

South Australia

Unclaimed Superannuation Benefits Act 1997

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

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

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

3—Interpretation

In this Act, unless the contrary intention appears—

Commonwealth Act means the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth as amended from time to time;

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 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;

superannuation provider or *provider* means a superannuation provider as defined in the Commonwealth Act;

trustee means a trustee as defined in the Commonwealth Act;

unclaimed superannuation benefit means an amount of money that is taken by Part 3 of the Commonwealth Act to be unclaimed money.

4—Application of Act

This Act applies to a fund and the superannuation provider of a fund if—

- (a) the provider 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 superannuation provider of a fund who is a natural person, the principal place where the provider carries on business as such a provider 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 superannuation providers of the fund and paragraph (a) or (b) applies to one or more but not to all the providers, the principal place where the fund is administered is in South Australia.

5—Statement of unclaimed superannuation benefits

- (1) The superannuation provider 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 provider 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 provider 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 superannuation provider gives the statement to the Treasurer, the provider 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 superannuation provider 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 provider to take reasonable care to comply with the provision.

Maximum penalty: \$2 000.

6—Payment of unclaimed superannuation benefits

The superannuation provider 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 provider and specified in the statement in accordance with section 5(3).

7—Treasurer to refund certain amounts

- (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 the Commonwealth Act and Part 22 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth had not been enacted, that person would have been paid that unclaimed superannuation benefit by the superannuation provider 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 superannuation provider 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 provider would have paid to the person concerned, the Treasurer must refund to the provider the amount of the excess.
- (3) The Consolidated Account is appropriated to the extent necessary for the purposes of this section.

8—Register of unclaimed superannuation benefits

- (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.

9—Discharge of liability

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

10—Superannuation provider not in breach of trust

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

11—Conflict with governing instrument of public sector scheme

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.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Repeal of Act

The *Unclaimed Superannuation Benefits Act 1997* was repealed by s 30 of the *Statutes Amendment and Repeal (Superannuation) Act 2012* on 15.6.2014.

Principal Act and amendments

Year	No	Title	Assent	Commencement
1997	80	<i>Unclaimed Superannuation Benefits Act 1997</i>	18.12.1997	29.1.1998 (<i>Gazette 29.1.1998 p318</i>)
2001	56	<i>Unclaimed Superannuation Benefits (Miscellaneous) Amendment Act 2001</i>	8.11.2001	6.12.2001 (<i>Gazette 6.12.2001 p5267</i>)

Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
Commonwealth Act	substituted by 56/2001 s 3(a)	6.12.2001
fund	amended by 56/2001 s 3(b)	6.12.2001
superannuation provider or provider	inserted by 56/2001 s 3(c)	6.12.2001
unclaimed superannuation benefit	amended by 56/2001 s 3(d)	6.12.2001
s 4	amended by 56/2001 s 4	6.12.2001
s 5		
s 5(1)	amended by 56/2001 s 5(a)	6.12.2001
s 5(2)	amended by 56/2001 s 5(b)	6.12.2001
s 5(3)	amended by 56/2001 s 5(c), (d)	6.12.2001
s 5(5)	amended by 56/2001 s 5(e), (f)	6.12.2001
s 6	amended by 56/2001 s 6	6.12.2001
s 7		
s 7(1)	amended by 56/2001 s 7(a)—(c)	6.12.2001
s 7(2)	amended by 56/2001 s 7(d), (e)	6.12.2001

s 9	amended by 56/2001 s 8	6.12.2001
s 10	amended by 56/2001 s 9	6.12.2001

Transitional etc provisions associated with Act or amendments

Statutes Amendment and Repeal (Superannuation) Act 2012, Sch 1— Transitional provisions

2—Unclaimed Superannuation Benefits Act

- (1) If—
- (a) an unclaimed superannuation benefit has been paid to the Treasurer by the superannuation provider of a fund under the *Unclaimed Superannuation Benefits Act 1997* (the *repealed Act*); and
 - (b) an amount equal to the amount of that unclaimed superannuation benefit (less any amount refunded to the superannuation provider under section 7 of the repealed Act) has not, before the repeal of the repealed Act by this Act, been paid to any person,

the Treasurer must, within 1 month of the commencement of this clause—

- (c) pay an amount equal to the amount of the unclaimed superannuation benefit to the Commissioner of Taxation; and
 - (d) provide the Commissioner of Taxation with all information relating to the unclaimed superannuation benefit kept in the register of unclaimed superannuation benefits under section 8 of the repealed Act.
- (2) The Consolidated Account is appropriated to the extent necessary for the purposes of this clause.

- (3) In this clause—

superannuation provider has the same meaning as in the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth;

unclaimed superannuation benefit means an amount of money that is taken by Part 3 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth to be unclaimed money.