

SOUTH AUSTRALIA

**UNCLAIMED SUPERANNUATION BENEFITS ACT 1997**

**SUMMARY OF PROVISIONS**

1. Short title
2. Commencement
3. Interpretation
4. Application of Act
5. Statement of unclaimed superannuation benefits
6. Payment of unclaimed superannuation benefits
7. Treasurer to refund certain amounts
8. Register of unclaimed superannuation benefits
9. Discharge of liability
10. Trustee not in breach of trust
11. Conflict with governing instrument of public sector scheme

# UNCLAIMED SUPERANNUATION BENEFITS ACT 1997

being

Unclaimed Superannuation Benefits Act 1997 No. 80 of 1997  
[Assented to 18 December 1997]<sup>1</sup>

<sup>1</sup> Came into operation 29 January 1998: *Gaz.* 29 January 1998, p. 318.

N.B. The amendments effected to this Act by the *Unclaimed Superannuation Benefits (Miscellaneous) Amendment Act 2001* have not been brought into operation.

**An Act to provide for the payment of unclaimed superannuation benefits to the Treasurer; and for other purposes.**

The Parliament of South Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Unclaimed Superannuation Benefits Act 1997*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears—

"**Commonwealth Act**" means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth as amended from time to time or as modified from time to time under section 332 of that Act;

"**exempt public sector superannuation scheme**" means an exempt public sector superannuation scheme as defined in the Commonwealth Act;

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

"**fund**" means—

- (a) a fund as defined in Part 22 of the Commonwealth Act;
- (b) an exempt public sector superannuation scheme;

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

"**trustee**" means a trustee as defined in the Commonwealth Act;

"**unclaimed superannuation benefit**" means an amount of money that is taken by Part 22 of the Commonwealth Act to be unclaimed money.

**Application of Act**

4. This Act applies to a fund and the trustee of a fund if—

- (a) the trustee is a corporation within the meaning of the Corporations Law and its registered office within the meaning of that Law is in South Australia; or
- (b) in the case of a trustee of a fund who is a natural person, the principal place where the trustee carries on business as such a trustee is in South Australia; or
- (c) in the case of an exempt public sector superannuation scheme, the principal place where the fund is administered is in South Australia; or

- (d) where there are 2 or more trustees of the fund and paragraph (a) or (b) applies to one or more but not to all the trustees, the principal place where the fund is administered is in South Australia.

#### **Statement of unclaimed superannuation benefits**

**5.** (1) The trustee of a fund must give to the Treasurer a statement (in a form approved by the Treasurer) of all unclaimed superannuation benefits in the fund as at 30 June 1997, as at 31 December 1997 and as at the end of each subsequent half-year.

(2) The trustee must give the Treasurer the statement—

- (a) as at 30 June 1997, on or before 30 April 1998;
- (b) in relation to a half-year ending on 31 December, on or before the following 30 April;
- (c) in relation to a half-year ending on 30 June, on or before the following 31 October,

or on or before such later date as the Treasurer approves by notice in writing given to the trustee whether before or after 31 October or 30 April, as the case requires.

(3) If, after the end of a half-year and before the trustee gives the statement to the Treasurer, the trustee pays any unclaimed superannuation benefit to a person who is entitled to it, the statement must contain such particulars about the payment as is required by the form approved under subsection (1).

(4) An approval by the Treasurer of a form of statement for the purposes of subsection (1) may require or permit the statement to be given on a specified kind of data processing device in accordance with specified software requirements.

(5) A trustee who fails to comply with a provision of this section is guilty of an offence if the failure is intentional or results from failure on the part of the trustee to take reasonable care to comply with the provision.

Maximum penalty: \$2 000.

#### **Payment of unclaimed superannuation benefits**

**6.** The trustee of a fund when giving the statement under section 5 must pay to the Treasurer, for payment into the Consolidated Account, an amount equal to the aggregate of the unclaimed superannuation benefits specified in the statement less the amount, or the aggregate of the amounts, paid by the trustee and specified in the statement in accordance with section 5(3).

#### **Treasurer to refund certain amounts**

**7.** (1) If—

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

the Treasurer must pay an amount equal to the amount of that unclaimed superannuation benefit to that person.

(2) If the trustee of a fund, after paying an amount to the Treasurer under this Act, satisfies the Treasurer that the amount so paid exceeds the amount that the trustee would have paid to the person concerned, the Treasurer must refund to the trustee the amount of the excess.

(3) The Consolidated Account is appropriated to the extent necessary for the purposes of this section.

#### **Register of unclaimed superannuation benefits**

**8.** (1) The Treasurer must keep a register of unclaimed superannuation benefits paid to the Treasurer under this Act.

(2) The register may be in such form, and kept in such manner, as the Treasurer determines but must include, in relation to each unclaimed superannuation benefit recorded in the register—

- (a) the name of the fund in which the benefit was held; and
- (b) the name of the person in respect of whom the benefit was payable.

#### **Discharge of liability**

**9.** A trustee of a fund who pays to the Treasurer an amount required by this Act is discharged from further liability as trustee in respect of that amount.

#### **Trustee not in breach of trust**

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

#### **Conflict with governing instrument of public sector scheme**

**11.** If there is a conflict between a duty imposed on the trustee of an exempt public sector superannuation scheme by this Act and a duty imposed on that trustee by the governing instrument of the scheme (whether the governing instrument is an Act, regulations or any other kind of instrument), the trustee must comply with this Act and in doing so will be taken to have complied with the governing instrument.