



Temporary Residents' Superannuation Legislation Amendment Act 2008

No. 151, 2008

**An Act to amend legislation in relation to
temporary residents' 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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Temporary Residents' Superannuation Legislation Amendment Act 2008

No. 151, 2008

An Act to amend legislation in relation to temporary residents' superannuation, and for related purposes

[Assented to 11 December 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Temporary Residents'
Superannuation Legislation Amendment Act 2008*.

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 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	11 December 2008
2. Schedule 1	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 on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

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

1 Title

Omit “**and a register of lost members for superannuation funds**”, substitute “, **a register of lost members for superannuation funds and certain payments relating to superannuation**”.

2 After paragraph 6(c)

Insert:

(ca) the making of certain payments relating to superannuation of persons who used to be holders of temporary visas under the *Migration Act 1958* and have left Australia; and

3 After paragraph 6(e)

Insert:

(ea) the safe-keeping of certain amounts relating to superannuation of persons who used to be holders of temporary visas under the *Migration Act 1958* and have left Australia; and

4 Section 7

After:

The Commissioner of Taxation may publish, or make available, details relating to unclaimed money in respect of members who have reached the eligibility age or who have died.

Insert:

<i>Superannuation of persons who used to hold temporary visas</i>

The Commissioner of Taxation must give the superannuation provider for a fund a notice identifying a member of the fund if satisfied that the member used to be the holder of a temporary visa,

has left Australia and is not an Australian or New Zealand citizen or the holder of a visa.

The superannuation provider must give the Commissioner a statement and pay the Commissioner the amount that would be payable to the member if the member had requested payment in connection with leaving Australia (subject to reductions for amounts paid or payable from the fund in respect of the member).

If the Commissioner is satisfied he or she has received a payment under this Act for such a member, the Commissioner must pay the amount he or she has received (and interest, in some cases) to the member, to a fund identified by the member or, if the member has died, to the member's legal personal representative.

5 Section 8 (definition of *approved form*)

Repeal the definition, substitute:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

6 Section 8

Insert:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

7 Section 8

Insert:

general interest charge means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

8 Section 8

Insert:

leave Australia has the same meaning as in the *Migration Act 1958*.

9 Section 8

Insert:

legal personal representative of a person who has died means an executor or administrator of the person's estate.

10 Section 8

Insert:

scheduled statement day has the meaning given by section 20B.

11 Section 8

Insert:

superannuation interest means:

- (a) an interest in a superannuation fund; or
- (b) an interest in an approved deposit fund; or
- (c) an RSA.

13 At the end of section 16

Add:

- (7) Subsection (1) does not apply to 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.

Note: 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 holders of temporary visas).

14 At the end of subsection 17(1)

Add:

Note: Subsection (1) does not require the superannuation provider to pay the Commissioner 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, because such money is not to be included in the statement under section 16 (and is payable to the Commissioner under section 20F).

15 After subsection 17(2)

Insert:

(2A) Subsection (2) does not apply to unclaimed money that is to be, is or has been taken into account in determining whether the Commissioner must make a payment under section 20H.

Note: Section 20H provides for payment by the Commissioner of amounts equal to amounts paid to the Commissioner under this section and subsection 20F(1) in respect of a person who is identified in a notice under section 20C or who used to be the holder of a temporary visa.

16 After Part 3

Insert:

Part 3A—Payment of unclaimed superannuation of former temporary residents

Division 1—Preliminary

20A Simplified outline

The following is a simplified outline of this Part:

The Commissioner must give the superannuation provider for a fund a notice if the Commissioner is satisfied that:

- (a) a person who used to be the holder of a temporary visa has a superannuation interest in the fund; and
- (b) at least 6 months have passed since the person ceased to hold the visa and left Australia; and
- (c) the person does not hold a visa and is not a citizen.

If the Commissioner gives such a notice, the superannuation provider must:

- (a) give the Commissioner a statement about the interest by the next date set for the purpose by the Commissioner; and
- (b) pay the Commissioner the amount that would have been payable from the fund to the person if the person had requested payment in connection with

his or her departure from Australia, reduced by
amounts already payable in respect of the person.

On payment, the superannuation provider ceases to be liable for the amount paid.

The person can claim the amount (and interest, in some cases) from the Commissioner.

20B Setting dates for statements and payments

The Commissioner may, by legislative instrument, specify days (*scheduled statement days*) by the end of which statements required by this Part are to be given to the Commissioner.

Division 2—Notices to superannuation providers about certain persons

20C Commissioner must give notices about certain former temporary residents

- (1) The Commissioner must give a superannuation provider for a fund a written notice if the Commissioner is satisfied that:
 - (a) there are reasonable grounds for believing that a particular person has a superannuation interest in the fund; and
 - (b) before, on or after the commencement of this section, the person:
 - (i) was, under the *Migration Act 1958*, the holder of a temporary visa, except a visa prescribed by the regulations, that has ceased to be in effect; and
 - (ii) left Australia after starting to be the holder of the visa (whether the visa ceased to be in effect before, when or after the person left); and
 - (c) at least 6 months have passed since the later of the following events (or either of them if they occurred at the same time):
 - (i) the visa ceased to be in effect;
 - (ii) the person left Australia; and
 - (d) the person:
 - (i) is not, under that Act, the holder of a temporary visa or permanent visa; and

- (ii) is neither an Australian citizen nor a New Zealand citizen; and
 - (iii) has not made a valid application for a permanent visa that has not been finally determined under that Act.
- (2) The notice must:
- (a) identify the person; and
 - (b) include the information (if any) prescribed by the regulations for the purposes of this paragraph.
- Note: The notice may contain the tax file number of the person and of the fund: see section 25A.
- (3) Subsection (1) does not apply to:
- (a) a superannuation provider who is the trustee of a State or Territory public sector superannuation scheme within the meaning of section 18; or
 - (b) a superannuation provider for an unfunded public sector scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992*.
- (4) A notice under subsection (1) cannot be amended.
- Note: Section 20J deals with revocation of a notice given under this section.
- (5) A notice under subsection (1) is not a legislative instrument.

Division 3—Effects of notice being given to superannuation provider

20D Application

This Division applies if the Commissioner gives a superannuation provider for a fund a notice under section 20C in connection with a person's superannuation interest in the fund.

20E Superannuation provider must give statement to Commissioner by scheduled statement day

Giving statement to Commissioner

- (1) The superannuation provider must give the Commissioner a statement, in the approved form, of information relevant to either or both of the following:
-

- (a) the person's superannuation interest in the fund;
- (b) the administration of any of the following in connection with the person's superannuation interest in the fund:
 - (i) this Part;
 - (ii) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*;
 - (iii) the *Income Tax Assessment Act 1997*, 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: The *Taxation Administration Act 1953* provides for offences and administrative penalties if the statement includes false or misleading information: see sections 8K and 8N of that Act and Division 284 in Schedule 1 to that Act.

Note 2: The approved form may also require the statement to include certain tax file numbers: see subsection 25(2A).

When statement must be given

- (2) The superannuation provider must give the Commissioner the statement by the end of:
 - (a) the next scheduled statement day after the notice is given; or
 - (b) if the Commissioner gives the notice less than 28 days before the next scheduled statement day—the following scheduled statement day.

Example: Suppose that 1 May and 1 November each year are the scheduled statement days, and that the Commissioner gives the notice to the superannuation provider on 15 April in a year. The superannuation provider must give the Commissioner the statement by the end of 1 November that year (rather than 1 May that year).

Note 1: The Commissioner may defer the time for giving the statement: 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 statement is not given when it must be: see section 8C of that Act and Division 286 in Schedule 1 to that Act.

Statement required even if person does not have interest

- (3) The superannuation provider must give the Commissioner the statement even if:

- (a) the person does not have a superannuation interest when the superannuation provider must give the statement; or
- (b) the superannuation provider is not required by subsection 20F(1) to pay the Commissioner an amount in respect of the person.

20F Superannuation provider must pay Commissioner unclaimed superannuation

- (1) The superannuation provider must pay the Commissioner (for the Commonwealth) the excess (if any) of the amount worked out under subsection (2) for the person's superannuation interest over the total worked out under subsection (3) for the interest by the time at which the excess is due and payable. The excess is due and payable at the end of:
 - (a) the next scheduled statement day after the notice is given; or
 - (b) if the Commissioner gives the notice less than 28 days before the next scheduled statement day—the following scheduled statement day; or
 - (c) if a day is identified for the superannuation provider under the regulations that is later than the day described in paragraph (a) and later than the day described in paragraph (b) if it is relevant—that later day.

Note 1: 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 2: The Commissioner may defer the time at which the excess is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: Section 20K provides for refunds of overpayments by the superannuation provider to the Commissioner.

- (2) Work out the amount that would have been payable to the person from the fund in respect of the superannuation interest had the person requested payment in connection with the person's departure from Australia. For this purpose:
 - (a) work out the amount that would have been payable at the time (the *calculation time*) immediately before:

- (i) the time at which a payment under subsection (1) in respect of the person is due and payable (assuming that such a payment must be made); or
 - (ii) for a payment to be made under subsection (1) before it is due and payable—the time the payment is to be made; and
 - (b) assume that the request were made before the calculation time; and
 - (c) assume that the person had not died before the calculation time.
- (3) Total:
- (a) the amount (if any) that is payable from the fund because regulations made for the purposes of the RSA Act or the SIS Act require or permit a benefit connected with the person's superannuation interest to be cashed; and
 - (b) if the person has actually died, the amount (if any) that has been paid from the fund in respect of the person because of the person's death; and
 - (c) the amount (if any) of the person's superannuation interest that supports a superannuation income stream (within the meaning of regulations made for the purposes of the *Income Tax Assessment Act 1997*); and
 - (d) the amount (if any) worked out in accordance with the regulations made for the purposes of this paragraph.
- Work out the amounts described in paragraphs (a), (b), (c) and (d) as at the calculation time.
- (4) For the purposes of subsections (2) and (3):
- (a) disregard Subdivision 12-FA in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) take account only of the person's entitlement to payment remaining after any reduction by a payment split under Part VIIIIB of the *Family Law Act 1975* (disregarding subsection 90MB(3) of that Act).

Note 1: Subdivision 12-FA in Schedule 1 to the *Taxation Administration Act 1953* is about withholding amounts from departing Australia superannuation payments.

Note 2: Part VIIIIB of the *Family Law Act 1975* is about splitting amounts payable in respect of a superannuation interest between the parties to a

marriage. Subsection 90MB(3) of that Act provides that the Part has effect subject to this Act.

Regulations for the purposes of paragraph (1)(c)

- (4A) Regulations for the purposes of paragraph (1)(c) may provide for a day to be identified by the Commissioner or the Australian Prudential Regulation Authority. This does not limit the provision that the regulations may make for identification of a day for those purposes.

General interest charge on late payment

- (5) If any of the amount the superannuation provider must pay under subsection (1) 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 pay on time

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

Penalty: 100 penalty units.

20G Effect of payment by superannuation provider

On payment of an amount to the Commissioner as required by subsection 20F(1), the superannuation provider is discharged from further liability to the person, and to anyone else in respect of the person, in respect of that amount.

Division 4—Payment by Commissioner

20H Payment by Commissioner in respect of person for whom an amount has been paid to Commissioner

- (1) This section applies in relation to a person if the Commissioner is satisfied, on application in the approved form or on the Commissioner's own initiative, that:
- (a) either:
 - (i) the person has been identified in a notice under section 20C; or
 - (ii) the person was, under the *Migration Act 1958*, the holder of a temporary visa, except a visa prescribed by the regulations, that ceased to be in effect at least 6 months ago, and the person left Australia at least 6 months ago but after starting to be the holder of the visa; and
 - (b) the total of:
 - (i) the amounts (if any) paid to the Commissioner under subsection 17(1) (before, on or after the commencement of this section) in respect of the person; and
 - (ii) the amounts (if any) paid to the Commissioner under subsection 20F(1) in respect of the person;exceeds the total of:
 - (iii) the amounts (if any) paid by the Commissioner under section 17 (before, on or after the commencement of this section) in respect of the person; and
 - (iv) the amounts (if any) paid by the Commissioner under all the earlier operations (if any) of this section in respect of the person; and
 - (v) the amounts (if any) paid by the Commissioner under section 20K in respect of the person.
- (2) The Commissioner must pay the excess:
- (a) to the person; or
 - (b) to a single fund that is a complying superannuation plan (within the meaning of the *Income Tax Assessment Act 1997*), if the person directs the Commissioner to pay to the fund and the Commissioner is satisfied that the person is:
 - (i) an Australian citizen; or

- (ii) a New Zealand citizen; or
 - (iii) under the *Migration Act 1958*, the holder of a permanent visa or a visa prescribed by the regulations; or
 - (c) to the person's legal personal representative, if the person has died.
- (2A) The Commissioner must also pay to the person, fund or legal personal representative the amount (if any) of interest worked out under subsection (2B), if the Commissioner is satisfied that:
- (a) the person is (or was just before dying) an Australian citizen or, under the *Migration Act 1958*, the holder of a permanent visa; and
 - (b) after 30 June 2007 either:
 - (i) the person left Australia; or
 - (ii) the person was, under the *Migration Act 1958*, the holder of a temporary visa.
- (2B) Work out, in accordance with the regulations, the amount of interest:
- (a) on so much (if any) of the excess as is attributable (directly or indirectly) to one or more amounts paid to the Commissioner under subsection 20F(1) and not to payments to or by the Commissioner under section 17; and
 - (b) at a rate equal to the annual yield on Treasury bonds with a 10-year term or, if another rate is prescribed by the regulations, that other rate.
- Note: The regulations may provide for various matters relevant to working out the interest, such as working out the periods for which particular rates apply to particular amounts of principal (which will affect any compounding of the interest, among other things).
- (2C) Regulations for the purposes of subsection (2B) may prescribe different rates for different periods over which the interest accrues, including a nil rate for any period starting when the person turns 65. This does not limit the ways in which the regulations may provide for working out the amount of interest under that subsection.
- (3) However, if the person has died and the Commissioner is satisfied that one or more superannuation providers that made any of the payments described in subparagraphs (1)(b)(i) and (ii) would, if they had not made those payments, have been required because of

the person's death to pay an amount to one or more other persons (the *death beneficiaries*), the Commissioner must pay each death beneficiary:

- (a) the total of the amounts the Commissioner is satisfied the superannuation providers would have been required to pay the death beneficiary; or
- (b) if the total of the excess and any interest that would be payable under subsection (2A) apart from this subsection is less than the sum of the totals described in paragraph (a) for all the death beneficiaries—the amount worked out for the death beneficiary using the formula in subsection (4).

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

- (4) The formula is:

$$\begin{array}{l} \text{Total of the excess and} \\ \text{any interest that would} \\ \text{be payable under} \\ \text{subsection (2A) apart} \\ \text{from subsection (3)} \end{array} \times \frac{\begin{array}{l} \text{Total described in paragraph (3)(a)} \\ \text{for the death beneficiary} \end{array}}{\begin{array}{l} \text{Sum of the totals described in} \\ \text{paragraph (3)(a) for all the death beneficiaries} \end{array}}$$

Withholding tax from payment

- (5) For the purposes of subparagraph (1)(b)(iv), an amount withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* from a payment under this section is taken to have been paid by the Commissioner.
- (6) To avoid doubt, subsection (2) has effect subject to Division 12 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 12 in Schedule 1 to the *Taxation Administration Act 1953* requires entities paying departing Australia superannuation payments and excess untaxed roll-over amounts to withhold amounts from those payments.

Division 5—Various rules for special cases

20J Revoking Commissioner’s notice to superannuation provider about person

Requirement for revocation

- (1) The Commissioner must revoke a notice given to a superannuation provider about a person under section 20C if the Commissioner is satisfied that either:
 - (a) the circumstances for giving the notice did not exist; or
 - (b) the circumstances for giving a notice about the person to the superannuation provider under that section no longer exist.

Means of revocation

- (2) The revocation must be made by written notice given to the superannuation provider.

Effect of revocation

- (3) If the Commissioner revokes a notice given to a superannuation provider about a person under section 20C, this Act has effect as if the notice had never been given.

No revocation if payment already made

- (4) However, the revocation of a notice given to a superannuation provider about a person under section 20C has no effect if a condition in subsection (5) or (6) exists.
- (5) One condition is that, before the revocation, the superannuation provider has made a payment to the Commissioner under subsection 20F(1) because of the notice.
- (6) The other condition is that:
 - (a) notice of the revocation is given to the superannuation provider less than 28 days before the scheduled statement day by the end of which an amount would be due and payable under subsection 20F(1) because of the notice under section 20C, apart from:
 - (i) the revocation; and

- (ia) paragraph 20F(1)(c); and
 - (ii) any deferral under section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) before the end of that day, the superannuation provider:
 - (i) gives the Commissioner a statement purportedly under section 20E because of the notice under section 20C; or
 - (ii) pays the Commissioner an amount purportedly under subsection 20F(1) because of the notice under section 20C.
- (7) Subsection (1) does not require the Commissioner to revoke a notice under section 20C if the revocation would not have effect because of subsection (4) of this section.

20K Refund of overpayment made by superannuation provider

- (1) This section applies if:
- (a) a superannuation provider has made a payment under subsection 20F(1) because of a notice about a person and a fund; and
 - (b) the Commissioner is satisfied that the amount paid exceeded the amount (if any) that was payable under that subsection because of the notice.
- (2) The Commissioner must pay the excess:
- (a) to the superannuation provider for the fund; or
 - (b) if the Commissioner is satisfied that:
 - (i) the fund no longer exists; and
 - (ii) another fund provides rights relating to the person equivalent to those provided by the fund whose superannuation provider made the payment under subsection 20F(1);to the superannuation provider for the other fund.

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

20L Commissioner may recover overpayment under section 20H

- (1) This section applies if:
- (a) the Commissioner makes a payment in respect of a person under, or purportedly under, section 20H; and
-

- (b) the amount paid exceeds the amount (if any) properly payable under that section in respect of the person.
- (2) The Commissioner may recover all or part of the excess from a person (the *debtor*) described in subsection (3) as a debt due by the debtor to the Commonwealth if the conditions specified in subsection (4) are met.
- (3) 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);
 - (b) the superannuation provider for the fund to which the payment was made or, if that payment, or an amount wholly or partly attributable to that payment, was transferred to another fund, the superannuation provider for that other fund.
- (4) 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.
- (5) Despite subsections (2) and (3), if the Commissioner gives a notice described in paragraph (4)(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.
- (6) The Commissioner may revoke a notice described in paragraph (4)(a).
- (7) The total of the amounts recovered from different debtors in relation to the same excess must not be more than the excess.
- (8) A notice described in paragraph (4)(a) is not a legislative instrument.

**20M Superannuation provider to return payment from
Commissioner that cannot be credited**

- (1) This section applies if:
- (a) a payment (the *Commissioner's payment*) is made to a fund under section 20H 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.
- (2) 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.

- (3) 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.

General interest charge

- (4) If any of the amount the superannuation provider is liable to repay under subsection (2) 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.

Division 6—Administration

20N Disclosure of migration and citizenship information

- (1) A person described in subsection (2) may disclose to the Commissioner, for the purposes of facilitating the administration of the legislation described in subsection (3), information described in subsection (4).

Note: The administration of the legislation may involve the Commissioner in disclosing the information, for example in a notice given under section 20C to a superannuation provider.

- (2) The persons who may disclose are:
- (a) the Secretary of a Department administered by a Minister administering a provision of the *Migration Act 1958* or of the *Australian Citizenship Act 2007*; and
 - (b) an APS employee in such a Department.
- (3) The legislation is:
- (a) this Act; and
 - (b) the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*; and
 - (c) the *Income Tax Assessment Act 1997*, and Chapters 2 and 4 in Schedule 1 to the *Taxation Administration Act 1953*, so far as they relate to this Act or the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*.
- (4) The information is information relevant to any of the following matters:
- (a) whether or not a particular person is or was the holder of a particular kind of visa under the *Migration Act 1958* at a particular time or in a particular period;
 - (b) whether or not a particular person is or was an Australian citizen at a particular time or in a particular period;
 - (c) whether or not a particular person is or was a New Zealand citizen at a particular time or in a particular period;
 - (d) whether or not a particular person left Australia at a particular time or in a particular period;
 - (e) whether or not there was, at a particular time or in a particular period, a valid application by a particular person

for a permanent visa that had not been finally determined under the *Migration Act 1958*;

- (f) confirmation, by reference to any employment of, or work done by, a person, that he or she is the same person as a particular person who is or was the holder of a temporary visa under the *Migration Act 1958* at a particular time or in a particular period.

20P Review of Commissioner's notices and decisions

A person who is dissatisfied with a notice given, or a decision made, by the Commissioner in the administration of Division 2, 4 or 5 of this Part may object against the notice or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Example: Decisions made by the Commissioner in the administration of Divisions 4 and 5 include:

- (a) decisions that the conditions exist for him or her to make a payment under section 20H, revoke (under section 20J) a notice given under section 20C or make a refund under section 20K; and
- (b) refusal of an application mentioned in section 20H; and
- (c) decisions about recovery under section 20L of an overpayment under section 20H.

17 After subsection 25(2)

Insert:

Statement about unclaimed superannuation of former temporary visa holder

- (2A) The approved form of statement by a superannuation provider for the purposes of subsection 20E(1) relating to a person's superannuation interest may require the statement to contain the tax file number of:
- (a) the superannuation provider; and
 - (b) the fund; and
 - (c) the person, if:
 - (i) the person has quoted his or her tax file number to the superannuation provider; or

- (ii) the Commissioner has given the superannuation provider the person's tax file number in a notice about the person under section 20C.

18 After section 25

Insert:

25A Notices under section 20C may include tax file numbers

A notice the Commissioner gives under section 20C about a person and his or her superannuation interest in a fund may include the tax file number of the person and the tax file number of the fund.

19 Subsection 29(1)

Omit "either", substitute "any".

20 After paragraph 29(1)(a)

Insert:

- (aa) a person making an application mentioned in subsection 20H(1) (about payment by the Commissioner);

21 At the end of subsection 29(4)

Add "or prevent a payment from being made under section 20H".

22 Section 49

Repeal the section, substitute:

49 Money paid to Commissioner not held on trust

To avoid doubt, money paid under this Act to the Commissioner is not, and has never been:

- (a) held on trust; or
- (b) special public money for the purposes of section 16 of the *Financial Management and Accountability Act 1997*.

Part 2—Taxation Administration Act 1953

23 Subsection 8AAB(5) (after table item 13A)

Insert:

13B	20F	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
13C	20M	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>

24 After paragraph 14ZW(1)(bc)

Insert:

- (bd) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a notice given to a superannuation provider under section 20C of that Act and the person is not the superannuation provider—2 years after the notice was given to the superannuation provider; or
- (be) if the taxation objection is made under section 20P of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* against a decision under Division 4 or 5 of Part 3A of that Act and the person is not a superannuation provider (as defined in that Act)—2 years after the person was given notice of the decision; or

25 Subsection 250-10(2) in Schedule 1 (after table item 67)

Insert:

68	payment in respect of a superannuation interest to the Commissioner	section 20F	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>
69	repayment of Commissioner's payment	section 20M	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>

26 Subsection 284-80(1) in Schedule 1 (table item 1)

After “importation,”, insert “or under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*,”.

Part 3—Income Tax Assessment Act 1997

27 After subsection 295-190(1)

Insert:

- (1A) Item 2 of the table in subsection (1) does not apply to a *roll-over superannuation benefit that is a *departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

28 Section 301-170

Before “A”, insert “(1)”.

29 Section 301-170

Omit “*departing Australia superannuation payment* is a *superannuation lump sum that:”, substitute “*superannuation lump sum is a *departing Australia superannuation payment* if it:”.

30 At the end of section 301-170

Add:

- (2) Also, a *superannuation lump sum is a *departing Australia superannuation payment* if it is paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (3) Despite subsection (2), a *superannuation lump sum paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* because a person has been identified in a notice under section 20C of that Act is not a *departing Australia superannuation payment* if, when it is paid, the Commissioner is satisfied that:
- (a) the person has not been, under the *Migration Act 1958*, the holder of a temporary visa that ceased to be in effect at least 6 months ago; or
 - (b) the person has been the holder of such a visa but has not left Australia (within the meaning of that Act) at least 6 months ago but after starting to be the holder of the visa.
- (4) Despite subsection (2), a *superannuation lump sum that is paid under section 20H of the *Superannuation (Unclaimed Money and*
-

Lost Members) Act 1999 and is prescribed by the regulations for the purposes of this subsection is not a *departing Australia superannuation payment*.

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

After “18”, insert “, subsection 20F(1) or section 20H”.

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

Omit “or 18”, substitute “, 18 or 20H”.

33 Paragraph 307-120(2)(a)

Omit “or (d)”, substitute “, (d) or (e)”.

34 At the end of subsection 307-120(2)

Add:

; or (e) if the benefit is a payment under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*—section 307-142.

35 After section 307-140

Insert:

307-142 Components of payments under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*

- (1) This section explains how to work out the *tax free component, and the *taxable component, of a *superannuation benefit that is a payment under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of a person.
- (2) The *tax free component is so much of the payment as is attributable to so much of the amounts paid to the Commissioner under subsection 17(1) or 20F(1) of that Act in respect of the person as would, if those amounts had instead been paid to the person as *superannuation benefits, have been the tax free components of those superannuation benefits.
- (3) The *taxable component is so much of the payment as is attributable to either or both of the following:

- (a) so much of the amounts paid to the Commissioner under subsection 17(1) or 20F(1) of that Act in respect of the person as would, if those amounts had instead been paid to the person as *superannuation benefits, have been the taxable components of those superannuation benefits;
- (b) subsection 20H(2A) of that Act (which is about interest payable in certain circumstances).

36 At the end of section 307-220

Add:

- (4) Subparagraph (2)(a)(i) does not apply to a *roll-over superannuation benefit that is a *departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Note 1: The whole departing Australia superannuation payment is included in the contributions segment of the superannuation interest, as none of the payment has been or will be included in the superannuation provider's assessable income.

Note 2: Including the whole payment in that segment, and thus the tax free component, of the superannuation interest ensures that the amount of the payment, which is taxed by the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*, does not attract more tax when paid as a superannuation benefit from the interest.

37 At the end of Subdivision 307-E

Add:

307-300 Superannuation benefits paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*

- (1) This section explains how to work out the *element taxed in the fund, and the *element untaxed in the fund, of the *taxable component of a *superannuation benefit that is a payment under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in respect of a person.
- (2) The *element taxed in the fund* is so much (if any) of the *taxable component as is attributable to so much of the amounts paid to the Commissioner under subsection 17(1) or 20F(1) of that Act in respect of the person as would, if those amounts had instead been

paid to the person as *superannuation benefits, have been the elements taxed in the fund of the taxable components of those superannuation benefits.

- (3) The *element untaxed in the fund* is so much (if any) of the *taxable component as is attributable to either or both of the following:
- (a) so much of the amounts paid to the Commissioner under subsection 17(1) or 20F(1) of that Act in respect of the person as would, if those amounts had instead been paid to the person as *superannuation benefits, have been the elements untaxed in the fund of the taxable components of those superannuation benefits;
 - (b) subsection 20H(2A) of that Act (which is about interest payable in certain circumstances).

*[Minister's second reading speech made in—
House of Representatives on 25 September 2008
Senate on 10 November 2008]*

(193/08)

Temporary Residents' Superannuation Legislation Amendment Act 2008 No. 151, 2008