

[Act 1997 No 30]



New South Wales

Unclaimed Money Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *Unclaimed Money Act 1995* to enable unclaimed superannuation benefits to be paid into the Consolidated Fund in the same way as unpaid money and to adjust administrative provisions relating to unclaimed money and unclaimed superannuation benefits so that they are in line with provisions applying to State taxation laws that are administered by the Chief Commissioner of State Revenue (who will now administer the *Unclaimed Money Act 1995*).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 30 June 1997.

Clause 3 is a formal provision giving effect to the amendments to the *Unclaimed Money Act 1995* set out in Schedule 1.

Unclaimed superannuation benefits

Schedule 1 [6] inserts proposed Part 3A (Unclaimed superannuation benefits) into the Principal Act. The proposed Part applies to private and public superannuation funds, and approved deposit funds, in New South Wales and is enacted for the purposes of section 225 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. That provision enables State legislation to be enacted to provide for the payment of unclaimed superannuation benefits. Proposed Division 1 (proposed section 13A) defines expressions used in the proposed Part. Proposed Division 2 relates to the unclaimed Superannuation benefits. A trustee of a superannuation fund is required to lodge a return with the Chief Commissioner of State Revenue for each half-year setting out unclaimed superannuation benefits, not later than 30 April and 31 October, respectively (proposed section 13B). The amount of the benefits (less the amount of any benefits paid after the end of the half-year and before the return is lodged) must be paid when the return is lodged. Trustees are required to keep copies of returns (proposed section 13C). The Chief Commissioner must publish in the Government Gazette the details of each sum of unclaimed superannuation benefits that is over \$50 (proposed section 13D). The Chief Commissioner is required to pay unclaimed superannuation benefits to a person if the Chief Commissioner determines that the person would have been entitled to be paid the benefits by the trustee of the relevant fund (proposed section 13E). The Chief Commissioner must also repay to trustees any excess superannuation benefits paid by the trustees to the Chief Commissioner and any other amounts that should not have been paid (proposed section 13F). The Consolidated Fund is appropriated for the purpose of the proposed repayments (proposed section 13G). The Chief Commissioner is also to keep a register of unclaimed superannuation benefits containing particulars of unclaimed superannuation benefits paid by a trustee of a superannuation fund and of members in respect of whom the benefits were payable (proposed section 13H).

A trustee who pays an amount to the Chief Commissioner is discharged from further liability (proposed section 131) and nothing done by a trustee under the proposed Part is to constitute a breach of trust (proposed section **13J**).

Proposed Division 3 (sections 13K and 13L) applies the proposed Part to public sector superannuation funds and, in the case of private funds, to a private fund if the fund's trustee is a company incorporated or having its registered office in New South Wales or, if the trustee or one of the trustees is not a company, the principal place where the trustee carries on business as a trustee is in New South Wales. Proposed section 13L is inserted for the purpose only of making it clear that the scheme envisaged by the proposed Part does operate in relation to trustees, assets and other matters outside New South Wales (as well as within New South Wales), once a relevant connection with New South Wales has been established for the purposes of the scheme. The proposed section therefore supports the intended operation of proposed section 13K.

Schedule 1 [2] and **[4]** make consequential amendments.

Returns for unclaimed money

Schedule 1 [5] extends from 2 months to 4 months the period within which returns as to unclaimed money must be lodged. This makes the time allowed the same as that for the lodging of returns for unclaimed superannuation benefits.

Administrative changes

Schedule 1 [8] inserts proposed section 27 that enables administrative provisions of the *Taxation Administration Act 1996* to be read with the Principal Act and repeals provisions in the Principal Act which cover the same matters. The following provisions of the *Taxation Administration Act 1996* will apply to unclaimed money and unclaimed superannuation benefits:

- (a) Part 5 (relating to interest and penalties in respect of outstanding money),
- (b) Part 7 (relating to the collection and payment of money),
- (c) Part 8 (relating to record keeping),
- (d) Part 9 (relating to administration, officers and investigation powers),

- (e) Part 10 (relating to objections and appeals),
- (f) various miscellaneous provisions, including provisions relating to means of payment, service of documents, evidentiary provisions and proceedings for offences.

Currently, the Principal Act establishes the office of Chief Commissioner of Unclaimed Money and the Chief Commissioner has the general administration of the Act. This position is to be abolished and the person who will have the general administration of the Act will be the Chief Commissioner of State Revenue, by operation of proposed section 27. **Schedule 1 [1]** makes a consequential amendment.

The Chief Commissioner is to be given a new power to assess the amount of unclaimed money or unclaimed superannuation benefits payable where a return is not lodged or the Chief Commissioner is of the opinion that an incorrect return has been lodged (Schedule 1 [8], proposed section 28). There is to be a right to object and a subsequent right of appeal to the Supreme Court against an assessment, by operation of proposed section 27.

The amendment also re-enacts provisions currently in the Principal Act (proposed sections 29 and 30).

Schedule 1 [3] and **[7]** make consequential amendments.

Savings and transitional provisions

Savings and transitional regulations may be made as a consequence of the proposed Act (**Schedule 1 [9]**). The provisions allowing an assessment of a return or liability to pay money under the Act are not to apply to a return lodged or required to be lodged before the applicable provisions of the proposed Act commence (**Schedule 1 [10]**).