

Unclaimed Money Act 1995 No 75

[1995-75]



New South Wales

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Responsible Minister

- Treasurer
- Minister for Finance

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

Authorisation

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Unclaimed Money Act 1995 No 75



New South Wales

An Act to provide for the payment of unclaimed money into the Consolidated Fund; to make provision for the publication of information about, and the repayment of, unclaimed money; to make similar provision in relation to unclaimed superannuation benefits of public sector superannuation schemes; 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.

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

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

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 public sector 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 public sector superannuation provider, and includes a person in accordance with whose instructions the enterprise or public sector 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.

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

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.

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

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

6A Part does not apply to unclaimed agent trust money

This Part does not apply to money that is unclaimed money under Part 2A (Trust money under [Property and Stock Agents Act 2002](#)).

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.
- (2A) Money held by an enterprise in an account is not unclaimed money if the enterprise, or an officer of an enterprise that is not a natural person, knows or has reason to believe that the account has not been operated on for the period specified in section 7(1) because of a dispute between 1 or more persons about who the owner of the

money is.

- (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 \$100.

Part 2A Trust money under [Property and Stock Agents Act 2002](#)

9A Definitions

In this Part, **licensee**, **former licensee** and **trust account** have the same meanings as in the [Property and Stock Agents Act 2002](#).

9B Unclaimed trust money held by licensee

- (1) Money that has been held by a licensee for more than 2 years in a trust account kept by the licensee is **unclaimed money** for the purposes of this Act.
- (2) A licensee who has held money for more than 2 years in a trust account kept by the licensee 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.

Note—

Unclaimed money is required to be paid to the Chief Commissioner after 30 June in each year. See section 10.

9C Unclaimed trust money held by former licensee or personal representative

- (1) Money held in a trust account by a former licensee or the personal representative of a deceased licensee is **unclaimed money** for the purposes of this Act but section 10 does not apply to the money.
- (2) A former licensee, or the personal representative of a deceased licensee, who holds unclaimed money must within the required time for compliance with this section—
 - (a) lodge with the Chief Commissioner a return relating to the unclaimed money in a form approved by the Chief Commissioner, and
 - (b) pay the amount of the unclaimed money to the Chief Commissioner.

- (3) The required time for compliance with this section is 3 months after the date on which the person ceased to be a licensee or became the personal representative of the deceased licensee (or such longer period as the Chief Commissioner may in a particular case allow).
- (4) The Chief Commissioner is to pay money received under this section into the Consolidated Fund.
- (5) A former licensee, or the personal representative of a deceased licensee, who fails to comply with this section 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 he or she was required to comply during which the failure continues.

9D Regulations

Money is not unclaimed money under this Part if—

- (a) the money is, or is of a class, prescribed by the regulations as exempt from the operation of this Part, 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 Part.

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.
 - (1AA) An enterprise may include, in any return that it is required to lodge under this section, particulars of money that is not unclaimed money because it does not exceed \$100 and section 9 (3) (c) applies to it. In any such case, the money is to be treated as unclaimed money for the purposes of this Part (other than subsections (1) and (1A) and section 12 (1)) and Parts 4 and 5.
 - (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 must publish sufficient information about the existence of each sum of unclaimed money paid to the Chief Commissioner under this Act if—
 - (a) the amount exceeds \$100 or another amount prescribed by the regulations, and
 - (b) the identity of the owner of the money is known.

- (2) The Chief Commissioner may also publish sufficient information about the existence of each sum of unclaimed money if—

(a) the amount—

(i) does not exceed \$100 and is specified in a return under section 10(1AA) and paid to the Chief Commissioner, or

(ii) is paid to the Treasurer under the *Legal Profession Uniform Law Application Act 2014*, section 14 or the *Trustee Companies Act 1964*, section 26, and

(b) the identity of the owner of the money is known.

(3) The Chief Commissioner may determine how information is published under this section.

Example—

Information may be published on Revenue NSW's website.

(4) In this section—

sufficient information means information the Chief Commissioner considers sufficient to give reasonable notice of sums of unclaimed money.

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—

beneficiary, in relation to a public sector superannuation scheme, 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.

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

member means a member of a public sector superannuation scheme.

public sector superannuation provider means a trustee of a public sector superannuation scheme.

public sector superannuation scheme means a State or Territory public sector superannuation scheme (within the meaning of section 18 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth) that is established—

- (a) by or under a law of New South Wales, or
- (b) under the authority of the Government of New South Wales or a body constituted by or under a law of New South Wales.

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 public sector superannuation scheme that is an STC scheme within the meaning of the *Superannuation Administration Act 1996*, the SAS Trustee Corporation, and
- (b) in relation to any other public sector superannuation scheme, the trustee of the scheme within the meaning of section 10 (1) of the Commonwealth Superannuation Act.

Division 2 Unclaimed superannuation benefits

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

- (1) A public sector 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 public sector superannuation provider as at the end of each half-year.
- (2) The public sector 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 public sector 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 public sector superannuation provider lodges the return with the Chief Commissioner, the public sector 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 public sector 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 public sector 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 public sector superannuation scheme, and
 - (ii) a member of the public sector superannuation scheme if the return relates to the member and the member has quoted his or her tax file number to the public sector 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 public sector superannuation provider that lodges a return must retain a copy of the return at the public sector superannuation provider's registered office or principal place of operation in the State (or, if the public sector 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 public sector superannuation provider must make the retained copies of returns reasonably available for inspection by any person.

Maximum penalty—2 penalty units.

- (4) The public sector 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, 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 public sector 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 public sector 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 public sector 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 public sector 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 public sector superannuation provider is, on payment to the Chief Commissioner of an amount as required by this Part, discharged from further liability in its capacity as a public sector superannuation provider in respect of that amount.

13J Public sector superannuation provider not in breach of trust

Nothing done by a public sector superannuation provider 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 Part applies to NSW public sector superannuation schemes

This Part applies to a public sector superannuation scheme of New South Wales and the provisions of this Part apply to the scheme and to the trustee of the scheme despite any provision of any other Act or law.

13L (Repealed)

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 (Repealed)

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 must be made in a form approved by the Chief Commissioner.
- (3) The Chief Commissioner may require an applicant to provide, within a specified period, further information or documents the Chief Commissioner reasonably requires to properly consider and determine the application.
- (4) The Chief Commissioner may refuse to determine an application if the applicant does not comply with a requirement under subsection (3).

18 Time for application

- (1) An application in accordance with section 17 may be lodged at any time before the owner's right to the money is extinguished.
- (2) The Chief Commissioner may permit an application in accordance with section 17 to be lodged after the owner's right to the money has been 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.

25A Enterprise entitled to recover money from Chief Commissioner in certain cases

- (1) An enterprise that pays an amount of unclaimed money to the owner of the money,

after having paid the same amount to the Chief Commissioner under this Act, is entitled to recover the amount paid to the Chief Commissioner from the Chief Commissioner.

- (2) This Part applies in respect of the money as if a reference to the owner of the money were a reference to the enterprise entitled to recover the money from the Chief Commissioner.
- (3) The person to whom the money was paid by the enterprise is not entitled to recover the money from the Chief Commissioner.
- (4) This section does not apply in respect of any money paid to the Chief Commissioner that was paid to a person determined by the Chief Commissioner to be the owner of the money before an application to recover the money is made by an enterprise.

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](#)).
- (1A) The Chief Commissioner must give the person written notice requiring the person to repay the money to the Chief Commissioner within the period, of at least 21 days, specified in the notice.
- (2) The Chief Commissioner is to pay money recovered under this section into the Consolidated Fund.
- (3) Money recoverable from a person under this section is taken to be an amount of unpaid tax for the purposes of the [Taxation Administration Act 1996](#), sections 46–47E and 71–80, with the following modifications—
 - (a) a reference to a taxpayer is to be read as a reference to the person from whom the money is recoverable,
 - (b) a reference to a taxation law is to be read as a reference to this Act,
 - (c) a reference to a tax is to be read as a reference to money payable to the Chief Commissioner under this Act,
 - (d) a reference to a tax liability, including a corporate tax liability, is to be read as a reference to the liability of the person to repay money to the Chief Commissioner under this Act,

- (e) a reference to a notice of assessment is to be read as a reference to a notice issued by the Chief Commissioner under subsection (1A).

26B Offset of repayment to other debts

Instead of repaying unclaimed money to the owner of the money under section 24, the Chief Commissioner may apply the amount that would otherwise be repaid to meet the following—

- (a) a tax debt or other amount payable by the owner under a taxation law, within the meaning of the *Taxation Administration Act 1996*,
- (b) a grant debt, within the meaning of the *State Debt Recovery Act 2018*, payable by the owner, whether or not a debt recovery order has been made under that Act against the owner for the debt,
- (c) a referable debt, within the meaning of the *State Debt Recovery Act 2018*, payable by the owner, if a debt recovery order has been made against the owner for the debt,
- (d) a fine, within the meaning of the *Fines Act 1996*, payable by the owner.

Part 4A Objections and reviews

Division 1 Objections

26C Objections

- (1) An applicant who is dissatisfied with the Chief Commissioner's determination of the applicant's application under section 17 may lodge a written objection with the Chief Commissioner.
- (2) The objection must specify the grounds for the objection fully and in detail.
- (3) The applicant has the onus of proving the objection.
- (4) An objection must be lodged with the Chief Commissioner not later than 60 days after the notice of determination is given to the applicant under section 21.
- (5) To avoid doubt, an applicant may not lodge an objection in relation to a decision by the Chief Commissioner to refuse to determine an application.

26D Objections lodged out of time

- (1) The Chief Commissioner may permit an applicant to lodge an objection after the end of the 60-day period specified in section 26C(4).
- (2) The applicant must provide written notice of the circumstances and reasons for the failure to lodge the objection within the 60-day period.

- (3) The Chief Commissioner may—
 - (a) grant permission unconditionally or subject to conditions, or
 - (b) refuse permission.
- (4) The Chief Commissioner must give the applicant notice of the Chief Commissioner's decision.
- (5) The Chief Commissioner must give reasons for—
 - (a) imposing conditions on the permission, or
 - (b) refusing permission.

26E Determination of objection

- (1) The Chief Commissioner must determine an objection by—
 - (a) allowing the objection in whole or in part, or
 - (b) disallowing the objection.
- (2) The Chief Commissioner may determine an objection that is the subject of an application for review under Division 2 at any time before the hearing of the application for review commences.
- (3) If the Chief Commissioner delegates the functions conferred by this section, the delegate who considers the objection must be a different person from, and not subordinate to, the person who made the determination against which the objection is lodged.

26F Suspension of determination

- (1) The Chief Commissioner may suspend the determination of an objection for a period during which the applicant, or another person having information relevant to the objection, fails to provide information relevant to the objection requested by the Chief Commissioner.
- (2) The Chief Commissioner must give the applicant written notice of a suspension under subsection (1).

26G Notice of determination

- (1) The Chief Commissioner must give notice to the applicant of the determination of the objection.
- (2) The Chief Commissioner must give reasons for—
 - (a) allowing the objection in part only, or

- (b) disallowing the objection.
- (3) The reasons for a determination of an objection in relation to which the Civil and Administrative Tribunal has jurisdiction under Division 2 to review must set out the matters referred to in the *Administrative Decisions Review Act 1997*, section 49(3) in relation to the determination.
- (4) The notice must also inform the applicant of the applicant's right to make an application for review under Division 2.

Division 2 Reviews

26H Review by Civil and Administrative Tribunal

- (1) An applicant may apply to the Civil and Administrative Tribunal (the **Tribunal**) for an administrative review under the *Administrative Decisions Review Act 1997* of a decision of the Chief Commissioner that has been the subject of an objection under Division 1 if—
 - (a) the applicant is dissatisfied with the Chief Commissioner's determination of the objection, or
 - (b) the Chief Commissioner has not determined the applicant's objection within 90 days after the objection was lodged, not including a period of suspension under section 26F.
- (2) An applicant who has applied to the Supreme Court under section 26I for a review of a decision may not apply to the Tribunal under this section in relation to the same decision.
- (3) However, the applicant may apply to the Tribunal, if the earlier application is withdrawn with the approval of the Supreme Court, for the purposes of enabling the Tribunal to deal with the matter.
- (4) The following provisions of the *Administrative Decisions Review Act 1997* do not apply to an application made under this section—
 - (a) Chapter 3, Part 2,
 - (b) section 55(3)-(6).
- (5) For the purposes of the *Administrative Decisions Review Act 1997*, section 58 (1)(a)—
 - (a) the obligation of the Chief Commissioner to lodge a statement of reasons with the Tribunal in relation to an application is limited to providing the Tribunal with a statement of reasons only in relation to the matters arising from the grounds specified in the application, and
 - (b) if one of the grounds specified in the application relates to a matter raised in an

objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the applicant by the Chief Commissioner under section 26G in explanation of the part of the determination to which the objection related.

26I Review by Supreme Court

- (1) An applicant may apply to the Supreme Court for a review of a decision of the Chief Commissioner that has been the subject of an objection under Division 1 if—
 - (a) the applicant is dissatisfied with the Chief Commissioner’s determination of the objection, or
 - (b) the Chief Commissioner has not determined the applicant’s objection within 90 days after the objection was lodged, not including a period of suspension under section 26F.
- (2) An applicant who has applied to the Civil and Administrative Tribunal under section 26H for administrative review of a decision may not apply to the Supreme Court under this section in relation to the same decision.
- (3) However, the applicant may apply to the Supreme Court, if the earlier application is withdrawn with the approval of the Civil and Administrative Tribunal, for the purposes of enabling the Supreme Court to deal with the matter.
- (4) A review by the Supreme Court is taken to be an appeal for the purposes of the [Supreme Court Act 1970](#) and the regulations and rules made under that Act, except as otherwise provided by that Act or those regulations or rules.

26J Time for making application for review

- (1) An application for review following a determination by the Chief Commissioner of an objection must be made not later than 60 days after the notice of the Chief Commissioner’s determination of the objection is issued.
- (2) The court or tribunal to which the application is to be made may allow a person to apply for a review after the 60-day period.
- (3) An application for review following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period may be made at any time after the end of the period.

26K Provisions relating to applications for review

- (1) An application for review following a failure of the Chief Commissioner to determine an objection must not be made unless the applicant has given written notice of the proposed application to the Chief Commissioner not less than 14 days before making the application.

- (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The applicant has the onus of proving the applicant's case in an application for review.
- (4) If the applicant or respondent appeals against a decision of the Civil and Administrative Tribunal in an application for review to an Appeal Panel of the Tribunal, the applicant in the application for review continues to bear the onus of proving the applicant's case in the appeal if the Appeal Panel grants leave for the appeal to extend to a review of the merits of the decision.

26L Powers of court or tribunal on review

- (1) The court or tribunal dealing with the application for review may do one or more of the following—
 - (a) confirm or revoke the determination to which the application relates,
 - (b) make a determination in place of the determination to which the application relates,
 - (c) order the applicant to repay unclaimed money to the Chief Commissioner,
 - (d) remit the matter to the Chief Commissioner for determination in accordance with the decision of the court or tribunal,
 - (e) make other further orders as to costs or otherwise as the court or tribunal thinks fit.
- (2) This section does not limit the application of the following provisions in relation to an application for review before the Civil and Administrative Tribunal—
 - (a) the *Administrative Decisions Review Act 1997*, Chapter 3, Part 3, Division 3,
 - (b) the *Civil and Administrative Tribunal Act 2013*, section 60.

26M Giving effect to decision on review

- (1) Within 60 days after the decision on the review becomes final, the Chief Commissioner must take action that is necessary to give effect to the decision.
- (2) If no appeal against the decision on the review is made within 30 days after the day on which the decision is made, the decision on the review is taken, for the purposes of this section, to have become final at the end of the 30-day period.

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 the

excluded provisions) 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 public sector 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 public sector superannuation provider to pay unclaimed money or unclaimed superannuation benefits under this Act.
- (2) Nothing in this section entitles a public sector 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 payable to any person or as part of the administrative, management or other costs of the scheme.
- (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.
- (4) For the purposes of this section, the **excluded provisions** are the following provisions of the *Taxation Administration Act 1996*—
- (a) Division 2 of Part 7,
 - (b) sections 60 and 63,
 - (c) Divisions 2A and 3 of Part 9,
 - (d) Division 5 of Part 10,
 - (e) sections 111 and 126–128.

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 public sector 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 public sector superannuation provider to pay unclaimed superannuation benefits.

- (3) An assessment may be made only if—
 - (a) the enterprise or public sector 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 public sector 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 public sector 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 9C, 10 or 13B 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 public sector superannuation providers that are not natural persons

Any act or thing that an enterprise or a public sector superannuation provider is required or permitted to do by or under this Act may, in the case of an enterprise or public sector superannuation provider that is not a natural person, be done on behalf of the enterprise or public sector superannuation provider by an officer of the enterprise or public sector 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 Chief Commissioner may process unclaimed money claims under other Acts

- (1) The Chief Commissioner is authorised to process claims for the payment or repayment of unclaimed trust money on behalf of the Treasurer.
- (2) For that purpose, Part 4 (other than sections 16, 18 and 25A) applies in respect of unclaimed trust money in the same way as it applies to unclaimed money paid to the Chief Commissioner under this Act.
- (3) Anything done or omitted to be done by the Chief Commissioner under this Act in respect of unclaimed trust money is taken, for the purposes of the *Legal Profession Uniform Law Application Act 2014* and the *Trustee Companies Act 1964*, to have been done or omitted by the Treasurer.
- (4) In this section, **unclaimed trust money** means money that is paid to the Treasurer under—
 - (a) section 14 of *Legal Profession Uniform Law Application Act 2014*, or
 - (b) section 26 of the *Trustee Companies Act 1964*.

33-45 (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 the Local Court.

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 any Act that 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.

Part 6 Provisions consequent on enactment of State Revenue

Legislation Further Amendment Act 2003

12 Publication of unclaimed money and benefit information

Sections 12 (1) and 13D (1), as in force immediately before the amendments made to those provisions by the *State Revenue Legislation Further Amendment Act 2003*, continue to apply in respect of amounts of unclaimed money or superannuation benefits exceeding \$20 paid to the Chief Commissioner before the commencement of those amendments.

Part 7 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2008

13 Application of amendments

- (1) The amendments made to this Act by the *State Revenue Legislation Amendment Act 2008* (other than the amendments to section 27) are taken to have effect on and from 1 July 2007.
- (2) This Act, as in force immediately before 1 July 2007, continues to apply in respect of any unclaimed superannuation benefits in a fund managed or provided by a superannuation provider before 1 July 2007.
- (3) However, a superannuation provider is, on payment of any such amount to the Commissioner of Taxation in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth, discharged from further liability under this Act in respect of the amount.
- (4) Subclause (3) does not apply to a public sector superannuation provider (within the meaning of Part 3A).
- (5) In this clause—
fund and **superannuation provider** have the meanings given by Part 3A of this Act, as in force before its amendment by the *State Revenue Legislation Amendment Act 2008*.

Part 8 Provisions consequent on repeal of Companies (Application of Laws) Act 1981

14 Unclaimed money arising from company liquidations

- (1) Money paid or payable to the Treasurer under section 427 of the *Companies (New South Wales) Code* is to be paid to the Chief Commissioner of State Revenue and dealt with as unclaimed money under this Act.
- (2) That money is deemed to be unclaimed money for the purposes of this Act and when paid to the Chief Commissioner is deemed to have been received by the Chief

Commissioner under section 10 of this Act.

- (3) Money is considered to have been paid or be payable under section 427 of the *Companies (New South Wales) Code* if it would have been paid or be payable under that section had the *Companies (Application of Laws) Act 1981* not been repealed.

Part 9 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2010

15 Definition

In this Part, **amending Act** means the *State Revenue Legislation Amendment Act 2010*.

16 Unclaimed money under other Acts

- (1) The amendment made to section 12 by the amending Act applies only in respect of money paid to the Treasurer on or after the commencement of the amendment.
- (2) Section 32, as inserted by the amending Act, extends to unclaimed money that was paid to the Treasurer before the insertion of that section.

17 Enterprise entitled to recover money from Chief Commissioner in certain cases

Section 25A, as inserted by the amending Act, extends to any unclaimed money paid by an enterprise to the owner of the money or to the Chief Commissioner before the insertion of that section.

Part 10 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2016

18 Time for application

Section 18 (2), as inserted by the *State Revenue Legislation Amendment Act 2016*, extends to money paid to the Chief Commissioner before the commencement of that provision.