

[Act 1995 No 75]



New South Wales

Unclaimed Money Bill 1995

Explanatory Note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide for the payment of unclaimed money to a Chief Commissioner of Unclaimed Money, and
- (b) to require the publication of information concerning unclaimed money, and
- (c) to establish a scheme for making and determining applications for repayment of unclaimed money, and
- (d) to repeal the *Unclaimed Money Act 1982*.

The Bill re-enacts the provisions of the *Unclaimed Money Act 1982* in simpler language and makes the following changes of substance:

- it widens the range of organisations required to pay unclaimed money to the State (but excludes the banks to which the *Banking Act 1959* of the Commonwealth applies)
 - it increases the penalties for failure to do so
 - it updates powers of investigation
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- it reduces from 20 years to 6 years the period during which the owner of unclaimed money held by the State is entitled to recover the money from the State
- it provides for appeals against determinations of applications for repayment of unclaimed money.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain terms used in the proposed Act.

Clause 4 specifies certain circumstances in which an account is to be taken to be **operated on** (or not operated on) for the purposes of the proposed Act.

Clause 5 clarifies references to money **held** by an enterprise and by an enterprise that does not have a separate legal personality. *Enterprise* is defined (in clause 3) as follows:

enterprise means a person, partnership, association, society, institution, organisation or other body, whether or not incorporated, that:

(a) operates in any way (or, in the case of a natural person, has a residential address) in the State, and

(b) holds money on account of another person or body, but does not include a bank (within the meaning of the *Banking Act 1959* of the Commonwealth).

Clause 6 provides that the proposed Act binds the Crown.

Part 2 Unclaimed money

Clause 7 sets out the criteria for determining whether money is *unclaimed money* for the purposes of the Act.

Clause 8 specifies the kind of money that may constitute unclaimed money.

Clause 9 exempts certain money from the meaning of the term *unclaimed money*.

Part 3 Payment of unclaimed money to Chief Commissioner

Clause 10 requires an enterprise that holds unclaimed money on 30 June in any year to pay the money to, and lodge a return relating to the money with, the Chief Commissioner of Unclaimed Money (the *Chief Commissioner*). The money is to be paid and the return lodged by the end of the following August (or within such longer time as the Chief Commissioner allows). The Chief Commissioner is to pay the money to the Consolidated Fund.

Clause 11 requires an enterprise that lodges a return to retain a copy of it for at least 6 years. An enterprise must make the retained copies of returns reasonably available for inspection by any person. Any inspection fee charged is not to exceed \$10 (or such greater amount as the regulations may prescribe).

Clause 12 requires the Chief Commissioner to cause to be published in the Government Gazette information concerning:

- each amount of unclaimed money exceeding \$50 (or exceeding the amount, if any, prescribed by the regulations) that is paid to the Chief Commissioner, and
- the identity of the owner of the money, if known.

Clause 13 relieves an enterprise from all further liability (apart from a liability arising under another law) in respect of unclaimed money that the enterprise pays to the Chief Commissioner. However, the provision does not operate to relieve the enterprise of its obligations in relation to records concerning that money, or from liability in respect of money that the Chief Commissioner repays to the enterprise under proposed Part 4 (Claims for and repayment of unclaimed money).

Part 4 Claims for and repayment of unclaimed money

Clause 14 defines *applicant*, for the purposes of proposed Part 4, as a person who applies under the Part for the repayment of unclaimed money paid to the Chief Commissioner.

Clause 15 specifies that the owner of any unclaimed money paid to the Chief Commissioner under the proposed Act is entitled to recover that money from the Chief Commissioner.

Clause 16 makes it clear that, if an owner's right to unclaimed money was not extinguished before the money was paid to the Chief Commissioner, the right subsists until the end of a period of 6 years beginning on the date of that payment.

Clause 17 empowers the owner of unclaimed money paid to the Chief Commissioner to make written application to the Chief Commissioner for its repayment.

Clause 18 limits the time for making such applications to the period during which the owner's right to the money subsists.

Clause 19 makes it clear that an applicant bears the onus of establishing that the applicant is the owner of the money to which the application relates.

Clause 20 provides that the standard of proof for establishing ownership of unclaimed money is the balance of probabilities.

Clause 21 specifies the way in which the Chief Commissioner determines an application (by giving the applicant notice in writing to the effect that the Chief Commissioner is satisfied, or is not satisfied, that the applicant owns the money (or part of the money) to which the application relates). If the Chief Commissioner has not determined the application at the end of a period of 90 days after the application was lodged, the Chief Commissioner is taken to have given a notice, at the end of that period, to the effect that the Chief Commissioner is not satisfied that the applicant is the owner of the money concerned.

Clause 22 allows an applicant to appeal against a determination to the District Court in accordance with rules of court.

Clause 23 makes it clear that an appeal is to be by way of a rehearing of the original application, although information additional to the information considered for the purposes of the original determination may be taken into consideration. The clause also provides that the District Court may make an order varying the determination appealed from or dismissing the appeal. The District Court's determination of an appeal is final.

Clause 24 empowers the Chief Commissioner to repay unclaimed money to its owner, and relieves the Chief Commissioner from further liability in respect of unclaimed money *so* repaid. However, if the person to whom the Chief Commissioner repaid the money is not the owner of the money, the owner is entitled to recover the money from that person (unless the owner is prevented from doing so by operation of the *Limitation Act 1969*).

Clause 25 deals with the situation where the Chief Commissioner is of the opinion that money paid to the Chief Commissioner in purported compliance with the proposed Act is not unclaimed money required to be *so* paid. The Chief Commissioner may repay the money to any person the Chief Commissioner considers appropriate.

Clause 26 appropriates the Consolidated Fund for the purposes of repayments by the Chief Commissioner.

Part 5 Investigative powers

Clause 27 provides that a power conferred under proposed Part 5 may be exercised only for the purposes of exercising functions under the proposed Act or the regulations.

Clause 28 permits the Chief Commissioner to authorise an officer of the Office of State Revenue, by delegation, to exercise the powers conferred on the Chief Commissioner by proposed Part 5. An officer *so* authorised is a *delegated officer* for the purposes of the proposed Part.

Clause 29 specifies the matter that must be included in the instrument of delegation.

Clause 30 confers on the Chief Commissioner power to require a person to provide records, information and evidence.

Clause 31 specifies the way in which the Chief Commissioner may deal with records provided or produced to the Chief Commissioner or a delegated officer.

Clause 32 requires an enterprise holding records that the Chief Commissioner or a delegated officer considers to be incorrect in relation to unclaimed money to note the records with details of what the Chief Commissioner believes to be the correct position.

Clause 33 confers on the Chief Commissioner power to require a person to attend and give evidence before the Chief Commissioner or a delegated officer.

Clause 34 is a standard provision to the effect that the possibility of self-incrimination does not excuse a person from complying with a requirement under the proposed Act to answer a question, furnish information or produce a record. However, any information given in an answer or otherwise furnished, and any record produced, in compliance with such a requirement is not admissible in any criminal proceedings against the person, except for proceedings for an offence against proposed section 40 (Offence-obstructing Chief Commissioner or delegated officer) or the regulations, or proceedings in respect of the falsity of information given on oath or by affirmation.

Clause 35 confers on the Chief Commissioner a power to enter premises.

Clause 36 makes it clear that entry to residential premises may be effected only with the consent of the owner or occupier or under the authority of a search warrant.

Clause 37 requires reasonable notice of an intention to enter premises to be given, unless the entry is made with the consent of the owner or occupier, or the giving of notice would defeat the purpose of the entry.

Clause 38 specifies the powers the Chief Commissioner may exercise once entry to the premises has been effected. These powers include the power to:

- require any person at the premises to produce any records in the person's possession or under the person's control, and to answer questions and otherwise furnish information, and
- seize and remove evidence of the commission of an offence against the proposed Act or the regulations.

Clause 39 provides for the issue of search warrants.

Clause 40 provides that it is an offence for a person to prevent, hinder or obstruct, or refuse or fail to comply with a requirement of, or provide false or misleading information to, the Chief Commissioner or a delegated officer in the exercise of their functions under proposed Part 5.

Clause 41 provides that it is an offence to impersonate the Chief Commissioner or a delegated officer.

Clause 42 provides that a person charged with an offence under proposed Part 5 is not guilty if the court hearing the charge is satisfied that the person could not have complied with the requirement to which the charge relates, or that the person complied to the best of the person's ability.

Part 6 Administration

Clause 43 provides that there is to be a Chief Commissioner of Unclaimed Money who, under the Minister, has the general administration of the proposed Act.

Clause 44 allows the Chief Commissioner to delegate his or her functions to an officer of the Office of State Revenue.

Part 7 Miscellaneous

Clause 45 allows an officer of an enterprise that is not a natural person to act on behalf of the enterprise.

Clause 46 provides that an officer of an enterprise that contravenes a provision of the proposed Act or regulations is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.

Clause 47 provides that proceedings for offences against the proposed Act or regulations may be taken only by a person authorised in writing by the Chief Commissioner, and are to be taken before a Local Court constituted by a Magistrate sitting alone.

Clause 48 provides for the way in which something may be lodged with the Chief Commissioner.

Clause 49 makes it clear that the proposed Act does not affect the operation of any other law dealing with unclaimed money.

Clause 50 empowers the making of regulations for the purposes of the proposed Act.

Clause 51 repeals the *Unclaimed Money Act 1982*.

Clause 52 is a formal provision giving effect to the amendment of Acts set out in Schedule 1.

Clause 53 is a formal provision giving effect to the savings, transitional and other provisions set out in Schedule 2.

Clause 54 provides for the review of the operation of the proposed Act by the Treasurer 5 years after the date of assent to the Act.

Schedule 1 Amendment of Acts

Schedule 1.1, 1.3 [1], 1.4, 1.5, 1.6 and 1.7 replace references to the *Unclaimed Money Act 1982* and the Treasurer in various Acts with references to the proposed Act and the Chief Commissioner, respectively.

Schedule 1.2 repeals a provision of the *Co-operatives Act 1992* to the effect that money that is required to be paid to a former member of a co-operative under Division 4 of Part 6 of that Act (Cancellation of membership etc of inactive members) is not unclaimed money for the purposes of the *Unclaimed Money Act 1982*, and that any such money may be credited to the general reserves of the co-operative when a person's right and title to the money against the co-operative is extinguished by the operation of any law providing for the limitation of actions.

Schedule 1.3 [2] repeals a provision of the *Local Government Act 1993* that specifically applies the *Unclaimed Money Act 1982* to purchase money paid for land sold by a local council for overdue rates and charges if the purchase money exceeds the amount owing. The provision is not necessary, as the proposed Act will apply to that money. (This is because section 720 (1) of the *Local Government Act 1993* is to the effect that any such excess is to be paid into the council's trust fund and held by the council in trust for the persons having estates or interests in the land immediately before the sale.)

Schedule 1.8 amends the *Search Warrants Act 1985* in consequence of proposed section 39.

Schedule 2 contains savings, transitional and other provisions. In particular, the Schedule provides that a person who would have been entitled to maintain an action for the recovery of unclaimed money under the *Unclaimed Money Act 1982* immediately before the repeal of that Act and *would* not (but for the Schedule) be entitled to recover unclaimed money from the Chief Commissioner under the proposed Act may apply to the Chief Commissioner for repayment of the money within 6 months after the repeal.