

Unclaimed Money Act 1995 No 75

[1995-75]



New South Wales

Status Information

Currency of version

Historical version for 1 January 2002 to 31 December 2003 (accessed 12 July 2024 at 5:33)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[State Revenue Legislation Further Amendment Act 2003 No 80](#) (not commenced — to commence on 1.1.2004)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 27 November 2003

Unclaimed Money Act 1995 No 75



New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Definitions	5
4 Operation on account	6
5 Money held by enterprise	7
6 Act binds Crown	7
Part 2 Unclaimed money	7
7 Unclaimed money	7
8 Money that may constitute unclaimed money	7
8A Enterprise must first make reasonable efforts to ensure owner is paid money	8
9 Certain money not unclaimed money	8
Part 3 Payment of unclaimed money to Chief Commissioner	9
10 Return and payment of unclaimed money to Chief Commissioner	9
11 Copies and inspection of returns	9
12 Publication of information relating to unclaimed money	10
13 Liability in respect of unclaimed money	10
Part 3A Unclaimed superannuation benefits	10
Division 1 Definitions	10

13A Definitions	10
Division 2 Unclaimed superannuation benefits	12
13B Return and payment of unclaimed superannuation benefits to Chief Commissioner	12
13BA (Repealed).....	13
13C Copies and inspection of returns	13
13D Publication of information relating to unclaimed benefits	13
13E Payment of unclaimed benefits where money later claimed	14
13F Chief Commissioner must repay excess	14
13G Appropriation	14
13H Register of unclaimed superannuation benefits	14
13HA (Repealed).....	15
13I Discharge of liability	15
13J Trustee not in breach of trust	15
Division 3 Application of Part	15
13K Application of Part	15
13L Extra-territorial operation	16
13M Deduction of tax from payments	16
Part 4 Claims for and repayment of unclaimed money	16
14 Definition	16
15 Owner’s entitlement to recovery	16
16 Extinguishment of entitlement	16
17 Application for repayment	17
18 Time for application	17
19 Onus on applicant.....	17
20 Standard of proof.....	17
21 Notice of determination.....	17
22, 23 (Repealed)	17
24 Chief Commissioner may repay unclaimed money to owner.....	17
25 Chief Commissioner may repay unclaimed money not required to be paid to Chief Commissioner	17
26 Appropriation.....	18
26A Recovery of money wrongly paid	18

Part 5 Miscellaneous	18
27 Application of certain provisions of Taxation Administration Act 1996	18
28 General power to make assessment.....	19
29 Enterprises and superannuation providers that are not natural persons.....	19
30 Annotation of records	20
31 Disclosure of certain information prohibited.....	20
32-45 (Repealed)	20
46 Liability of officers for offences by enterprises	20
47 Proceedings	21
48 Lodgment with Chief Commissioner	21
49 Other laws not affected	21
50 Regulations.....	21
51 Repeal	21
52 (Repealed)	21
53 Savings, transitional and other provisions.....	21
54 Review of Act.....	22
Schedule 1 (Repealed)	22
Schedule 2 Savings, transitional and other provisions	22

Unclaimed Money Act 1995 No 75



New South Wales

An Act to provide for the payment of unclaimed money into the Consolidated Fund; to require the publication of information relating to unclaimed money; to provide for a Chief Commissioner of Unclaimed Money and a scheme for determining applications for repayment of unclaimed money; to repeal the *Unclaimed Money Act 1982*; to make consequential amendments to other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Unclaimed Money Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

account includes a record of money held on account of another person or body.

Chief Commissioner means the Chief Commissioner of State Revenue appointed under the *Taxation Administration Act 1996*.

Commonwealth RSA Act means the *Retirement Savings Accounts Act 1997* of the Commonwealth.

Commonwealth Superannuation Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

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) or a building society, credit union or friendly society.

exercise a function includes perform a duty.

function includes a power, authority or duty.

officer of an enterprise or superannuation provider that is not a natural person means a person who is concerned in or takes part in the management of the enterprise or superannuation provider, and includes a person in accordance with whose instructions the enterprise or superannuation provider is managed or controlled.

owner of 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 the person's executors, administrators and assigns and the lawful attorney or agent in the State of the person, executor, administrator or assign.

record includes:

- (a) any book, account, deed, writing or document, and
- (b) any other source of information compiled, recorded or stored in written form, or on microfilm or by electronic process, or stored in any other manner or by any other means.

retirement savings account has the same meaning as it has in the Commonwealth RSA Act.

return means a return required by section 10, 13B or 13BA.

RSA provider has the same meaning as it has in the Commonwealth RSA Act.

superannuation fund means a superannuation fund within the meaning of Part 3A.

superannuation provider means a superannuation provider within the meaning of Part 3A.

unclaimed superannuation benefit means an amount that is taken to be unclaimed money under the [Superannuation \(Unclaimed Money and Lost Members\) Act 1999](#) of the Commonwealth.

4 Operation on account

- (1) For the purposes of this Act, an account is taken to be operated on during any period that money is held in the account pursuant to an agreement (other than an implied agreement) to hold the money for a fixed term.
- (2) However, the debiting of a fee, duty, tax or charge, or the crediting of interest or a dividend, to an account does not constitute an operation on the account.

5 Money held by enterprise

- (1) In this Act, a reference to money held by an enterprise:
- (a) includes a reference to money that is in the hands or under the control of the enterprise, and
 - (b) is, in relation to an enterprise that does not have a separate legal personality, taken to be a reference to money held by the members for the time being of the enterprise for the purposes of the enterprise.
- (2) In this section, **member** of an enterprise means a person, body or organisation that is, under its rules of membership, a member of the enterprise, or, if the rules do not provide for membership of the enterprise, a person, body or organisation that is a member of the body that governs or has the management of the enterprise.

6 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 Unclaimed money

7 Unclaimed money

- (1) For the purposes of this Act, money is **unclaimed money** if it is money of a kind referred to in section 8 that an enterprise holds in an account that has not been operated on for at least:
- (a) 6 years, or
 - (b) such shorter period:
 - (i) as may be prescribed by the regulations (being a period of not less than 2 years), or
 - (ii) as may be approved, in relation to a particular enterprise, by the Chief Commissioner at the request of the enterprise (being a period of not less than 12 months).
- (2) The account may include:
- (a) money whose owner is not identifiable, and
 - (b) money owned jointly or severally by 2 or more persons.

8 Money that may constitute unclaimed money

Money may be unclaimed money only if it is one of the following kinds:

- (a) money (including principal and interest, dividends, bonuses and profits) the recovery of which has been or may be barred by operation of law,
- (b) money on deposit,
- (c) share capital subscribed for a share in a body from which the capital subscribed may be withdrawn by the subscriber.

8A Enterprise must first make reasonable efforts to ensure owner is paid money

- (1) An enterprise that holds any money of a kind referred to in section 8 in an account referred to in section 7 (1) must make reasonable efforts:

- (a) to identify and locate the owner of the money, and
- (b) to ensure that the money is paid to the owner of the money.

Maximum penalty: 50 penalty units.

- (2) Money held by an enterprise in an account is not unclaimed money (despite section 7) unless, after making reasonable efforts and after a reasonable period has passed, the enterprise is unable to ensure that the money is paid to the owner of the money.
- (3) This section does not apply in respect of any money that is not unclaimed money because of section 9.

9 Certain money not unclaimed money

- (1) Money held by an enterprise in an account is not unclaimed money at any particular time (despite section 7) if, at that time, the recovery of the money by its owner is not barred by operation of law and:
- (a) the enterprise holding the money also holds other money (not being unclaimed money) of the owner in an account, or
 - (b) the enterprise (or an officer of an enterprise that is not a natural person) knows or has reason to believe that the owner of the money wishes to retain the money in the account.
- (2) However, an enterprise (or an officer of an enterprise that is not a natural person) does not have reason to believe that an owner wishes to retain money in an account merely because the owner does not respond to a communication from the enterprise (or does not respond as specified in the communication), even if the terms of the communication suggest that the owner's failure to respond indicates such a wish.
- (3) For the purposes of this Act, money is not unclaimed money if:
- (a) the money is, or is of a class, prescribed by the regulations as exempt from the operation of this Act, or

(b) the money is held by an enterprise that is, or is of a class, prescribed by the regulations as exempt from the operation of this Act, or

(c) the amount of money in the account concerned does not exceed \$20.

Part 3 Payment of unclaimed money to Chief Commissioner

10 Return and payment of unclaimed money to Chief Commissioner

- (1) An enterprise that holds unclaimed money on 30 June in any year must, within 4 months after that date (or such longer period as the Chief Commissioner may in a particular case allow), lodge with the Chief Commissioner a return relating to that money in a form approved by the Chief Commissioner.
- (1A) If, after 30 June and before the enterprise lodges the return with the Chief Commissioner, the enterprise pays any unclaimed money to the owner of the unclaimed money, the return must contain such particulars relating to the amounts so paid as are required by the form.
- (1B) The enterprise, when lodging the return, must pay to the Chief Commissioner an amount equal to the sum of the unclaimed money specified in the return less the sum of amounts paid by the enterprise and specified in accordance with subsection (1A).
- (2) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (3) An enterprise that fails to comply with subsection (1), (1A) or (1B) is guilty of an offence and is liable:
 - (a) to a penalty not exceeding 50 penalty units, and
 - (b) to a further penalty not exceeding 5 penalty units for each day after the period within which it was required to comply with that subsection during which the failure continues.

11 Copies and inspection of returns

- (1) An enterprise that lodges a return must retain a copy of the return at the enterprise's registered office or principal place of operation in the State (or, if the enterprise is a natural person, at a place nominated by the person and specified in the return).

Maximum penalty: 2 penalty units.
- (2) The copy is to be retained for at least 6 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.
- (3) The copy may be held in any form, but it must be readily able to be reproduced in the form of a document.

Maximum penalty: 2 penalty units.

- (4) An enterprise must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty: 2 penalty units.

- (5) The enterprise may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount).

12 Publication of information relating to unclaimed money

- (1) The Chief Commissioner is to cause to be published such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of:
- (a) the existence of each sum of unclaimed money paid to the Chief Commissioner under this Act that exceeds \$20 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and
 - (b) the identity of the owner of the money (if known).
- (2) The Chief Commissioner may determine the method by which such information is to be published. For example, the information may be published in the Gazette or on the Internet (or both).

13 Liability in respect of unclaimed money

- (1) An enterprise that pays unclaimed money to the Chief Commissioner in compliance with this Act is relieved from all further liability (other than a liability arising under any other law) in respect of the money concerned.
- (2) However, this section does not operate to relieve an enterprise from:
- (a) any obligation to comply with section 11 or a requirement, notice or direction under Part 5, or
 - (b) liability in respect of money paid to the Chief Commissioner in purported compliance with this Act if the Chief Commissioner repays the money to the enterprise under Part 4.

Part 3A Unclaimed superannuation benefits

Division 1 Definitions

13A Definitions

In this Part:

approved deposit fund has the same meaning as it has in section 10 (1) of the

Commonwealth Superannuation Act.

beneficiary, in relation to a superannuation fund, has the same meaning as it has in section 10 (1) of the Commonwealth Superannuation 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.

exempt public sector superannuation scheme means a superannuation scheme established under an Act of this State that is specified in regulations made under the Commonwealth Superannuation Act for the purposes of the definition of **exempt public sector superannuation scheme** in that Act.

fund means:

- (a) a superannuation fund, or
- (b) a retirement savings account.

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

holder of an RSA has the same meaning as it has in the Commonwealth RSA Act.

member means:

- (a) a member of, or depositor with, a superannuation fund, or
- (b) a holder of an RSA.

regulated superannuation fund has the same meaning as it has in section 19 of the Commonwealth Superannuation Act.

superannuation fund means:

- (a) a regulated superannuation fund, or
- (b) an exempt public sector superannuation scheme, or
- (c) an approved deposit fund.

superannuation provider means:

- (a) a trustee of a superannuation fund, or
- (b) an RSA provider.

tax file number has the same meaning as it has in the [Superannuation \(Unclaimed Money and Lost Members\) Act 1999](#) of the Commonwealth.

trustee means:

- (a) in relation to a regulated superannuation fund, an exempt public sector superannuation scheme (other than a scheme referred to in paragraph (b) or (c)) or an approved deposit fund, the trustee of the fund within the meaning of section 10 (1) of the Commonwealth Superannuation Act, or
- (b) in relation to an exempt public sector superannuation scheme that is an FTC scheme within the meaning of the *Superannuation Administration Act 1996*, the FSS Trustee Corporation, or
- (c) in relation to an exempt public sector superannuation scheme that is an STC scheme within the meaning of the *Superannuation Administration Act 1996*, the SAS Trustee Corporation.

Division 2 Unclaimed superannuation benefits

13B Return and payment of unclaimed superannuation benefits to Chief Commissioner

- (1) A superannuation provider must lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of all unclaimed superannuation benefits in the fund that is managed or provided by the superannuation provider as at the end of each half-year.
- (2) The superannuation provider must lodge the return:
 - (a) in relation to a half-year ending on 30 June, on or before the following 1 November, and
 - (b) in relation to a half-year ending on 31 December, on or before the following 1 May, or on or before such later date as the Chief Commissioner may in a particular case allow by notice in writing to the superannuation provider whether before or after 1 November or 1 May, as the case requires.
- (3) If, after the end of a half-year and before the superannuation provider lodges the return with the Chief Commissioner, the superannuation provider pays any unclaimed superannuation benefit to a person who is entitled to it, the return must contain such particulars relating to the amounts so paid as are required by the form.
- (4) The superannuation provider, when lodging the return, must pay to the Chief Commissioner an amount equal to the sum of the unclaimed superannuation benefits specified in the statement less the sum of amounts paid by the superannuation provider and specified in accordance with subsection (3).
- (5) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (6) An approval by the Chief Commissioner of a form or return for the purposes of this section:

- (a) may require the return to contain the tax file number of:
 - (i) the fund, and
 - (ii) a member of the fund if the return relates to the member and the member has quoted his or her tax file number to the superannuation provider, and
- (b) may require or permit the return to be given on a specified kind of data processing device in accordance with specified software requirements.

(7) (Repealed)

13BA (Repealed)

13C Copies and inspection of returns

- (1) A superannuation provider that lodges a return must retain a copy of the return at the superannuation provider's registered office or principal place of operation in the State (or, if the superannuation provider is a natural person, at a place nominated by the person specified in the return).

Maximum penalty: 2 penalty units.

(1A) (Repealed)

- (2) The copy is to be retained for at least 5 years after the date on which it was lodged.

Maximum penalty: 2 penalty units.

- (3) A superannuation provider must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty: 2 penalty units.

- (4) The superannuation provider may charge an inspection fee of not more than \$10 (or, if the regulations prescribe a greater amount for the purposes of this subsection, that greater amount).

13D Publication of information relating to unclaimed benefits

- (1) The Chief Commissioner is to cause to be published such information as appears to the Chief Commissioner to be sufficient to give reasonable notification of:
 - (a) the existence of each sum of unclaimed superannuation benefits paid to the Chief Commissioner under this Part that exceeds \$20 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount), and
 - (b) the identity of the beneficiary (if known).

- (2) The Chief Commissioner may determine the method by which such information is to be published. For example, the information may be published in the Gazette or on the Internet (or both).

13E Payment of unclaimed benefits where money later claimed

(1) If:

- (a) any unclaimed superannuation benefits have been paid to the Chief Commissioner under this Part, and
- (b) the Chief Commissioner is satisfied on application made by a person in a form approved by the Chief Commissioner that, if this Part and the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth had not been enacted, the person would have been paid that unclaimed superannuation benefit by the superannuation provider by whom it was paid to the Chief Commissioner,

the Chief Commissioner must pay that unclaimed superannuation benefit to that person.

- (2) The approved form of application may include a request that the applicant provide his or her tax file number to the Chief Commissioner.
- (3) A person is not obliged to comply with the request to provide his or her tax file number, and non-compliance with the request does not prevent the person from being paid an unclaimed superannuation benefit.

13F Chief Commissioner must repay excess

If a superannuation provider, after paying an amount to the Chief Commissioner under this Part, satisfies the Chief Commissioner that the amount so paid exceeds the amount that would have been paid to the person concerned, or is not unclaimed superannuation benefits that are required to be paid to the Chief Commissioner under this Act, the Chief Commissioner must refund to the superannuation provider the amount of the excess.

13G Appropriation

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments or refunds by the Chief Commissioner under this Part.

13H Register of unclaimed superannuation benefits

- (1) The Chief Commissioner must keep a register of unclaimed superannuation benefits paid to the Chief Commissioner under this Part.
- (2) The register may be in such form, and kept in such manner, as the Chief

Commissioner determines but must include particulars of:

- (a) the unclaimed superannuation benefits paid to the Chief Commissioner by a superannuation provider, and
 - (b) the member in respect of whom the unclaimed superannuation benefit was payable.
- (3) The Chief Commissioner may give information contained in the register to the Commissioner of Taxation holding office under a law of the Commonwealth.

13HA (Repealed)

13I Discharge of liability

A superannuation provider is, on payment to the Chief Commissioner of an amount as required by this Part, discharged from further liability in his or her capacity as superannuation provider in respect of that amount.

13J Trustee not in breach of trust

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

Division 3 Application of Part

13K Application of Part

- (1) This Part applies to a superannuation fund and to the trustee of a superannuation fund (not being an exempt public sector superannuation scheme) if:
 - (a) (Repealed)
 - (b) the trustee is a corporation within the meaning of the [Corporations Act 2001](#) of the Commonwealth and its registered office within the meaning of that Act is in New South Wales, or
 - (c) in the case of a trustee who is a natural person, the principal place where the trustee carries on business as a trustee is in New South Wales, or
 - (d) in a case where there are 2 or more trustees of the fund and paragraph (b) or (c) applies to one or more but not to all the trustees, the principal place where the fund is administered is in New South Wales.
- (2) This Part applies to an exempt public sector superannuation scheme and the provisions of this Part apply to the scheme and to the trustee of any such scheme despite any provision of any other Act or any other law.
- (3) This Part applies to a retirement savings account and an RSA provider if the provider

has its registered office within New South Wales.

13L Extra-territorial operation

It is the intention of Parliament that this Part should extend (subject to section 13K), as far as possible, to the following:

- (a) land or things situated outside New South Wales, whether in or outside Australia,
- (b) acts, transactions and matters done, entered into or occurring outside New South Wales, whether in or outside Australia,
- (c) trustees and beneficiaries situated or residing outside New South Wales, whether in or outside Australia,
- (d) RSA providers and holders of RSAs situated or residing outside New South Wales, whether in or outside Australia.

13M Deduction of tax from payments

Nothing in this Act prevents the Chief Commissioner from deducting from a payment of an unclaimed superannuation benefit to any person any tax payable to the Commonwealth on the unclaimed superannuation benefit that the Chief Commissioner is required to deduct from the unclaimed superannuation benefit under a law of the Commonwealth.

Part 4 Claims for and repayment of unclaimed money

14 Definition

In this Part:

applicant means a person who applies under section 17 for the repayment of unclaimed money paid to the Chief Commissioner under this Act.

15 Owner's entitlement to recovery

The owner of any unclaimed money paid to the Chief Commissioner under this Act is entitled to recover that money from the Chief Commissioner in accordance with this Part.

16 Extinguishment of entitlement

Despite the *Limitation Act 1969*:

- (a) if an owner's right to money paid to the Chief Commissioner under this Act was not extinguished before the date of that payment, the owner's entitlement under this Part is not extinguished until the end of a period of 6 years beginning on that date, and
- (b) the owner's right to that money subsists until the end of that period.

17 Application for repayment

- (1) The owner of any money paid to the Chief Commissioner under this Act may apply to the Chief Commissioner for repayment of the money.
- (2) An application under this section must be made in writing and be lodged with the Chief Commissioner.

18 Time for application

An application in accordance with section 17 may be lodged at any time before the owner's right to the money is extinguished.

19 Onus on applicant

An applicant bears the onus of establishing that the applicant is the owner of the money to which the application relates.

20 Standard of proof

The standard of proof for establishing ownership of unclaimed money is the balance of probabilities.

21 Notice of determination

- (1) 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 is the owner of the money (or part of the money) to which the application relates.
- (2) If the Chief Commissioner has not determined an application by the end of the period of 90 days after its lodgment, the Chief Commissioner is taken to have given the applicant 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.

22, 23 (Repealed)

24 Chief Commissioner may repay unclaimed money to owner

- (1) The Chief Commissioner may repay unclaimed money paid to the Chief Commissioner under this Act to any person who is determined under this Part to be the owner of the money.
- (2) A notice under section 21 (1) is to be accompanied, or followed as soon as practicable, by the appropriate repayment (if any).
- (3), (4) (Repealed)

25 Chief Commissioner may repay unclaimed money not required to be paid to Chief

Commissioner

- (1) The Chief Commissioner may repay money paid to the Chief Commissioner in purported compliance with this Act, but only if the Chief Commissioner is of the opinion that the money is not unclaimed money that is required to be paid to the Chief Commissioner under this Act.
- (2) The money may be repaid to the person by whom it was paid or to such other person as the Chief Commissioner considers appropriate.

26 Appropriation

The Consolidated Fund is appropriated by this section for the purposes of, and to the extent necessary to permit, repayments by the Chief Commissioner under this Part.

26A Recovery of money wrongly paid

- (1) If money is paid under this Part to a person who is not the owner of the money, the Chief Commissioner is entitled to recover the money from the person to whom it was paid (unless prevented from doing so by operation of the [Limitation Act 1969](#).)
- (2) The Chief Commissioner is to pay money recovered under this section into the Consolidated Fund.

Part 5 Miscellaneous

27 Application of certain provisions of [Taxation Administration Act 1996](#)

- (1) Parts 5, 7, 8, 9, 10 and 11 of the [Taxation Administration Act 1996](#) (other than sections 60, 63, 81-85, 111 and 126-128) are to be read as if they form part of this Act, subject to the following modifications:
 - (a) a reference to a tax default is to be read as a reference to a failure to pay the whole or part of money payable under this Act,
 - (b) a reference to a taxpayer is to be read as a reference to an enterprise or a superannuation provider,
 - (c) a reference to a taxation law is to be read as a reference to this Act,
 - (d) a reference to a tax is to be read as a reference to money payable to the Chief Commissioner under this Act,
 - (e) a reference to a person's tax liability is to be read as a reference to the liability of an enterprise or a superannuation provider to pay unclaimed money or unclaimed superannuation benefits under this Act.
- (2) Nothing in this section entitles a superannuation provider to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the

amount of a superannuation benefit or RSA benefit payable to any person or as part of the administrative, management or other costs of the fund or a retirement savings account.

- (3) Nothing in this section entitles an enterprise to deduct the amount of any interest or penalty tax payable by virtue of the operation of subsection (1) from the amount of any unclaimed money payable to any person.

28 General power to make assessment

- (1) The Chief Commissioner may make an assessment of the liability of an enterprise to pay unclaimed money, or of a superannuation provider to pay unclaimed superannuation benefits, to the Chief Commissioner.
- (2) The Chief Commissioner may make one or more assessments of the liability of an enterprise to pay unclaimed money, or of a superannuation provider to pay unclaimed superannuation benefits.
- (3) An assessment may be made only if:
 - (a) the enterprise or superannuation provider fails to lodge a return by the due date, or
 - (b) the Chief Commissioner is of the opinion that an incorrect return has been lodged by the enterprise or superannuation provider.
- (4) An assessment of a liability may consist of a determination that there is not a liability to pay unclaimed money or unclaimed superannuation benefits to the Chief Commissioner.
- (5) The Chief Commissioner may withdraw an assessment under this section at any time after the date of written notice of the assessment is given to the relevant enterprise or superannuation provider, whether or not the amount specified in the assessment has been paid.
- (6) A notice of assessment issued following a failure to pay the whole or part of money under section 10 (1) or 13B (1) must specify any interest and penalty tax payable.
- (7) The validity of an assessment is not affected because a provision of this Act has not been complied with.

29 Enterprises and superannuation providers that are not natural persons

Any act or thing that an enterprise or a superannuation provider is required or permitted to do by or under this Act may, in the case of an enterprise or superannuation provider that is not a natural person, be done on behalf of the enterprise or superannuation provider by an officer of the enterprise or superannuation provider.

30 Annotation of records

- (1) If the Chief Commissioner or an authorised officer is of the opinion that any matter in a record of an enterprise that relates (or may at some future time relate) to unclaimed money is incorrect, the Chief Commissioner may direct the enterprise to note the record with details of what the Chief Commissioner believes to be the true position concerning the matter.
- (2) The enterprise must comply with any such direction.

Maximum penalty (subsection (2)): 5 penalty units.

31 Disclosure of certain information prohibited

- (1) A person engaged in the administration of this Act must not disclose any information obtained in connection with an application for payment of unclaimed money or an unclaimed superannuation benefit under this Act, including any information obtained for the purpose of determining the application.

Maximum penalty: 100 penalty units.

- (2) This section does not prohibit a disclosure that is made:
 - (a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, or
 - (b) in connection with the administration or execution of this Act or a taxation law (within the meaning of the *Taxation Administration Act 1996*), including for the purpose of any legal proceedings arising out of this Act or a taxation law or a report of any such proceedings, or
 - (c) to the Commissioner of Taxation holding office under a law of the Commonwealth, or a person authorised by the Commissioner of Taxation.

32-45 (Repealed)

46 Liability of officers for offences by enterprises

- (1) If an enterprise contravenes, whether by act or omission, any provision of this Act or the regulations, each officer of the enterprise is taken to have contravened the same provision if the officer knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the enterprise has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on an enterprise for an offence committed by the enterprise against this Act or the regulations.

47 Proceedings

Proceedings for an offence against this Act or the regulations:

- (a) may be taken only by a person authorised in writing by the Chief Commissioner, and
- (b) are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

48 Lodgment with Chief Commissioner

For the purposes of this Act, a thing is lodged with the Chief Commissioner if it is:

- (a) lodged at an office of the Chief Commissioner, or
- (b) sent by post addressed to the Chief Commissioner at an office of the Chief Commissioner, or
- (c) sent by facsimile transmission or other electronic means notified by the Chief Commissioner as being an available means of communication, or
- (d) delivered to the facilities of a document exchange addressed to the Chief Commissioner if the Chief Commissioner has indicated that documents may be delivered to the Chief Commissioner in that way, or
- (e) sent by any means provided for the service of documents by another Act or law.

49 Other laws not affected

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

50 Regulations

- (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 2 penalty units for a breach of the regulation.

51 Repeal

The *Unclaimed Money Act 1982* is repealed.

52 (Repealed)

53 Savings, transitional and other provisions

Schedule 2 has effect.

54 Review of Act

- (1) The Treasurer is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 (Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 53)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Unclaimed Money Amendment Act 1997

State Revenue Legislation Amendment Act 1999

Unclaimed Money Amendment Act 2000

State Revenue Legislation Amendment Act 2001

State Revenue Legislation Further Amendment (No 2) Act 2001 (to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part:

earlier Act means the *Unclaimed Money Act 1982*.

3 Money held before commencement of Act

- (1) This Act applies to money held before as well as after the commencement of this Act.
- (2) However, this Act does not apply to money held in an account that had not been operated on for a period of 6 or more years immediately before the commencement of this Act if the money concerned was not, on that commencement, unclaimed money for the purposes of the earlier Act.

4 Time running before commencement of Act

A period specified in this Act includes any part of the period that may have occurred before the commencement of this Act.

5 Money paid to Treasurer under earlier Act

Any money paid to the Treasurer in compliance with the earlier Act is taken to have been paid to the Chief Commissioner under this Act.

6 Exercise of Treasurer's functions under earlier Act

Any functions exercised by the Treasurer under the earlier Act are taken to have been exercised by the Chief Commissioner under this Act.

7 Form for lodgment of returns

The form set out in Schedule 1 to the earlier Act is taken to be the form approved by the Chief Commissioner for the purposes of section 10 until the Chief Commissioner approves a different form.

8 Application for payment of unclaimed money

- (1) A person who:
 - (a) would have been entitled to maintain an action for the recovery of unclaimed money under section 10 of the earlier Act immediately before the repeal of that Act, and
 - (b) would not, but for this subclause, be entitled to recover unclaimed money from the Chief Commissioner under this Act,may apply to the Chief Commissioner for the repayment of that money within 6

months after that repeal.

- (2) The provisions of Part 4 of this Act apply to and in respect of any such application as if it were an application under that Part.

Part 3 Provisions consequent on enactment of Unclaimed Money Amendment Act 1997

9 Existing returns

Sections 27 and 28, as inserted by the *Unclaimed Money Amendment Act 1997*, do not apply to a return lodged or required to be lodged before the commencement of those sections.

Part 4 Provisions consequent on enactment of Unclaimed Money Amendment Act 2000

10 Amendments do not affect existing obligations

- (1) The amendments made to this Act by the *Unclaimed Money Amendment Act 2000*, do not affect any liability that arises before the commencement of those amendments.

- (2) In particular, any obligation:

- (a) to pay unclaimed superannuation benefits or RSA benefits to the Chief Commissioner, or
- (b) to lodge a return with the Chief Commissioner, or
- (c) to retain a copy of the return,

that arose before the commencement of those amendments continues as if the amendments had not been made.

Part 5 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2001

11 Publication of unclaimed money and benefit information

- (1) The requirement that the Chief Commissioner cause amounts of unclaimed money or superannuation benefits paid to the Chief Commissioner that exceed \$20 to be published as provided for by section 12 or 13D, as amended by the *State Revenue Legislation Amendment Act 2001*, applies only in respect of amounts paid to the Chief Commissioner on or after 1 July 2001.
- (2) In respect of amounts paid to the Chief Commissioner before that date, the requirement applies to amounts exceeding \$50.

- (3) Sections 12 (2) and 13D (2), as inserted by the *State Revenue Legislation Amendment Act 2001*, apply to amounts paid to the Chief Commissioner before or after 1 July 2001.