, amounts held by the Commissioner for lost members, inactive low-balance members or eligible rollover fund members or amounts paid by superannuation providers on a voluntary basis, the Commissioner still holds an amount, the Commissioner must pay

Authorised Version C2021A00024

that amount to a fund in which the person for whom the Commissioner holds the amount is active, or in accordance with the regulations.

20 After paragraph 19(1)(dd)

Insert:

(de) amounts paid to the Commissioner under section 22 (other amounts paid by superannuation providers); and

(df) each person in respect of whom there is an amount referred to in paragraph (de) of this subsection; and

21 After subparagraph 20H(1)(b)(iiab)

Insert:

(iiac) the amounts (if any) paid to the Commissioner under section 22 in respect of the person; and

22 After subparagraph 20H(1)(b)(vb)

Insert:

(vc) the amounts (if any) paid by the Commissioner under subsection 22B(2) in respect of the person; and

23 Paragraph 20H(2B)(a)

After “subsection 21E(2),”, insert “section 22 or subsection 22B(2),”.

24 Subsection 20H(3)

After “(iiab)”, insert “, (iiac)”.

25 Subsection 20QF(8) (note)

After “21C(1)”, insert “, 22(1)”.

26 Subsection 21E(8) (note)

After “21C(1)”, insert “, 22(1)”.

27 After Part 3C

Insert:

Authorised Version C2021A00024

Part 3D—Payment of other amounts to the Commissioner

Division 1—Payments by superannuation providers

22 Superannuation provider may pay amounts to Commissioner

(1) A superannuation provider may pay to the Commissioner an amount that it holds if:

(a) it holds the amount on behalf of:

(i) a member of the superannuation fund, approved deposit fund or RSA for which the superannuation provider is the trustee or RSA provider; or

(ii) a former member of that superannuation fund, approved deposit fund or RSA; or

(iii) a non-member spouse of that member or former member; and

(b) it reasonably believes that paying the amount to the Commissioner would be in the best interests of the member, former member or non-member spouse; and

(c) at the same time as making the payment, it gives the Commissioner a statement that complies with subsection (2).

(2) The statement must be a statement, in the approved form, of information relevant to either or both of the following:

(a) the amount;

(b) the administration of any of the following in connection with the amount:

(i) this Part;

(ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;

(iii) the *Income Tax Assessment Act 1997*, Part 3AA of this Act, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Part or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.

(3) The amount paid must be the amount that would have been payable by the superannuation provider if:

Authorised Version C2021A00024

(a) the amount had constituted an account that the superannuation provider held for the member, former member or non-member spouse; and

(b) the member, former member or non-member spouse had requested that the balance held in the account be rolled over or transferred to a complying superannuation fund (within the meaning of the SIS Act).

(4) For the purposes of subsection (3):

(a) assume that the request were made before the time of the payment; and

(b) assume that the member, former member or non-member spouse had not died before the time of the payment.

(5) This section does not apply to:

(a) an amount that is unclaimed money, and that was unclaimed money on the most recent unclaimed money day; or

(b) an amount payable to a person identified in a notice the Commissioner has given the provider under section 20C; or

(c) an amount that is held in an inactive low-balance account, and that was held in such an account on the most recent unclaimed money day; or

(d) an amount that is held in an account of an eligible rollover fund member, unless the payment under this section is made before 1 June 2021; or

(e) an amount that is held in a lost member account, and that was held in such an account on the most recent unclaimed money day.

Note 1: Unclaimed money is payable to the Commissioner under subsection 17(1).

Note 2: An amount mentioned in paragraph (5)(b) is payable to the Commissioner under section 20F.

(6) Upon payment to the Commissioner of an amount under this section, the superannuation provider is discharged from further liability in respect of that amount.

Authorised Version C2021A00024

22A Errors or omissions in statements

(1) A superannuation provider who becomes aware of a material error, or material omission, in any information in a statement of the superannuation provider under subsection 22(2) must give the corrected or omitted information to the Commissioner.

(2) The corrected or omitted information must be given:
  (a) in the approved form; and
  (b) no later than 30 days after the superannuation provider becomes aware of the error or omission.

Note 1: The Commissioner may defer the time for giving the information: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the information is not given when it must be: see sections 8C and 8E of that Act and Division 286 in Schedule 1 to that Act.

Division 2—Payments by Commissioner

22B Payments by Commissioner in respect of persons for whom amounts have been paid to Commissioner

(1) This section applies in relation to a person if:
  (a) a superannuation provider paid an amount to the Commissioner under section 22 in respect of the person; and
  (b) the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that it is possible for the Commissioner to pay the amount in accordance with subsection (2).

(2) The Commissioner must pay the amount:
  (a) to a single fund if:
    (i) the person has not died; and
    (ii) the person directs the Commissioner to pay to the fund; and
    (iii) the fund is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*); or
  (b) in accordance with subsection (4) if:
    (i) the person has died; and

Authorised Version C2021A00024

(ii) the Commissioner is satisfied that, if the superannuation provider had not paid the amount to the Commissioner, the provider would have been required to pay an amount or amounts (***death benefits***) to one or more other persons (***death beneficiaries***) because of the deceased person's death; or

(c) to the person's legal personal representative if the person has died but subparagraph (b)(ii) does not apply; or

(d) to the person if this paragraph applies (see subsection (3)).

Note: Money for payments under this subsection is appropriated by section 16 of the *Taxation Administration Act 1953*.

(3) Paragraph (2)(d) applies if:

(a) subparagraph (2)(a)(ii) does not apply; and

(b) any of the following subparagraphs apply:

(i) the person has reached the eligibility age;

(ii) the amount is less than $200;

(iii) a terminal medical condition (within the meaning of the *Income Tax Assessment Act 1997*) exists in relation to the person; and

(c) the person has not died.

(4) In a case covered by paragraph (2)(b), the Commissioner must pay the amount under subsection (2) by paying to each death beneficiary the amount worked out using the following formula:

$$\text{Amount payable under subsection (2)} \times \frac{\text{Death benefit for the death beneficiary}}{\text{Total death benefits}}$$

Note: If there is only one death beneficiary, the whole of the amount is payable to that beneficiary.

(5) If:

(a) the Commissioner makes a payment under subsection (2) to a fund, a legal personal representative or a person; and

(b) the payment is in accordance with paragraph (2)(a), (c) or (d);

the Commissioner must also pay to the fund, legal personal representative or person the amount of interest (if any) worked out in accordance with the regulations.

Authorised Version C2021A00024

Note: Money for payments under this subsection is appropriated by section 16 of the *Taxation Administration Act 1953*.

(6) If:

(a) the Commissioner makes a payment under subsection (2) to a death beneficiary; and

(b) the payment is in accordance with paragraph (2)(b);

the Commissioner must also pay to the death beneficiary the amount of interest (if any) worked out in accordance with the regulations.

Note: Money for payments under this subsection is appropriated by section 16 of the *Taxation Administration Act 1953*.

(7) Regulations made for the purposes of subsection (5) or (6) may prescribe different rates for different periods over which the interest accrues. For this purpose, ***rate*** includes a nil rate.

(8) This section does not apply to an amount that is to be, is or has been, taken into account in determining whether the Commissioner must make a payment under subsection 20H(2) or (3).

Note: Subsections 20H(2) and (3) provide for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under subsections 17(1), 20F(1), 20QD(1), 21C(1), 22(1) and 24E(1) in respect of a person who:

(a) is identified in a notice under section 20C; or

(b) used to be the holder of a temporary visa.

22C Refund of overpayment made by superannuation provider

If the Commissioner is satisfied that an amount a superannuation provider for a fund (the ***first fund***) has paid to the Commissioner under section 22 in respect of a person exceeded the amount (if any) that was payable under that section in respect of the person, the Commissioner must pay the excess:

(a) to the superannuation provider; or

(b) to a superannuation provider for another fund if the Commissioner is satisfied that:

(i) the first fund no longer exists; and

(ii) the other fund provides rights relating to the person equivalent to those provided by the first fund.

Authorised Version C2021A00024

Note: Money for payments under this section is appropriated by section 16 of the *Taxation Administration Act 1953*.

Division 3—Various rules for special cases

22D Prescribed public sector superannuation schemes

Section 6, subsections 19(1) to (3), this Part and subsection 25(3A) 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 *Legislation 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.

22E Commissioner may recover overpayment

(1) If:

(a) the Commissioner makes a payment in respect of a person under, or purportedly under, this Part; and

(b) the amount paid exceeds the amount (if any) properly payable under this Part in respect of the person;

the Commissioner may recover all or part of the excess from a person (the ***debtor***) described in subsection (2) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (3) are met.

(2) The persons from whom the Commissioner may recover are as follows:

(a) the person to whom the payment was made (whether the payment was made to the person in the person's own right or as the legal personal representative of someone else who had died);

(b) the superannuation provider for the fund to which the payment was made;

Authorised Version C2021A00024

(c) if the payment, or an amount wholly or partly attributable to that payment, was transferred to another fund—the superannuation provider for that other fund.

(3) The conditions for recovery are that:

(a) the Commissioner gave the debtor written notice, as prescribed by the regulations, of the proposed recovery and the amount to be recovered; and

(b) at least 28 days have passed since the notice was given; and

(c) the amount recovered is not more than the amount specified in the notice.

(4) Despite subsections (1) and (2), if the Commissioner gives a notice described in paragraph (3)(a) to a superannuation provider for a fund, and the fund does not hold an amount attributable to the payment, the Commissioner cannot recover from the superannuation provider.

(5) The Commissioner may revoke a notice described in paragraph (3)(a).

(6) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.

(7) A notice described in paragraph (3)(a) is not a legislative instrument.

22F Superannuation provider to return payment from Commissioner that cannot be credited

(1) If:

(a) a payment (the ***Commissioner's payment***) is made to a fund under subsection 22B(2) or (5) in accordance with a person's direction; and

(b) the superannuation provider for the fund has not credited the payment to an account for the benefit of the person by the time (the ***repayment time***) that is the end of the 28th day after the day on which the Commissioner's payment was made;

the superannuation provider is liable to repay the Commissioner's payment to the Commonwealth. The repayment is due and payable at the repayment time.

Authorised Version C2021A00024

Note: The amount the superannuation provider is liable to repay is a tax-related liability for the purposes of the *Taxation Administration Act 1953*. Division 255 in Schedule 1 to that Act deals with payment and recovery of tax-related liabilities.

(2) The superannuation provider must give the Commissioner, in the approved form, information relating to the Commissioner's payment when repaying it.

Note: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the form is not given when it must be or includes false or misleading information: see sections 8C, 8K and 8N of that Act and Divisions 284 and 286 in Schedule 1 to that Act.

(3) If any of the amount the superannuation provider is liable to repay under subsection (1) remains unpaid by the superannuation provider after the repayment time, the superannuation provider is liable to pay general interest charge on the unpaid amount for each day in the period that:

(a) starts at the repayment time; and

(b) ends at the end of the last day on which either of the following remains unpaid:

(i) the amount unpaid at the repayment time;

(ii) general interest charge on any of the amount.

28 Section 24N

After "3C", insert ", 3D".

29 After subparagraph 24NA(1)(a)(iia)

Insert:

(iib) a superannuation provider has paid an amount to the Commissioner under section 22 (an amount paid by a superannuation provider on a voluntary basis) and, after applying Part 3D and section 20H, the Commissioner holds an amount under that Part in respect of the person (a ***superannuation amount***); or

30 After subsection 25(3)

Insert:

Authorised Version C2021A00024

Statement about payments by superannuation providers on a voluntary basis

(3A) The approved form of statement by a superannuation provider for the purposes of subsection 22(2) may require the statement to contain the tax file number of:

(a) the superannuation provider; and

(b) the fund; and

(c) a member or former member of the fund, or a non-member spouse of such a member or former member, if:

(i) the statement relates to an amount, in the fund, held on behalf of the member, former member or non-member spouse; and

(ii) the member, former member or non-member spouse has quoted the tax file number of the member, former member or non-member spouse to the superannuation provider.

31 Paragraph 29(1)(aa)

After "21E(1)", insert ", 22B(1)".

Taxation Administration Act 1953

32 Subsection 8AAB(4) (after table item 33D)

Insert:

33E	22F	*Superannuation (Unclaimed Money and Lost Members) Act 1999*	repayment of Commissioner's payment in respect of payments that cannot be credited to an account

33 Subsection 250-10(2) in Schedule 1 (after table item 69AD)

Insert:

69AE	payment of amounts to the Commissioner	22	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

Authorised Version C2021A00024

69AF	payment from Commissioner that cannot be credited	22F	*Superannuation (Unclaimed Money and Lost Members) Act 1999*

[*Minister's second reading speech made in—*
House of Representatives on 6 February 2020
Senate on 12 February 2020]

(5/20)

Authorised Version C2021A00024