

UNCLAIMED MONEY ACT, 1982, No. 174

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 174, 1982.

An Act to provide for the payment of certain unclaimed money into the Consolidated Fund; to provide for the publication of information relating to any such money; to enable any such money to be recovered from the Treasurer; to repeal the Unclaimed Moneys Act, 1917; and for other purposes. [Assented to, 24th December, 1982.]

See also Industrial Arbitration (Unclaimed Money) Amendment Act, 1982.

Unclaimed Money.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Unclaimed Money Act, 1982".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

-
- (2) Except as provided by subsection (1), this Act shall commence on 31st December, 1982.

Interpretation.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“business” means—

- (a) a company, within the meaning of the Companies (New South Wales) Code, having for its object the acquisition of gain;
- (b) a recognized company, recognized foreign company or foreign company, within the meaning of the Companies (New South Wales) Code, which carries on business within the State and has for its object the acquisition of gain;
- (c) a society incorporated under, or a society, association or union of associations registered under, the Co-operation Act, 1923, having for its object the acquisition of gain, or a society or company which has that object and in respect of which an exemption is in force under section 61 of that Act;

Unclaimed Money.

- (d) a society or association registered under the Permanent Building Societies Act, 1967, or a society or company in respect of which an exemption is in force under section 35 of that Act;
- (e) a credit union, association of credit unions, or union of associations of credit unions, registered under the Credit Union Act, 1969, or a society or company in respect of which an exemption is in force under section 28 of that Act;
- (f) a public authority constituted by or under any Act;
- (g) a council within the meaning of, and any county council constituted under, the Local Government Act, 1919, and the Sydney County Council constituted under the Gas and Electricity Act, 1935; or
- (h) a person, partnership, association, society, institution or other body, whether or not incorporated, who or which carries on business within the State and has for his or its object the acquisition of gain,

and includes—

- (i) a life assurance company or association; and
- (j) a bank;

“officer”, in relation to a business, means a person who is concerned in or takes part in the management or control of the business, and includes a person in accordance with whose instructions the business is managed or controlled;

“owner”, in relation to any money, means the person who is entitled to the money (or the person who would be so entitled except for the operation of the Limitation Act, 1969), and includes his executors, administrators and assigns, and his or their lawful attorney or agent in the State;

Unclaimed Money.

“regulations” means regulations made under this Act;

“withdrawable share capital” means share capital subscribed for a share in a body referred to in paragraph (c), (d) or (e) of the definition of “business” in this subsection.

(2) In this Act, a reference to money which a business holds includes a reference to money which is in the hands or under the control of the business.

Unclaimed money.

4. (1) For the purposes of this Act, money is unclaimed money if it is—
- (a) money (including principal and interest money, dividends, bonuses and profits) the recovery of which has been or may at some future time be barred by operation of law;
 - (b) money on deposit; or
 - (c) withdrawable share capital,
- which is in an account which has not been operated upon—
- (d) for a period of at least—
 - (i) except as provided by subparagraph (ii)—6 years; or
 - (ii) such other period (not longer than 6 years and not shorter than 2 years) as may be prescribed; or
 - (e) in a particular case, for such shorter period (not shorter than 12 months) as the Treasurer approves at the request of the business holding the money.

(2) For the purposes of subsection (1), an account in which money is held shall be deemed to be operated upon during any period that the money is being held in the account pursuant to an agreement (not being an implied agreement) to hold the money for a fixed term.

Unclaimed Money.

(3) For the purposes of subsection (1), the debiting of a fee, or the crediting of interest or a dividend, to an account does not constitute an operation upon the account.

(4) Notwithstanding subsection (1), money held by a business in an account is not unclaimed money at any particular time if, at that time, the recovery of the money by its owner is not barred by operation of law and—

- (a) the business holds other money (not being unclaimed money) of that owner in an account; or
- (b) the business knows or has reason to believe that the owner of the money wishes to retain the money in the account.

(5) For the purposes of subsection (4) (b), where a business communicates or attempts to communicate with the owner of any money which the business holds in an account, with a view to ascertaining the owner's instructions in relation to the money, the business does not have reason to believe that the owner of the money wishes to retain the money in the account by reason only of the failure of the owner to respond to the communication, notwithstanding that the terms of the communication purport to infer such a wish from that failure to respond.

(6) For the purposes of this Act, money is not unclaimed money if the money—

- (a) is, or is of a class, prescribed as exempt from the operation of this Act; or
- (b) is held by a business which is, or which is of a class, prescribed as exempt from the operation of this Act.

Other laws not affected.

5. Nothing in this Act affects the operation of any other law of the State which provides for the manner in which unclaimed money is to be dealt with.

Unclaimed Money.

Return and payment of unclaimed money to Treasurer.

6. (1) Where on 31st December in any year a business holds any money which, on that date, is unclaimed money, the business shall—

- (a) within 2 months after that date or such longer period as the Treasurer may in a particular case allow, lodge with the Treasurer a return with respect to that money in or to the effect of the form set out in Schedule 1, completed in the manner indicated in that form; and
- (b) at the time the business lodges the return, pay that money to the Treasurer.

(2) The Treasurer shall pay any money received by him under subsection (1) into the Consolidated Fund.

(3) A business which fails to comply with subsection (1) is guilty of an offence against this Act and is liable—

- (a) to a penalty not exceeding \$500; and
- (b) to a further penalty not exceeding \$50 for each day after the period within which it was required to comply with that subsection during which the failure continues.

Copies and inspection of returns.

7. (1) A business which lodges a return pursuant to section 6 shall, for a period of 20 years after the date on which the return is lodged, retain a copy of the return at—

- (a) the principal office or registered office of the business in the State;
or
- (b) the principal place of business in the State of the business.

(2) A business shall permit a person, on payment by the person of such fee (not exceeding \$2) as the business determines, to inspect during the normal business hours of the business any of the copies of returns retained by the business pursuant to subsection (1).

Penalty: \$200.

Unclaimed Money.

Publication of information relating to unclaimed money.

8. The Treasurer shall cause to be published in the Gazette such information as appears to him to be necessary or desirable for the purpose of giving reasonable publicity to—

- (a) the existence of each sum of unclaimed money paid to him under section 6 that exceeds—
 - (i) except as provided by subparagraph (ii)—\$50; or
 - (ii) such other amount as may be prescribed; and
- (b) the identity of the money's owner.

Liability in respect of unclaimed money.

9. (1) Subject to this section, a business which pays any unclaimed money to the Treasurer in compliance with section 6 shall be relieved from all further liability in respect of that money.

(2) Subsection (1) does not operate to relieve a business from any liability in respect of money paid to the Treasurer in purported compliance with section 6 where that money is subsequently repaid by the Treasurer to the business pursuant to section 10 (5).

(3) Subsection (1) does not operate to relieve any business or person from any obligation to comply with a requirement or direction under section 11.

Repayments and claims.

10. (1) Subject to this section, the owner of any unclaimed money paid to the Treasurer under section 6 shall, upon proving to the satisfaction of the Treasurer that he is the owner of the money, be entitled to recover that money from the Treasurer.

Unclaimed Money.

(2) Notwithstanding the Limitation Act, 1969—

- (a) an action for recovery of any money to which a person is entitled under subsection (1) is maintainable if brought before, but is not maintainable if brought on or after, the expiration of a period of 20 years commencing on the date on which the money to which the action relates was paid to the Treasurer under section 6; and
- (b) the right and title of the person to that money subsists until the expiration of that period.

(3) Where any unclaimed money is paid to the Treasurer under section 6 and that money is subsequently paid by the Treasurer to a person who is not the owner of the money, the owner of the money shall be entitled to recover the money from the person to whom it was paid by the Treasurer.

(4) Where any unclaimed money which was paid to the Treasurer under section 6 is paid by the Treasurer in good faith to a person who is not the owner of the money, the Treasurer shall be relieved from all further liability in respect of that money.

(5) Where any money is paid to the Treasurer in purported compliance with section 6 and the Treasurer is of the opinion that the money is not unclaimed money which is required to be paid to him under that section, the Treasurer may repay that money to the person by whom it was paid or to such other person as to the Treasurer seems appropriate.

Power to obtain information.**11. (1)** For the purpose of—

- (a) administering this Act;
- (b) ascertaining whether a business is complying with the provisions of this Act or the regulations; or
- (c) ascertaining the identity of the owner of any unclaimed money,

the Treasurer or a person authorised by the Treasurer for the purposes of this section may require a business or any officer of a business—

- (d) to furnish to the Treasurer or the person so authorised such information, or such copies of any books, records, returns or other documents of the business, as he requires; or

Unclaimed Money.

- (e) to permit the Treasurer or the person so authorised, without payment of any fee, to inspect and to take copies or extracts from such books, records, returns or other documents of the business as he requires.

(2) Where the Treasurer or a person authorised by him for the purposes of this section is of the opinion that any entry or information in a book, record, return or other document of a business relates or may at some future time relate to any unclaimed money, and is incorrect, he may direct the business to make such alteration or amendment to the book, record, return or other document as to him appears necessary to correct that entry or information.

(3) A business or person shall not—

- (a) fail to comply with a requirement under subsection (1) or a direction under subsection (2); or
- (b) furnish, pursuant to a requirement under subsection (1), information that to his knowledge is false or misleading in a material particular.

Penalty: \$500.

Proceedings.

12. Proceedings for an offence against this Act or the regulations—

- (a) may be taken only by a person authorised in writing by the Treasurer; and
- (b) shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Liability of officers for offences by business.

13. (1) Where a business contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the business shall be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the business contravened the provision without his knowledge;

Unclaimed Money.

- (b) he was not in a position to influence the conduct of the business in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention by the business.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the business has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any business by which an offence against the provision is actually committed.

Amendment of Schedule 1.

14. The Governor may, by proclamation published in the Gazette, substitute or amend Schedule 1.

Repeal of Act No. 11, 1917.

15. The Unclaimed Moneys Act, 1917, is repealed.

Savings and transitional provisions.

16. Schedule 2 has effect.

Regulations.

17. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may impose a penalty not exceeding \$200 for a breach of the regulation.

Unclaimed Money.

- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

SCHEDULE 1.

(Sec. 6.)

RETURN OF UNCLAIMED MONEY UNDER THE UNCLAIMED MONEY ACT, 1982.

Details of all unclaimed money held by
(insert name of business
 as at 31st December, 19
or "me", as appropriate) *(insert year)*
 are set out below.
 Signed
(name of person making return)
 Date
(capacity in business)

SUMS OF UNCLAIMED MONEY EXCEEDING \$50.

| Name of owner on books (surname then initials only, e.g., "Jones, A. B." no address required). <i>(List names in alphabetical order.)</i> | Total amount due to owner. \$ | Brief description of money (e.g., "dividend", "interest" or other). | Year in which money became payable to owner. |
|--|-------------------------------------|--|---|
| | | | |

*Unclaimed Money.*SCHEDULE 1—*continued.*RETURN OF UNCLAIMED MONEY UNDER THE UNCLAIMED MONEY ACT, 1982—
continued.

SUMS OF UNCLAIMED MONEY NOT EXCEEDING \$50.

| Name of owner of money on books (surname then initials only, e.g., "Jones, A. B." no address required). (List names in alphabetical order.) | Total amount due to owner. \$ | Brief description of money (e.g., "dividend", "interest" or other). | Year in which money became payable to owner. |
|--|-------------------------------------|--|---|
| | | | |

SCHEDULE 2.

(Sec. 16.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

"appointed day" means 31st December, 1982.

"repealed Act" means the Unclaimed Moneys Act, 1917.

Non-operation of account before appointed day.

2. For the purposes of section 4, an account is not operated upon for a period notwithstanding that the whole or any part of the period occurred before the appointed day.

Unclaimed Money.

SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Payment of money advertised under repealed Act.**

3. Where the first occasion on which a copy of an alphabetical register is published in the Gazette pursuant to section 4 of the repealed Act is less than 1 year before the appointed day, the company holding the money to which the register relates shall, within 2 months after the appointed day, pay to the Treasurer so much of that money as at the appointed day has not been paid to the money's owner, and any money so paid shall be deemed to have been paid to the Treasurer under section 6.

Money paid to Treasurer under repealed Act.

4. Any money paid to the Treasurer before the appointed day in compliance with the repealed Act shall, for the purposes of this Act, be deemed to have been paid to the Treasurer under section 6.

Commencement of period in which money may be recovered.

5. For the purposes of section 10, the period of 20 years during which an action may be maintained to recover unclaimed money paid to the Treasurer shall, in the case of money deemed to have been so paid by clause 4, be deemed to have commenced on the day that the money was paid to the Treasurer in compliance with the repealed Act.

Alphabetical register made under repealed Act.

6. An alphabetical register made before the appointed day pursuant to section 3 of the repealed Act shall, for the purposes of this Act, be deemed to be a copy of a return lodged with the Treasurer pursuant to section 6 on the appointed day.

Proceedings for certain offences.

7. Notwithstanding anything in this Act, where a business or person commits an offence against the repealed Act, before the appointed day, and proceedings for that offence are disposed of on or after the appointed day, that business or person shall not be liable to any greater penalty than that to which it or he would have been liable if the proceedings had been disposed of immediately after the commission of the offence.

Unclaimed Money.

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

References to repealed Act.

8. On and from the appointed day, a reference in any Act, other than this Act, to the Unclaimed Moneys Act, 1917, shall be construed as a reference to the Unclaimed Money Act, 1982.
